

ANNOUNCEMENT OF APPEAL¹

Case:	A-001-2024
Appellant:	Uniper Global Commodities SE
Appeal received on:	6 September 2024
Subject matter:	Appeal against ACER's decision 09/2024 of 5 July 2024 on the second amendment to the methodology for pricing balancing energy and cross-zonal capacity used for the exchange of balancing energy or operating the imbalance netting process.
Keywords:	Methodology for pricing balancing energy, price limits on balancing energy markets, lack of legal basis, ACER's competence and revision of proposals, objectives of the EB Regulation, duty to state reasons
Contested decision Number:	No. 09/2024
Language of the case:	English

¹ Announcement published in accordance with Article 9 of Decision BoA No1-2023 Laying down the rules of organisation and procedure of the Board of Appeal of the Agency for the Cooperation of the Energy Regulators.

Remedy sought by the Appellant (including procedural requests)

The Appellant requests the Board of Appeal to suspend the proceedings pursuant to Art. 28(1)(a) of the Rules of Procedure until a legally binding decision is reached on the action for annulment pending before the General Court on the ACER Decision No 03/2022 (case number T-96/23).

The Appellant requests the Board of Appeal to:

- declare the Appellant's appeal well-founded and remit the case to the competent body of ACER in accordance with Article 28(5) of the ACER Regulation;
- declare that ACER Decision 09/2024 of 5 July 2024 is invalid *ipso jure* or to annul that Decision in its entirety as ACER exceeded its powers in the Decision and there is no legal basis for setting a transitional price limit at all;
- indicate that ACER has to deny the proposal as even according to ACER's analysis it does not comply with the requirements of the EB Regulation and the Electricity Regulation.

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. *First plea*: The EB Regulation lacks a legal basis for the establishment of a variable price limit or the confirmation of a transitional price limit:

ACER has decided without a legal basis and in breach of Article 10(1) of the Electricity Regulation. Neither the TSOs nor ACER are authorized to set a regulatory price limit. Apart from Article 30(2) of the EB Regulation, there is no legal basis for technical price limits in the EB Regulation. Technical price limits may be introduced, provided that strict conditions are met, and no lack of efficiency in the balancing energy market has been established.

2. *Second plea*: Infringement by ACER of Article 5(1), Article 5(2)(f) and Article 6(3) of the EB Regulation in acting beyond its competence by taking a decision that is completely different in substance from the proposal provided for approval:

ACER's decision is an approval decision, and must therefore remain related to the application and its essential content. However, the TSOs' proposal was substantially revised. The newly introduced variable price limit may have a similar effect as the proposed but it is designed and motivated entirely differently.

3. *Third plea*: With deciding on something completely different from what was requested and was consulted before, ACER has undermined the right to consultation under Article 10 of the EB Regulation and under Article 14(6) of the ACER Regulation.
4. *Fourth plea*: ACER has not sufficiently reasoned its decision to set a variable price limit and to confirm a transitional price limit:

ACER's decision lacks of an adequate statement of reasons and therefore does not comply with Article 14(7) of the ACER Regulation. Especially in the light of the fact that by setting a technical price limit of +/- 15,000 €/MWh, ACER is contradicting its previous decisions (01/2021 and 03/2022), and thus the decision had to give reasons as to why a lower price limit was also considered a necessary and proportionate measure.

5. *Fifth plea*: By setting a variable price limit and confirming a transitional price limit, ACER has violated the objectives laid down in Article 3 of the EB Regulation:

The decision is contrary to the objectives of the EB Regulation of enhancing effective competition

among balancing energy providers, the establishment of effective national and European balancing energy markets and the consistent functioning of day-ahead, intraday and balancing markets.

6. *Sixth plea*: By setting a variable price cap and confirming a transitional price cap, ACER has violated the principle of proportionality, which is laid down in Article 3(2)(a) of the EB Regulation and is also one of the general principles of EU law. ACER fails to demonstrate and is unable to demonstrate that the price limit set is suitable, necessary and appropriate to achieve objectives accepted by the EB Regulation.

Further information

More information on the appeal procedure can be found on the 'Appeals' section of the Agency's website: [Procedural Documents](#) | www.acer.europa.eu