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Unser Zeichen
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Ihr Zeichen

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**Consultation: The definition of capacity calculation regions, 22 June 2016
Comments by Oesterreichs Energie (Register ID number: 80966174852-38)**

Dear Madam,
Dear Sir,

Oesterreichs Energie, the Association of Austrian Electricity Companies, welcomes the opportunity to comment on the public consultation: The definition of capacity calculation regions, 22 June 2016, (PC_2016_E_02). Oesterreichs Energie represents more than 140 energy companies active in generation, trading, transmission, distribution and sales which in total cover more than 90 per cent of the Austrian electricity generation and the entire distribution.

Consultation questions:

1. Do you consider both the commitment from the CWE and the CEE TSOs to cooperate towards a merger of the CWE and CEE CCRs and the MoU signed on 3 March 2016 as sufficient to ensure that the CWE and CEE regions will develop and implement a common congestion management procedure compliant with the requirements of the CACM Regulation, as well as of Regulation (EC) No 714/2009? Or should the definition of the CCRs provide for a CCR already merging the proposed CWE and CEE regions to ensure compliance with the required common congestion management procedure?

In order to have legal and operational clarity we strongly advocate to define the merging of the CWE and CEE regions in an upcoming CCR Decision and not just to rely on bilateral commitments and the MoU of 3 March 2016.

Furthermore the upcoming CCR Decision should provide clear governance rules considering that initiatives started by the CWE region can and shall be continued and finalized without any delay and disruption.

2. Do you have comments on the description of the geographical evolution of the CCRs over time, as proposed by all TSOs in Annex 3 to the Explanatory document to the CCRs Proposal?

Having regard to Oesterreichs Energie's reply to Question 1 above (supporting the inclusion of a merged CEE/CWE CCR in the upcoming CCR Decision), reference to the special situation of the CEE and CWE CCRs in Annex 3 to the Explanatory Document to the CCRs Proposal becomes redundant.

3. Should the CEE region (or a merged region) include the bidding zone borders between Croatia and Slovenia, between Croatia and Hungary, and between Romania and Hungary?

This Question 3 relates to the attribution of already existing bidding zone borders to the CEE region and accordingly falls within the scope of the process to define CCRs pursuant to Art 15 of the CACM Guideline.

4. Should the CEE region (or a merged region) include a bidding zone border between Germany/Luxembourg and Austria?

Establishing new bidding zone borders is neither in the scope of the CCR definition, as this is organised within the bidding zone review; nor is a bidding zone border between Germany/Luxembourg and Austria justified by technical, legal or economic reasons.

In contrast to Question 3 above, we want to stress that this Question 4 relates to the introduction (and attribution) of a so far non-existing bidding zone border. The definition of new bidding zone borders is however not within the scope of the process to define CCRs pursuant to Art 15 of the CACM Guideline, but exclusively regulated by the bidding zone process as laid down in Art 32 *et seq.* of the CACM Guideline. The subject matter of Question 4 thus exceeds the scope of the CCR definition process already from the outset.

Pursuant to Art 15 para 2 of the CACM Guideline, the common proposal regarding the determination of CCR shall be based upon existing bidding zone borders which shall be assigned to a respective CCR. In other words, under Art 15 of the CACM Guideline the CCR Proposal is only intended to propose CCRs based on existing bidding zone borders, but not to suggest the reconfiguration of bidding zones by the introduction of new bidding zone borders.

The review of existing bidding zones configurations is explicitly governed by Art 32 *et seq.* of the CACM Guideline. Pursuant thereto, the bidding zone review is based on a thorough and detailed study as an absolute prerequisite for the introduction of new bidding zone borders. This procedural set-up underscores the legal inadmissibility to introduce new bidding zone borders by the CCR process which does not provide for any thorough analysis of an efficient bidding zone configuration at all.

Hence, the inclusion of a non-existing bidding zone border between Germany and Austria in a CCR Decision would clearly exceed the competences by the decision making body and

clearly violate and (unlawfully) anticipate the results of the bidding zone review which is the only procedure to establish new bidding zone borders under the current regulatory framework. (Reference is made to Oesterreichs Energie's Statement in Intervention in Case-A-001-2015 before ACER's Board of Appeal ("BoA") which is known to ACER.)

5. Do you have comments on any other new element or development concerning the CCRs Proposal which occurred after the public consultation held by ENTSO-E from 24 August to 24 September 2015?

According to recent decisions of the BoA in Cases-A-001-2015 and A-002-2015 (as published on 21 December 2015), the BoA held that the ACER Opinion (as referred to in the current CCR Proposal in particular in relation to the alleged requirement to introduce a new bidding zone border between Austria and Germany) is a purely non-binding document and "*indeed no legal effects derive from non-compliance with it*" (see Recital 39).

The ACER Opinion can therefore by no means constitute a sustainable legal basis for a proposition of a German-Austrian bidding zone border in an upcoming CCR Decision.

Thank you for taking our comments into consideration. If you have any further questions, please do not hesitate to contact us.

Yours sincerely,

DI Wolfgang Anzengruber
President

Dr. Barbara Schmidt
Secretary General