

**REQUEST FOR AMENDMENT BY
REGIONAL REGULATORY AUTHORITIES AGREED AT
THE (NORDIC) ENERGY REGIONAL REGULATORS'
FORUM**

ON

**NORDIC TSOS' PROPOSAL IN ACCORDANCE WITH
ARTICLE 33(1) AND ARTICLE 38(1) OF THE
COMMISSION REGULATION (EU) 2017/2195 OF 23
NOVEMBER 2017 ESTABLISHING A GUIDELINE ON
ELECTRICITY BALANCING**

17 October 2019

I. Introduction and legal context

This document elaborates an agreement of the Regulatory Authorities of Denmark, Finland, Norway and Sweden (hereafter referred to as the Regulatory Authorities) made at the (Nordic) Energy Regional Regulators' Forum on 17 September 2019, on Energinet's, Fingrid's, Statnett's and Svenska kraftnät's (hereafter referred to as the TSOs) proposal in accordance with article 33(1) and article 38(1) of the Commission Regulation (EU) 2017/2195 of 23 November 2017 establishing a guideline on electricity balancing (EBGL) (hereafter referred to as "the Proposal").

The Proposal was received by the last Regulatory Authority on 17 April 2019. EBGL article 5(6) requires the Regulatory Authorities to consult and closely cooperate and coordinate with each other in order to reach an agreement, and make decisions within six months following receipt of submissions of the last relevant Regulatory Authority concerned, i.e. by 17 October 2019.

The Regulatory Authorities reached an agreement in the (Nordic) ERRF on 17 September 2019 to request an amendment to the Proposal.

II. The TSOs' Proposal

The proposal is an element in the TSOs plans to establish a Nordic aFRR capacity market and, as such, is to be seen in the context of two other proposals submitted to approval with the Regulatory Authorities pursuant to, respectively, EBGL article 34(1) and article 41(1).

A draft proposal was consulted by the TSOs through ENTSO-E from 3 September 2018 to 4 October 2018 in line with Article 10(4) of the EBGL. Along with the draft proposal, all TSOs published an explanatory document. In the public consultation, all TSOs were seeking input from stakeholders and market participants on the draft proposal. The Regulatory Authorities closely observed, analyzed and continuously provided feedback and guidance to all TSOs during various meetings and through a shadow opinion dated 2 November 2018 followed by a mail from the Regulatory Authorities dated 9 April 2019.

III. Agreed Regulatory Authorities' Position

The Regulatory Authorities have reached an agreement that the proposal cannot be approved and therefore request the TSOs to amend the Proposal, in accordance with EBGL article 6(1), taking into consideration the comments presented below.

IV. Requests for changes to the Proposal

Headline

The Regulatory Authorities suggest the TSOs to make the headline of the proposal more specific.

Recitals

Recital 2

The Regulatory Authorities request the TSOs to refer to The Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity (hereafter the “Electricity Market Regulation”) rather than Regulation (EC) No 714/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the network for cross-border exchanges in electricity (hereafter referred to as “Regulation (EC) No 714/2009”) and to take the former Regulation into account rather than the latter as it will not apply as of 1 January 2020, cf. Article 75 (1) of the former regulation.

Recital 4

The Regulatory Authorities request the TSOs to make the reference to operational limits in SOGL Regulation more precise.

Recital 10

The Regulatory Authorities find that the recital merely contains the TSOs’ conclusion. The Regulatory Authorities request the TSOs to elaborate and substantiate why they have reached this conclusion.

Recital 17

The TSOs state that the Proposal contributes to the general objectives of the EBGL Regulation to the benefit of all market participants and electricity end consumers. The Regulatory Authorities request that the TSOs support this statement with an impact assessment of the proposed methodology. Reference is made to the request for amendment by the Regulatory Authorities to the abovementioned proposal pursuant to EBGL article 41(1)

Articles

Article 1

The Regulatory Authorities find that there is a drafting inconsistency between the current proposal and article 3 in the proposal pursuant to EBGL article 41(1) and request the TSOs to ensure consistency in wording between the two proposals.

The Regulatory Authorities advise the TSOs not to refer the proposal’s article 1(4) to terms and conditions that are not developed yet, but, if deemed necessary by the TSOs, to refer to them in the recitals.

Article 2

The Regulatory Authorities request the TSOs to specify whether there will be BSPs that are not eligible and, if necessary, to amend the proposal accordingly.

Article 3

The Regulatory Authorities request the TSOs to reassess the timing of procurement as the Electricity Market Regulation article 6(9) prescribes it to be D-1. A deviation from that can only be considered if TSOs motivates and requests a derogation following the requirements in the Electricity Market Regulation article 6(9). Irrespective of a derogation, at least 40 % of the standard balancing products and a minimum of 30 % of all products used for balancing capacity, must be procured D-1.

Article 3(3) of the proposal states that the duration of the application of the methodology in accordance with EBGL Article 41 should be until the co-optimized allocation process of cross-zonal capacity (CZC) for exchange of balancing capacity in accordance with EBGL Article 40 will be implemented by all TSOs.

The Regulatory Authorities request the TSOs to amend the proposal's article 3(3) to require the TSOs to resubmit the proposal pursuant to EBGL article 38(1) together with an assessment on whether or not to apply the co-optimized allocation process pursuant to EBGL article 40 as soon as this process is available for application for the TSOs.

Article 4

The Regulatory Authorities find that a reference to EBGL article 16 should also be made in the proposal's article 4(1).

The Regulatory authorities request the TSOs to elaborate in the explanatory document further on the potential challenges arising from the fact that prequalifications are not harmonized for the time being in the Nordics.

The Regulatory Authorities request the TSOs to specify whether a BSP before prequalification is to be considered "a potential BSP" and whether "an eligible BSP" has the same status as "a prequalified BSP". Reference is made to the request above on the proposal's article 2.

Article 5

The Regulatory Authorities ask the TSOs to clarify what is meant by the platform in the proposal's article 5(3) or to remove the concept from the proposal.

Article 6(9) of the Electricity Market Regulation prescribes the procurement to be D-1 unless a derogation is granted. Such derogation needs to be compliant with the requirements given in article 6(9) of the Electricity Market Regulation. Irrespective of a derogation, at least 40 % of the standard balancing products and a minimum of 30 % of all products used for balancing capacity, must be procured D-1.

Thus, the Regulatory Authorities request the TSOs to reconsider the gate closure times in order to ensure compliance with article 6(9) in the Electricity Market Regulation.

Article 6

The Regulatory Authorities refer to the comments made on article 9 and 14 in this Request for Amendment.

The Regulatory Authorities request the TSOs in the proposal's article 6(2)(d) to refer to the methodologies pursuant to SOGL article 157 and SOGL article 159 to where the FATs are defined.

Article 7

For the proposal's article 7(1) reference is made to the request for amendment above on articles 2(2)(b) and 4(1).

The reference in the proposal's article 7(2) to article 5(3) is a wrong reference. The Regulatory Authorities request the TSOs to change the reference to Article 5(4).

Article 8

The Regulatory Authorities do not find pay-as-bid (PAB) to be well justified. The Regulatory Authorities believe that PAB causes, among others 1) Unwanted incentives with regard to bidding behavior; 2) Lack of transparency with regard to costs and TSO settlement; 3) Weak incentives for new investments; and 4) market barriers where knowledge of the market is essential.

The Regulatory Authorities, consequently, request the TSOs to better justify why the choice of pay-as-bid pricing meets the general settlement principles pursuant to EBGL Article 44 (1)(f) and (h), i.e. to avoid distorting incentives to BSPs and to provide incentives for BSPs to offer and deliver balancing services to the connecting TSO, or change the market design to pay-as-clear from the outset of the establishment of the common market.

This request should also be seen in relation to the later request to article 12 of this Request for Amendment.

Article 9

EBGL article 38(5) reads

TSOs may allocate cross-zonal capacity for the exchange of balancing capacity or sharing of reserves only if cross-zonal capacity is calculated in accordance with the capacity calculation methodologies developed pursuant to Regulation (EU) 2015/1222 and (EU) 2016/1719”.

These methodologies have been developed but are not implemented yet. Nevertheless, and despite the analysis in the explanatory document to the TSOs proposal pursuant to EBGL article 41(1) the Regulatory Authorities still do not find the proposed CZC allocation compliant with article 38 (5).

The Regulatory Authorities request the TSOs to further specify how they will assess whether the CZC is needed for aFRR exchange, e.g. with more details on how the assessment is made and under which premises and how often.

Article 12

The Regulatory Authorities understand that the proposed cost sharing methodology is a result of the TSOs' proposal according to article 8, i.e. to apply a pay-as-bid pricing from the outset of the common market. The regulatory Authorities ask the TSOs to consider the outcome of the conclusion stemming from the above mentioned request in this Request for Amendment related to article 8, i.e. to better justify why pay-as-bid is considered more appropriate than pay-as-clear or change to pay-as-clear from the outset.

In relation to this, the Regulatory Authorities request further clarifications on how the proposed cost sharing model could be considered to sufficiently meet the objectives of EBGL articles 44(1) (f) and (i) read in conjunction with EBGL article 3(1)(a) and EBGL article 3(2)(b). The clarification thus is to address how transparency and non-discrimination is ensured.

Further, the Regulatory Authorities considers it unclear whether the average of marginal bid values includes bids that are not accepted, whether the same average price should apply to all imports wherever it comes from, and why there is no market splitting in case of congestions.

Article 13

The Regulatory Authorities request the TSOs to shorten the deadline for publication of information in order to ensure compliance with article 6(9) in the Electricity Market Regulation.

Article 14

The proposal's article 14(2) should refer to NRAs in the Nordic Capacity Calculation Region instead of the Nordic synchronous area.

V. Conclusion

The Regulatory Authorities have assessed, consulted, closely cooperated and coordinated to reach the agreement that they cannot approve the Proposal pursuant to EBGL articles 33(1) and 38(1).

According to EBGL article 6(1), the Regulatory Authorities hereby request an amendment to the Proposal. The amendments shall take into account the Regulatory Authorities' assessment stated above and shall be submitted by all TSOs no later than two months after receiving the last Regulatory Authorities request for amendment in accordance with EBGL article 6(1).

The Regulatory Authorities have agreed to issue their national decision to request an amendment to the amended Proposal on the basis of this agreement by 17 October 2019.