

**OPINION OF THE AGENCY FOR THE COOPERATION OF ENERGY
REGULATORS No 10/2017**

of 7 April 2017

**ON THE APPLICATION OF ARTICLE 30(2) OF COMMISSION REGULATION
(EU) 2016/1719**

THE AGENCY FOR THE COOPERATION OF ENERGY REGULATORS,

HAVING REGARD to Regulation (EC) No 713/2009 of the European Parliament and of the Council of 13 July 2009 establishing an Agency for the Cooperation of Energy Regulators¹, and, in particular, Article 7(6) thereof,

HAVING REGARD to the outcome of the consultation with the European Commission pursuant to Article 7(6) of Regulation (EC) No 713/2009,

HAVING REGARD to the favourable opinion of the Board of Regulators of 6 April 2017, delivered pursuant to Article 15(1) of Regulation (EC) No 713/2009,

WHEREAS:

1. Introduction

- (1) By letter dated 3 March 2017, the regulatory authority of Lithuania, Valstybinė kainų ir energetikos kontrolės komisija (VKEKK), requested an official opinion from the Agency with regard to the implementation of Article 30(2) of Commission Regulation (EU) 2016/1719 of 26 September 2016 establishing a guideline on forward capacity allocation.
- (2) In essence, VKEKK argued that, according to Article 30(2) of Regulation (EU) 2016/1719, the competent regulatory authorities are required to adopt coordinated decisions on the introduction of long-term transmission rights, where no such rights exist on a bidding zone border at the entry into force of Regulation (EU) 2016/1719, no later than six months after the entry into force of that Regulation and, to that end, to consult the regulatory authorities of the relevant capacity calculation region (CCR) and take due account of their opinions.
- (3) However, VKEKK also argued that, while Regulation (EU) 2016/1719 entered into force on 17 October 2016, the CCRs were determined by the Agency's Decision No 06/2016 of 17 November 2016, so that the regulatory authorities could start the regional consultation on

¹ OJ L 211, 14.8.2009, p. 1.

the decision on the introduction of long-term transmission rights only after 17 November 2016.

- (4) On these grounds, VKEKK sought the opinion of the Agency on whether the six-month period to adopt the decision on long-term transmission rights should run from 17 November 2016 - the date of adoption of Agency's Decision No 06/2016 - instead of 17 October 2016 - the date of entry into force of Regulation (EU) 2016/1719.

2. Background and legal context

- (5) On the basis of Article 18(3)(b) and 18(5) of 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 and repealing Regulation (EC) No 1228/2003, the European Commission has adopted guidelines for capacity allocation in the day-ahead and intraday markets in electricity as well in the forward markets in electricity.
- (6) Commission Regulation (EU) 2015/1222 of 24 July 2015 establishing a guideline on capacity allocation and congestion management lays down the rules for capacity allocation in the day-ahead and intraday markets, and according to its Article 84 and its publication in the Official Journal of the European Union on 25 July 2015, entered into force on 14 August 2015.
- (7) Articles 9(6), 9(11), 15(1) and 15(2) of Regulation (EU) 2015/1222 require the development by transmission system operators (TSOs) of a common proposal regarding the determination of CCRs, which must also define the bidding zone borders attributed to TSOs who are members of each CCR, and an approval by the regulatory authorities or a decision by the Agency.
- (8) By its Decision No 06/2016 of 17 November 2016, the Agency decided on the electricity TSOs' proposal for the determination of CCRs.
- (9) Regulation (EU) 2016/1719 stipulates the rules for capacity allocation in the forward markets and, according to its Article 64 and its publication in the Official Journal of the European Union on 27 September 2016, entered into force on 17 October 2016.
- (10) With regard to CCRs, Article 8 of Regulation (EU) 2016/1719 provides that:
- For the purposes of this Regulation the capacity calculation regions shall be those established pursuant to Article 15 of Regulation (EU) 2015/1222.*
- (11) With regard to the decision on cross-zonal risk hedging opportunities, Article 30 of Regulation (EU) 2016/1719 provides that:

1. TSOs on a bidding zone border shall issue long-term transmission rights unless the competent regulatory authorities of the bidding zone border have adopted coordinated decisions not to issue long-term transmission rights on the bidding zone border. When adopting their decisions, the competent regulatory authorities of the bidding zone border shall consult the regulatory authorities of the relevant capacity calculation region and take due account of their opinions.

2. Where long-term transmission rights do not exist on a bidding zone border at the entry into force of this Regulation, the competent regulatory authorities of the bidding zone border shall adopt coordinated decisions on the introduction of long-term transmission rights no later than six months after the entry into force of this Regulation.

3. Procedure

- (12) VKEKK's request concerns the application of Article 30(2) of Regulation (EU) 2016/1719, in particular of the requirement that the competent regulatory authorities of the bidding zone border adopt coordinated decisions on the introduction of long-term transmission rights no later than six months after the entry into force of that Regulation.
- (13) Regulation (EU) 2016/1719 has been adopted as a guideline on the basis of Article 18(3)(b) and 18(5) of Regulation (EC) No 714/2009.
- (14) According to Article 7(6) of Regulation (EC) No 713/2009, a regulatory authority, when encountering in a specific case difficulties with the application of Guidelines referred to in Directive 2009/72/EC, Directive 2009/73/EC, Regulation (EC) No 714/2009 or Regulation (EC) No 715/2009, may request the opinion of the Agency.
- (15) Therefore, the Agency understands VKEKK's request as one for an opinion under Article 7(6) of Regulation (EC) No 713/2009.
- (16) In accordance with Article 7(6) of Regulation (EC) No 713/2009, the Agency consulted the European Commission, via email of 9 March 2017 to the Directorate-General for Energy, seeking its view on the interpretation of Article 30(2) of Regulation (EU) 2016/1719. In its response of 10 March 2017, the services of the Directorate-General for Energy indicated in essence that they agree with an approach under which the deadline for the regulatory authorities to decide on the introduction of long-term transmission rights according to Article 30(2) of Regulation (EU) 2016/1719 is postponed by one month in order to account for the late decision on the CCRs and for a regional consultation process based on that decision.

4. Assessment

- (17) Article 30(2) of Regulation (EU) 2016/1719 requires that the competent regulatory authorities decide within six months after the entry into force of that Regulation - i.e. by 17 April 2017.
- (18) Article 30(1) of Regulation (EU) 2016/1719 provides that, when adopting their decisions on long-term transmission rights, the competent regulatory authorities consult the regulatory authorities of the relevant CCR and take due account of their opinions.
- (19) Even though Article 30(2) of Regulation (EU) 2016/1719 does not expressly refer to a consultation with the regulatory authorities of the CCR, it follows from Article 30(1) thereof that the consultation with the regulatory authorities of the relevant CCR is also required for the coordinated decisions on the introduction of long-term transmission rights under Article 30(2).
- (20) In that regard, according to Article 8 of Regulation (EU) 2016/1719, the term 'CCR' refers to the CCRs established pursuant to Article 15 of Commission Regulation (EU) 2015/1222. Due to the regulatory authorities' disagreement, the CCRs referred to in Article 15 of Regulation (EU) 2015/1222 were established by the Agency with its Decision No 06/2016 of 17 November 2016, i.e. after the entry into force of Commission Regulation (EU) 2016/1719.
- (21) Maintaining a six-month period starting from 17 October 2016 - the date of entry into force of Regulation (EU) 2016/1719 - and thus ending on 17 April 2017, for the competent regulatory authorities to adopt the decisions on long-term transmission rights, despite the establishment of the CCRs on 17 November 2016, would effectively shorten to five months the period between the start of the consultation with the regulatory authorities of the relevant CCR and the deadline for the competent regulatory authorities to adopt the above-mentioned decisions on long-term transmission rights.
- (22) As the purpose of Article 30(2) of Regulation (EU) 2016/1719 cannot be to deprive the regulatory authorities of the full six-month period for their decision-making process and as the establishment of the CCRs after the entry into force of Regulation (EU) 2016/1719 could not be anticipated, Article 30(2) can be interpreted to the effect that the period of six months for the decisions on long-term transmission rights, including the consultation with the regulatory authorities of the relevant CCR, is available in its entirety to the competent regulatory authorities.
- (23) To this end, the triggering event for the six-month period for the decisions of the competent regulatory authorities on long-term transmission rights, pursuant to Article 30(2) of Regulation (EU) 2016/1719, can be considered as being the establishment of the CCRs by the Agency with its Decision No 06/2016 of 17 November 2016.

5. Conclusion

- (24) In view of the fact that the CCRs were established after the entry into force of Regulation (EU) 2016/1719, the six-month period for the decisions of the competent regulatory authorities on long-term transmission rights, pursuant to Article 30(2) of Regulation (EU) 2016/1719, including the consultation with the regulatory authorities of the relevant CCR can actually start with the establishment of the CCRs on 17 November 2016 and, accordingly, end on 17 May 2017.
- (25) This interpretation of Article 30(2) of Regulation (EU) 2016/1719 is in line with the view expressed by the services of the European Commission's Directorate-General for Energy.

HAS ADOPTED THIS OPINION:

Article 30(2) of Regulation (EU) 2016/1719 can be interpreted to the effect that the six-month period for the decisions of the competent regulatory authorities on long-term transmission rights, including the consultation with the regulatory authorities of the relevant CCR, starts with the establishment of the CCRs by the Agency with its Decision No 06/2016 on 17 November 2016, and, accordingly, ends on 17 May 2017.

Done at Ljubljana on 7 April 2017.

For the Agency:


Alberto Pototschnig
Director