Commission Regulation (EU) 2016/1719 of 26 September 2016 establishing a guideline on forward capacity allocation (Text with EEA relevance)

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(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to 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[(1)] and in particular Article 18(3)(b) and (5), thereof,

Whereas:

(1) The urgent completion of a fully functioning and interconnected internal energy market is crucial to the objectives of maintaining security of energy supply, increasing competitiveness and ensuring that all consumers can purchase energy at affordable prices. A well-functioning internal market in electricity should provide producers with appropriate incentives for investing in new power generation, including in electricity from renewable energy sources, paying special attention to the most isolated Member States and regions in the Union's energy market. A well-functioning market should also provide consumers with adequate measures to promote more efficient use of energy, which presupposes a secure supply of energy.

(2) Security of energy supply is an essential element of public security and is therefore inherently connected to the efficient functioning of the internal market in electricity and the integration of the isolated electricity markets of Member States. Electricity can reach the citizens of the Union only through the network. Functioning electricity markets and, in particular, the networks and other assets associated with electricity supply are essential to public security, to economic competitiveness and to the well-being of the citizens of the Union.

(3) Regulation (EC) No 714/2009 sets out non-discriminatory rules for access conditions to the network for cross-border exchanges in electricity and, in particular, rules on capacity allocation and congestion management for interconnections and transmission systems affecting cross-border electricity flows. In order to move towards a genuinely integrated electricity market, efficient hedging opportunities should be developed for generators, consumers and retailers to mitigate future price risk in the area where they operate, including harmonisation of the current auction rules on forward capacity allocation.

Changes to legislation: *Commission Regulation (EU) 2016/1719 is up to date with all changes known to be in force on or before 28 December 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(4) Long-term capacity calculation for the year- and month-ahead market time frames should be coordinated by the transmission system operators (hereinafter 'TSOs') at least at regional level to ensure that capacity calculation is reliable and that optimal capacity is made available to the market. For this purpose, TSOs should establish a common grid model gathering all the necessary data for the long-term capacity calculation and taking into account the uncertainties inherent to the long-term time frames. The coordinated net transmission capacity based approach should apply to calculate and allocate long-term cross-border capacities. The flow-based approach might be applied where cross-zonal capacities between bidding zones are highly interdependent and the approach is justified from an economic efficiency point of view.

(5) Harmonised long-term cross-zonal capacity allocation rules require the establishment and operation of a single allocation platform at European level. This central platform should be developed by all TSOs to facilitate the allocation of long-term transmission rights for market participants and should provide for the transfer of long-term transmission rights from one eligible market participant to another.

(6) In order to allow a transparent and non-discriminatory allocation of long-term transmission rights, the single allocation platform needs to publish all the relevant information about the auction before its opening. Nomination rules should contain detailed information on the nomination procedure for physical transmission rights including requirements, timings, gate closures and eligibility for exchange between market participants.

(7) Long-term transmission rights holders should be entitled to return to the TSOs their long-term transmission rights for reallocation in a subsequent forward capacity allocation. For the return of the long-term transmission rights, the holders may receive a payment. In addition, market participants should be entitled to either transfer or purchase already allocated long-term transmission rights. The market participants should inform TSOs about such transfers or purchases and about the counterparties including involved market participants and respective TSOs.

(8) It is important that the administrative burdens and costs associated with the participation in the single allocation platform are kept within reasonable limits, notably as regards the harmonisation of the contractual framework with market participants.

(9) Currently there are multiple allocation rules across the Union governing the contractual arrangements for long-term transmission rights. TSOs should develop harmonised allocation rules for physical transmission rights, financial transmission rights — options (hereinafter 'FTRs — options') and financial transmission rights — obligations (hereinafter 'FTRs — obligations') at Union level.

(10) Those harmonised allocation rules should at least contain the description of the allocation process/procedure for long-term transmission rights, including the minimum requirements for participation, financial matters, type of products offered in explicit auctions, nomination rules, curtailment and compensation rules, rules for market participants in case they are transferring their long-term transmission rights, the use-it-or-sell-it (hereinafter 'UIOSI') principle, rules as regards *force majeure* and liability.

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Those harmonised allocation rules should also outline the contractual obligations to be respected by market participants.

(11) Commission Regulation (EU) 2015/1222[(2)] establishes a day-ahead firmness deadline and a related compensation regime for long-term transmission rights curtailed after such deadline. Similarly, long-term transmission rights curtailed before the day-ahead firmness deadline should be reimbursed or compensated by TSOs to the long-term transmission rights holders.

(12) Caps on the compensation to be paid to holders whose long-term transmission rights have been curtailed before the day-ahead firmness deadline may be introduced, taking into the account the liquidity of the relevant markets and the possibility for market participants to adjust their positions.

(13) In line with Article 8 of Regulation (EC) No 713/2009 of the European Parliament and of the Council[(3)], the Agency for the Cooperation of Energy Regulators ('the Agency') should take a decision as regards common terms and conditions of access or methodologies, where the competent national regulatory authorities are not able to reach an agreement on those regulatory issues.

(14) This Regulation has been developed in close cooperation with the Agency, the European Network of Transmission System Operators for Electricity (the 'ENTSO for Electricity') and stakeholders, in order to adopt effective, balanced and proportionate rules in a transparent and participative manner. In accordance with Article 18(3) of Regulation (EC) No 714/2009, the Commission will consult the Agency, ENTSO for Electricity and other relevant stakeholders, before proposing any amendment to this regulation.

(15) This Regulation supplements Annex I to Regulation (EC) No 714/2009, in accordance with the principles set out in Article 16 of that Regulation.

(16) The measures provided for in this Regulation are in accordance with the opinion of the Committee referred to in Article 23(1) of Regulation (EC) No 714/2009,

HAS ADOPTED THIS REGULATION:

TITLE I

GENERAL PROVISIONS

Article 1

Subject matter and scope

1 This Regulation lays down detailed rules on cross-zonal capacity allocation in the forward markets, on the establishment of a common methodology to determine long-term cross-zonal capacity, on the establishment of a single allocation platform at European level offering long-term transmission rights, and on the possibility to return long-term transmission rights for subsequent forward capacity allocation or transfer long-term transmission rights between market participants.

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2 This Regulation shall apply to all transmission systems and interconnections in the Union, except the transmission systems on islands which are not connected with other transmission systems via interconnectors.

3 In Member States where more than one TSO exists, this Regulation shall apply to all TSOs within that Member State. Where a TSO does not have a function relevant to one or more obligations under this Regulation, Member States may provide that the responsibility for complying with those obligations is assigned to one or more different, specific TSOs.

4 The single allocation platform may be opened to market operators and TSOs operating in Switzerland on the condition that its national law implements the main provisions of Union electricity market legislation and that there is an intergovernmental agreement on electricity cooperation between the Union and Switzerland.

5 Subject to the conditions of paragraph 4, the participation of Switzerland in the single allocation platform shall be decided by the Commission based on an opinion given by the Agency. The rights and responsibilities of Swiss TSOs joining the single allocation platform shall be consistent with the rights and responsibilities of TSOs operating in the Union, allowing for a smooth functioning of the allocation of the long-term transmission rights implemented at Union level and a level playing field for all stakeholders.

Article 2

Definitions

For the purposes of this Regulation, the definitions in Article 2 of Regulation (EC) No 714/2009, Article 2 of Regulation (EU) 2015/1222, Article 2 of Commission Regulation (EU) No 543/2013[(4)] as well as Article 2 of Directive 2009/72/EC of the European Parliament and of the Council[(5)] shall apply.

In addition, the following definitions shall apply:

(1) ‘forward capacity allocation’ means the attribution of long-term cross-zonal capacity through an auction before the day-ahead time frame;

(2) ‘long-term transmission right’ means a physical transmission right or a FTR — option or a FTR — obligation acquired in the forward capacity allocation;

(3) ‘allocation rules’ means the rules for forward capacity allocation applied by the single allocation platform;

(4) ‘single allocation platform’ means the European platform established by all TSOs for forward capacity allocation;

(5) ‘auction’ means the process by which long-term cross-zonal capacity is offered and allocated to market participants who submit bids;

(6) ‘UIOSI’ means the principle according to which the underlying cross-zonal capacity of physical transmission rights purchased and non-nominated is automatically made available for day-ahead capacity allocation and according to which the holder of these physical transmission rights receives remuneration from the TSOs.

(7) ‘nomination’ means the notification of the use of long-term cross-zonal capacity by a physical transmission rights holder and its counterparty, or an authorised third party, to the respective TSOs;

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(8) ‘nomination rules’ means the rules with regard to the notification of use of long-term cross-zonal capacity by a physical transmission rights holder and their counterparty, or an authorised third party, to the respective TSOs;

(9) ‘market spread’ means the difference between the hourly day-ahead prices of the two concerned bidding zones for the respective market time unit in a specific direction;

(10) ‘compensation rules’ means the rules according to which each TSO responsible for the bidding zone border, where long-term transmission rights have been allocated, compensates transmission right holders for curtailing the long-term transmission rights.

Article 3

Objectives of forward capacity allocation

This Regulation aims at:

(a) promoting effective long-term cross-zonal trade with long-term cross-zonal hedging opportunities for market participants;

(b) optimising the calculation and allocation of long-term cross-zonal capacity;

(c) providing non-discriminatory access to long-term cross-zonal capacity;

(d) ensuring fair and non-discriminatory treatment of TSOs, the Agency, regulatory authorities and market participants;

(e) respecting the need for a fair and orderly forward capacity allocation and orderly price formation;

(f) ensuring and enhancing the transparency and reliability of information on forward capacity allocation;

(g) contributing to the efficient long-term operation and development of the electricity transmission system and electricity sector in the Union.

Article 4

Adoption of terms and conditions or methodologies

1 TSOs shall develop the terms and conditions or methodologies required by this Regulation and submit them for approval to the competent regulatory authorities within the respective deadlines set out in this Regulation. Where a proposal for terms and conditions or methodologies pursuant to this Regulation needs to be developed and agreed by more than one TSO, the participating TSOs shall closely cooperate. TSOs, with the assistance of ENTSO for Electricity, shall regularly inform the competent regulatory authorities and the Agency about the progress of the development of these terms and conditions or methodologies.

2 TSOs deciding on proposals for terms and conditions or methodologies in accordance with Article 4(6) shall decide with qualified majority if no consensus could be reached among them. A qualified majority for proposals in accordance with Article 4(6) shall require a majority of:

a TSOs representing at least 55 % of the Member States; and