

Energy Community Secretariat

Am Hof 4, Level 5, 1010 Vienna, Austria

Phone	+43 (0)1 535 2222
Email	contact@energy-community.org
Web	www.energy-community.org

Agency for the Cooperation of Energy Regulators

Attn. Director [REDACTED]

Vienna, 25 August 2015

ACER/O/jko/02/25-08-2015

Per e-mail only

incremental@acer.europa.eu

Reference: **Public Consultation on the Incremental Capacity Proposal and further NC CAM amendments (PC_2015_G_05)**

Dear Director [REDACTED]

Ladies and Gentlemen,

The Energy Community Secretariat ("Secretariat") welcomes the opportunity to contribute to the *Public Consultation on the Incremental Capacity Proposal and further NC CAM amendments (PC_2015_G_05)* and has the pleasure to provide its following comments. In particular, we would like to use the possibility offered by question four of the public consultation and propose an additional amendment related to Article 2(1) of Regulation (EU) No 984/2013.

By Ministerial Council Decision 2011/02/MC-EnC the Energy Community members have committed to implement the Third Energy Package including related Network Code / Guideline Regulations. The Ministry representatives (Permanent High Level Group) and Regulatory Board have already established procedures for their adoption upon proposal of the European Commission ("Commission").

Except for Serbia, Ukraine (gas) and Albania (electricity), not all Energy Community member countries so far implemented the Third Energy Package. We, though, have good reason to expect significant progress for the second half of this year. This should, in our view, provide a thorough basis for the Commission to consequently table existing Network Code / Guideline Regulations – such as Regulation (EU) No 984/2013 – for adoption in the Energy Community.

Article 2(1) sentence two of Regulation (EU) No 984/2013 foresees that "it [*the Regulation*] may also apply to entry points from and exit points to third countries, subject to the decision of the relevant national regulatory authority". To this extent, said provision deviates from the obligatory application of Regulation (EU) No 984/2013 on entry and exit points between EU Member States, as ruled by Article 2(1) sentence one leg.cit.

Energy Community Secretariat

Am Hof 4, Level 5, 1010 Vienna, Austria

Phone	+43 (0)1 535 2222
Email	contact@energy-community.org
Web	www.energy-community.org

Provided an Energy Community member country – *per definitionem* qualifying as “third country” in the sense of Article 2(1) sentence two of Regulation (EU) No 984/2013 – has transposed and implemented both the Third Energy Package and Regulation (EU) No 984/2013, equal treatment of the relevant Energy Community member country with any other “third country” must be considered a discrimination infringing Article 7 of the Energy Community Treaty that prohibits discrimination within the scope of the Treaty and to which the European Union is a Party. Any such different treatment also stands against the very scope of the Energy Community Treaty, namely to integrate the Energy Community and EU gas and electricity markets. We further believe that the fact of having a common legal basis with the EU Member States, namely the Third Energy Package, alone calls for and justifies specific provisions for Energy Community member countries, different from those for “third countries”. Covering any non-EU Members State under this term, in our view, represents an unduly undifferentiated concept that neglects the deep legal interlinks between the EU and Energy Community. In the light of this, **we propose introducing a new paragraph (1a) in Article 2 of Regulation (EU) No 984/2013 reading as follows: “To the extent an Energy Community Contracting Party has transposed this Regulation, it shall apply to entry and exit points between the relevant Contracting Party and Member States.”**

The Secretariat remains at your disposal to further discussion of our proposal. Please do not hesitate to contact me at [REDACTED]

Yours sincerely,

[REDACTED]