Hungarian Energy and Public Utility Regulatory Authority
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ANNOUNCEMENT OF APPEAL

Case	N/A
Appellant:	Hungarian Energy and Public Utility Regulatory Authority
Appeal received on	6 June 2019
Subject matter	Notice of Appeal - Decision on the incremental capacity project proposal for the Mosonmagyaróvár interconnection point
Keywords	Request for annulment – Lack of rules of procedure - Request for suspension of application - Violation of Directive 2009/73/EC, Regulation 713/2019/EC and Commission Regulation 2017/459 – Violation of procedural rules and fundamental procedural guarantees - Violation of Rules of Procedure
Contested decision Number:	Decision No. 05/2019
Language of the case	English

Remedy sought by the Appellant

The Appellant requests the Board of Appeal to:

1. Void and nullify the Decision No. 05/2019 of the Agency for the Cooperation of Energy Regulators of 9 April 2019 on the incremental capacity project proposal for the Mosonmagyaróvár interconnection point.

2. Order the Agency to establish and publish - without delay - a rules of procedure for cases when the Agency is carrying out a contentious procedure in accordance with Art. 8 (1) of the Regulation 713/2009/EC.

3. Suspend the application of the contested Decision with immediate effect.

Pleas in law and main arguments

The contested decision was adopted on 9 April 2019. The Appellant contests the Agency's decision in its entirety.

The Appellant's claims and arguments can be summarised as follows:

1. The Decision lacks well-defined methodologies and certain undisclosed assumptions and missing data are required for the execution of the decision

The Appellant deems the execution of the Decision impossible due to the lack of a well-defined methodology and certain data (such as the accepted level of CAPEX; calculation methodology for the mandatory minimum premium; depreciation principles; the calculation of the minimum capacity level commitments) without which the economic test cannot be carried out fully and clearly for each offer level.

2. The Decision violates Directive 2009/73/EC and Commission Regulation 2017/459

The Appellant claims that the Agency, when acting in the stead of national regulatory authorities, must have followed the same binding rules of EU law in deciding over the case. The Agency omitted to assess the provisions of Art. 40 (a) and (d) of the Directive 2009/73/EC, furthermore did not sufficiently take into account Art. 28 (2) of the CAM NC and the claims of the Appellant in its

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resolution No. 10490/2018 in that regard. This is a manifest error of assessment and violation of the law. Under no provisions of applicable law and under no other circumstances has the Agency the right to trigger a procedure (in this case capacity auction) which may eventually lead to an automatic and legally unstoppable infrastructure construction, rejected by one of the regulatory authorities and transmission system operators.

3. The Agency's procedure violated procedural rules and fundamental procedural guarantees

The Appellant claims that during the procedure leading to the adoption of the Decision the Agency violated Article 41 and 51 of the Charter of Fundamental Rights of the European Union. The violations included the lack of Rules of Procedure to secure fundamental rights in the proceeding and the lack of impartiality by the Agency.

4. The approval of the Decision violated the provisions of Regulation 713/2009/EC and the Rules of Procedure of the Board of Regulators

The Decision was unlawfully approved by the Board of Regulators.

5. Illegality of repeated vote and influencing members of the Board of Regulators in order to alter their voting

The call for a repeated electronic vote violated the Rules of Procedure of the Board of Regulators, as there were neither fundamental changes in the circumstances nor any substantial amendments in the revised draft Decisions compared to the previous ones. Furthermore, the Director of the Agency influenced members of the Board of Regulators in order to alter their votes, consequently violating the right to good administration.

Further information

More information on the appeal procedure can be found on the 'Appeals' section of the Agency's website:
http://www.acer.europa.eu/The_agency/Organisation/Board_of_Appeal/Pages/default.aspx

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