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Response to the ACER consultation document: **The Definition of Capacity Calculation Regions**

Czech Energy Regulatory Office (ERU) hereby submits its response to the consultation document *The Definition of Capacity Calculation Regions* of the Agency for the Cooperation of Energy Regulators (ACER or Agency) which was made public on June 22nd 2016.

- 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?**

The Energy Regulatory Office generally supports the merger of the two regions as soon as practically possible. We see a merit in providing a merged region (the so called "CORE" region) already in the proposal to be approved. In addition, we believe this approach would ensure an equal treatment of all involved TSOs as per the procedural provisions of the CACM regulation. However, we are also aware of the fact that a significant progress has already been made by the TSOs on a voluntary basis, which we very much welcome. We are concerned that an imposition on the TSOs for a merger through an amendment to the CCR proposal could prove to be a setback to this process. Nevertheless, we consider the statement of the TSOs in the All TSOs proposal for Capacity Calculation Regions (CCR) and in the Memorandum of Understanding of March 3rd 2016 to be inadequate insofar as it only addresses one of the two capacity calculation timeframes, namely the day-ahead market coupling.

Having weighed up the foregoing, we are convinced that both options are acceptable and we encourage the Agency to decide on this matter on the basis of its assessment of the proposal against the applicable CACM GL provisions, and within the bounds of its administrative discretion. Should the Agency opt to approve the CCR proposal as it currently stands on this point (i.e. with two separate regions and referring to the MoU), we invite the Agency to encourage the TSOs to present a corresponding voluntary approach (preferably in the form of another MoU) for the intraday timeframe, as well.

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?

Apart from our considerations with regard to the merger of the CEE and CWE based regions above, the Energy Regulatory Office does not have any comments.

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?

The Energy Regulatory Office supports the inclusion of the bidding zone borders of Croatia - Slovenia, Croatia - Hungary and Romania - Hungary into the proposed CEE region (or into the merged region). Given the ongoing CWE and CEE negotiations regarding the implementation of FB MC ERU believes it to be appropriate.

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

The Energy regulatory office supports inclusion of the German/Luxembourg - Austrian bidding zone border (DE-AT) in to the CEE region (or into a merged region). Furthermore, ERU strongly supports the motion to split the currently existing single German/Luxembourg - Austrian bidding zone into separate German/Luxembourg bidding zone and Austrian bidding zone.

To provide a clarification for our reasoning we would like to refer to the following. As stated in the introduction of the All TSOs CCR proposal point (1), when drafting the CCR proposal TSOs have taken into consideration the regions specified in point 3(2) of Annex I to *Regulation (EC) No 714/2009 of the European Parliament and of the Council of 13th of July 2009 on conditions for access to the network for cross-border exchanges in electricity* (Regulation (EC) 714/2009) which specifies the CEE region to consist of borders between: **Germany**, Poland, Czech Republic, Slovakia, Hungary, **Austria** and Slovenia (emphasis ERU). As stated in the points (2) and (3) the CCR proposal takes into the account the general principles and goals set in the *Commission Regulation (EU) 2015/1222 establishing a guideline on capacity allocation and congestion management* (CACM GL) which sets the requirements for TSOs to cooperate on the level of CCRs, on a pan-European level and across bidding zone borders which is why the capacity calculation for the day-ahead and intraday market timeframes should be coordinated at least at the regional level and therefore should be defined by all TSOs. In ERU's view this was accomplished by TSOs by submitting the common CCR proposal which categorizes the DE-AT border in the CEE region.

Furthermore, as stated in the point (5), the CCR proposal takes into account the ACER Opinion No 09/2015 dated September 23rd 2015 (the Opinion) in which the agency has provided its opinion on the request of the polish regulator URE dated November 27th 2014 on whether the decisions of the Austrian, Hungarian, Slovenian and Slovak NRAs approving the methods of allocation of cross-border transmission capacity in the CEE region comply with the provisions of the *Guidelines on the management and allocation of available transfer capacity of interconnectors between national systems* (Guidelines) contained in the Annex I of Regulation (EC) 714/2009. ERU has provided its observations on the 2nd of January 2015 after being invited

to do so by ACER Director Mr. Alberto Pototschnig. In the observations ERU has expressed its agreement with the legal assessment of the situation existing in the CEE region as presented in the URE's request and its conviction that the absence of a regionally coordinated allocation mechanism at the cross-border interconnection between Germany and Austria is at variance with Regulation (EC) 714/2009. The agency has in its Opinion particularly stated that in point (82) it considers the DE-AT interconnection as usually and structurally congested, pursuant to point 1.2 and 1.4 of the Guidelines in conjunction with Article 2(2)(c) of Regulation (EC) 714/2009, in the point (85) that it deems necessary that capacity allocation methods are implemented on this border pursuant to Article 2(2)(c) of Regulation 714/2009 and points 1.2 and 1.4 of the Guidelines and in the points (118) and (119) that the pending bidding zone review under the CACM rules does not constitute a prerequisite for reconfiguration of bidding zones which is supported by the fact that all current review scenarios being considered do in fact include the DE-AT bidding zone border.

The Energy Regulatory Office fully supports the agency and its Opinion that *“there is currently structural congestion on the DE-PL, DE-CZ and CZ-AT interconnectors, (...), existing mitigating measures (i.e. virtual phase shifters, flow-based method with Security Oriented Option) (...) cannot replace transparent, non-discriminatory and market based congestion management procedures compliant with Regulation (EC) 714/2009, (...), thus the DE-AT border should form a constituent part of the CEE region for the application of coordinated capacity calculation, optimization of allocation and secure operation of the network, as required by point 3.5 of Annex I to Regulation (EC) 714/2009”*. We are hopeful that the Agency will observe the principle of legal certainty and legitimate expectations and will, in deciding on the CCR proposal, stick to the conclusions of said Opinion.

Following the Agency's evaluation, ERU is of the opinion that due to overwhelming collection of evidence¹ of insufficient structural capacity on the DE-AT border proving this border is unable to accommodate all physical flows resulting from the international trade requested by market participants in the single German/Luxembourg - Austrian bidding zone. This results in a significant negative impact on the operation and security of neighboring CEE transmission networks, and their ability to accommodate cross-border trade. We therefore fully support the motion to split the single German/Luxembourg - Austrian bidding zone into separate German/Luxembourg bidding zone and Austrian bidding zone through the definition of Capacity Calculation Regions.

¹ Apart from the ACER Opinion no 09/2015, we would also like to refer to a number of other documents confirming detrimental effects of the loop flows in the Czech Republic and generally in Continental Europe caused by the unlimited trades between Germany and Austria:

THEMA in 2013: https://ec.europa.eu/energy/sites/ener/files/documents/201310_loop-flows_study.pdf

ENTSO-E in 2014: <https://www.entsoe.eu/news-events/announcements/announcements-archive/Pages/News/ENTSO-E-Publishes-Bidding-Zone-Review-Technical-Report.aspx>

ACER in 2015:

http://www.acer.europa.eu/Official_documents/Acts_of_the_Agency/Publication/ACER_Market_Monitoring_Report_2015.pdf

The Energy Regulatory Office is convinced that the CCR proposal as it currently stands on this point is the most practical way how to bring the existing congestion management method on the German - Austrian border (or rather the lack thereof) in line with the rules of the Third Energy Package.

- 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?**

ERU has no other comments.