

Draft SEE CAO Auction Rules

– Common Position of the Energy Community Regulatory Board –

I. BACKGROUND

The preparation of Auction Rules for allocation of available transfer capacities applicable for the Coordinated Auction Office for South East Europe (SEE CAO) is one of the responsibilities of the *Limited Liability Project Team Company in Charge for Establishing a SEE CAO* (PTC)¹. Having in mind that the concept of a regional project should require harmonised regulatory treatment across borders, the Energy Community Regulatory Board (ECRB) at its 11th meeting on 9 July 2009 related to regulatory approval of SEE CAO related documents decided that

- as long as an NTC approach is pursued, the ECRB will issue non-binding recommendations on SEE CAO related documents, even if not all TSOs participate in the SEE CAO in a first step;
- NRAs shall maintain the right to formally approve the SEE CAO related documents on national level but shall take the ECRB recommendation into utmost account. If the national decision should deviate from the ECRB recommendation the ECRB, members shall justify the modification to the ECRB.

The PTC published draft Auction Rules for a two weeks public consultation on 16 September 2013. On 25 October 2013 the PTC submitted an adjusted version of the Auction Rules - reflecting the comments received during public consultation and including explanation on the treatment of the individual comments - to the ECRB Section at the Energy Community Secretariat for further submission to the ECRB and development of a common ECRB position.

The ECRB Electricity Working Group (EWG) discussed the draft Auction Rules at its meeting on 2 October 2013 (public consultation version) and 5 November 2013 (version after public consultation). Further, national regulators and PTC representatives discussed the draft Auction Rules (version after public consultation) at a coordination meeting on 4 November 2013².

II. ASSESSMENT

The ECRB carefully reflected the discussions on EWG level, in particular paying due attention to the compliance of the SEE Auction Rules with the Energy Community *acquis communautaire*³ and their consistency with the

¹ www.seecao.com.

² Meeting summary see Annex 1.

³ In particular, Regulations (EC) 1228/2003 and (EC) 714/2009.

European and Energy Community Electricity Target Model⁴, as well as with the (draft) Network Code for Capacity Allocation and Congestion Management (CACM NC) and the (draft) Network Code for Forward Capacity Allocation (FCA NC). In the light of the final target to create a single allocation platform for the countries applying the FCA NC and CACM NC⁵, the ECRB also stresses the importance of the SEE CAO Auction Rules being coherent with the related rules applicable for other European allocation platforms⁶ and expressed its appreciation for the efforts made in this direction.

Against this background, **the ECRB welcomes the draft SEE CAO Auction Rules as important step for further regional integration and harmonisation of cross border trade in electricity.**

The ECRB, however, notes that **Annex 3** of the draft Auction Rules includes source-sink pairs that are currently allocated by *Elektromreža Srbije* (EMS); references of Annex 3 to source sink pairs “KOSTT – [other border]” therefore do not correctly reflect the current technical situation until a, currently negotiated, operational agreement between EMS and KOSTT clarifies differently. In this context, the ECRB stresses the need to keep the scope of the SEE CAO activities in mind, namely to facilitate trading activities. For practical reasons, provision of technically correct information on the source sink pairs centrally coordinated by the SEE CAO should therefore be essential.

The ECRB finally notes that the **allocation of 50% of NTC** on certain borders as foreseen in Annex 3 is not in line with Regulation (EC) 714/2009. Such uncoordinated process and segregation exacerbates for market participants assessing the value of capacity and impedes non-discriminatory pricing. The allocation of less than the entire available NTC for a certain timeframe maintains disintegration and hampers market functioning.

III. COMMON POSITION OF THE ENERGY COMMUNITY REGULATORY BOARD

Based on the above assessment and with reference to the procedures agreed by the 11th ECRB, **the ECRB recommends national regulators** whose TSOs are involved in the SEE CAO to

1. **Approve the draft Auction Rules** on national level; but
2. **Suspend approval of Annex 3** until an operational agreement between EMS and KOSTT provides technically correct basis for allocating capacities at source sink pairs “KOSTT – [other border]”. Alternatively,

⁴ The Regional Action Plan for Wholesale Market Opening in SEE defines an Electricity Target Model for the Energy Community that is (with slightly deviating implementation deadlines) streamlined with the European Electricity Target Model and legislative developments.

⁵ According to the conclusions of the Energy Community Ministerial Council (<http://www.energy-community.org/pls/portal/docs/1162177.PDF>), the Network Codes – once legally binding in the form of a Regulation on EU level - shall become applicable in the Energy Community upon adoption by the Energy Community Permanent High Level Group (PHLG). The PHLG and ECRB already laid down the procedures for such adoption (<http://www.energy-community.org/pls/portal/docs/1636177.PDF>; <http://www.energy-community.org/pls/portal/docs/1636177.PDF>). The ECRB, PHLG and Athens Forum underlined that the adoption shall time and content wise follow the sequence chosen on EU level.

⁶ Namely the CEE CAO (www.central-ao.com) and CASC (www.casc.eu).

national regulators might decide to suspend the approval of the entire Auction Rules (including Annex 3) until such agreement has been reached. With a view to allow for sufficient negotiation time, the ECRB invites national regulators to grant approval of Annex 3 within 30 days before operational start of the SEE CAO; and

3. Require the following adjustments to the Auction Rules

Reference	Required adjustment	Reasoning
Article 2.3.5	A clarifying sentence should be added that in case of curtailment of PTR, daily auctions will not be held	Market participants holding a PTR before curtailment are supposed to receive initial price compensation for curtailed capacity (Art. 2.3.5). After curtailment, having in mind an emergency situation, the price on the daily auction may drastically increase in comparison to the initially paid price. In that case initial PTR holder may be negatively affected and market abuse may be exercised whenever a situation close to emergency situation happens. It should be clarified that in case of curtailment of PTR, <u>daily auctions will not be held</u>
definition "TSO"	Be amended as follows (amendment <u>underlined</u>): <i>".. a legal entity or <u>natural person</u> responsible for..."</i>	For purpose of compliance with Directive 2009/72/EC
Definitions	Definitions "SSI", "UIOLI" should be added	For purpose of reader-friendliness (even if mentioned in the text)
definition "SEE TSOs"	Annex should be cancelled and related references in the text should be corrected to "Participating TSOs"	The existing definition of "SEE TSOs" makes reference to all TSOs of the 8 th Region. The 8 th Region, however, covers <i>all</i> Energy Community Contracting Parties ⁷ , including Moldova and Ukraine. The equalisation of "SEE" and "the 8 th Region" is therefore misleading in geographic terms. Even beyond this formal aspect, the tasks foreseen for "SEE TSOs" throughout the text (e.g. acceptance of allocation results by SEE CAO, Article 1.4.2; scheduling, Article 2.2.3; et al) obviously do not relate to the TSOs of Moldova and/or Ukraine (8 th Region) and not even to <i>all</i> TSOs of SEE; those SEE TSOs that will not be serviced by the SEE CAO (i.e. the non- "participating TSOs") are not covered by related obligations.
Annex 2 (new)	Annex should be re-named "participating TSOs" and list only those TSOs for which source –sink pairs (Annex 3) will be serviced by the SEE CAO)	
Annex 2 (current version)	List of shareholders can be cancelled	The list of SEE CAO shareholders does not provide added value information for the purpose of capacity allocation; company information shall be available from the company's website / annual report
Article 1.4.1	After <i>"...while the auction participants are obligated to fulfil its payment obligations"</i> , the following phrase should be added <i>"according to the rights granted (PTR)"</i>	For purpose of clarity
Article 16.3.1.d	Add missing reference	The first sentence is lacking a reference after <i>"in accordance with"</i>

⁷ Plus the territories of the Republic of Bulgaria, of the Hellenic Republic, of the Republic of Hungary, of Romania and of the Republic of Slovenia and the territory of the Republic of Italy with regard to the interconnections between the Italian Republic and the territories of the Adhering Parties (Ministerial Council Decision 2008|02|MC-EnC).

4. Elements of further improvement

The ECRB, finally further invites the TSOs serviced by the SEE CAO together with the national regulators and ECRB to reflect the following elements for future improvement of the Auction Rules:

- adjust the auction rules to the requirements of Regulation (EC) 714/2009, abolishing allocation of 50% of NTC once Regulation (EC) 714/2009 becomes part of the national legislation of the involved jurisdictions;
- make the offers for transfer on the secondary market available to all auction participants in the secondary trading with a view to increase transparency and avoid market abuse; provided, transferees do not intend to discriminate between Transferors, making available related information should be incontestable;
- reconsider why an Auction Participant can only submit bids for a border where he is recognized as eligible market participant: the added value of this requirement is questionable, having in mind that the Auction Participant has to fulfil financial requirements towards SEE CAO and the fact that allocated PTR can be transferred, resold or non-nominated before (Articles 3.1.7);
- reconsider the limitation of bid numbers (Articles 5.7.1): while such limitation exists for CASC⁸, it discourages the development of cross-border transactions.

⁸ Not for the CEE CAO, though.

Annex 1

Coordination meeting between regulators and SEE CAO Project Team Company
on
Draft Auction Rules for the SEE CAO

4.11.2013, 17:30-19:00, Energy Community Secretariat (Vienna)

SUMMARY OF DISCUSSIONS

1. The meeting was chaired by Mrs Grall, Energy Community Secretariat.
2. The participants (ref. Annex 1) agreed on the following **meeting agenda**
 - Draft SEE CAO Auction Rules⁹ (AR): discussion of preliminary comments / questions by regulators
3. Mrs Grall re-called the **background** of the meeting, namely:
 - 3.1. The decision of the 11th ECRB¹⁰ that
 - *As long as a NTC approach is pursued the ECRB will issue non binding recommendations on SEE CAO related documents even if not all TSOs participate in the SEE CAO in a first step*
 - *NRA shall maintain the right to formally approve the SEE CAO related documents on national level but shall take the ECRB recommendation into utmost account. If the national decision should deviate from the ECRB recommendation the ECRB members shall justify the modification to the;* and
 - 3.2. The decision of the 22nd ECRB to abolish the permanent SEE CAO Implementation Group and replace it by a more flexible structure for discussions between regulators, TSOs, other relevant stakeholders (traders, EFET, industries, EURELECTRIC) and Ministries on SEE CAO related documents prepared by the PTC and requiring NRA approval¹¹.
4. Mrs Grall informed that – in line with point (3.1) – the ECRB-Section circulated the draft AR, submitted by the Project Team Company in Charge of Establishing the SEE CAO (PTC) on 25 October 2013¹², to the ECRB Electricity Working Group (EWG) for comments on 25 October 2013.
5. Mrs Grall underlined that the comments / questions raised at the present meeting **neither represent a final view of the ECRB EWG nor the ECRB** in line with point (3.1) but the meeting would target clarification of questions of regulators with a view to develop a final ECRB recommendation for harmonised approval of the AR by national regulators. She noted that the comments raised at the present meeting would not necessarily be exhaustive. At the same time, Mrs Grall however encouraged regulatory representatives to use the opportunity of this meeting to discuss all questions / ask for clarifications etc.
6. Mr Mijuskovic introduced the process of AR development, the reflection of comments received during public consultation and provided an outlook on the PTC/SEE CAO way forward. Participants welcomed the progress made.
7. The following **comments** have been discussed:
 - Mr Wagmann asked why the border HOPS-EMS was not included in the list of source sink pairs (Annex 3). Mr Mijuskovic explained that Annex 3 summarizes the borders for which TSOs declared ATC to be

⁹ Version sent by SEE CAO PTC after public consultation and including the comments reflected from public consultation.

¹⁰ Published at http://www.energy-community.org/portal/page/portal/ENC_HOME/INST_AND_MEETINGS?event_reg.category=E11796.

¹¹ Published at http://www.energy-community.org/portal/page/portal/ENC_HOME/INST_AND_MEETINGS?event_reg.category=E13233.

¹² Including the comments received during public consultation and explanations on their treatment.

allocated by the SEE CAO; since TSOs are not obliged to use this SEE CAO service the list does not necessarily include all borders.

- Mr Wagmann requested to change Article 1.2.3 from “*The Auction Rules cancel and replace all previous auction rules used to allocate ATC on Source-Sink Pairs mentioned in Annex 3*” to “*The Auction Rules shall become part of existing national auction rules used to allocate ATC*” since in the case of Croatia also other AR apply for the borders serviced by the CEE CAO.
- Mr Radovanovic noted that Annex 3 includes source sink pairs that are part of the EMS control area for which ATC are currently allocated by EMS; reflection to source sink pairs “KOSTT – [other border]” would therefore not correctly reflect the current technical situation until an operational agreement between EMS and KOSTT (currently negotiated between EMS and KOSTT) would clarify differently. Mr Gjonbalaj underlined that Annex 3 should reflect source sink pairs of participation TSOs in CAO regardless of current technical situation. Participation of KOSTT in CAO should not be related to operational agreement between KOSTT and EMS even though such agreement is expected to be finalised before the operational start of the SEE CAO. Issuance of “Y” EIC code to KOSTT will make KOSTT source sink pairs technically effective. Mrs Grall invited to keep the scope of the SEE CAO activities in mind, namely to facilitate trading activities; for practical reasons, provision of technically correct information on the source sink pairs centrally coordinated by the SEE CAO should be essential for this purpose.
- With reference Article 17.9, defining force majeure as “...*any unforeseeable event or situation beyond the reasonable control of _____ Party and/or a Participating TSO...*”, and having in mind that the term “Party” is defined as “*Either SEE CAO or an Auction Participant*”, Mr Milicic asked whether all of the consequences (related to curtailment, reimbursement and similar procedures in the AR) of a, for example, force majeure at Auction Participant's site are really desired by all parties and NRAs. Mr Mijuskovic explained that this should not be critical since the AR in case of force majeure do not foresee different treatment of capacities related to compensation.
- Mr Pointvoogl asked why Belgian law was chosen as reference. Mr Mijuskovic explained that this was a compromise with the aim to find a neutral reference.
- Mr Lukic recommended revising the wording of the definition of PTR in editorial terms.
- Mr Lukic suggested including a clarification in Article 7.1 that bids should be considered following the principle “all or nothing”.
- Mrs Grall asked why may an auction participant only submit bids for a border where he is recognized as the eligible market participant having in mind that the auction participant has to fulfil financial requirements towards SEE CAO and the fact that allocated PTR can be transferred, resold or non-nominated before being in position to use allocated PTR on the market. Mr Pantic explained that this approach was chosen having in mind that it is expected that not all SEE TSOs will participate in the SEE CAO.
- Mrs Grall noted that the definition of a TSO is not fully in line with the definition of Directive 2003/54/EC as well as in Directive 2009/72/EC; in particular reference to “a natural person” is missing.
- Mrs Grall suggested harmonising the use of the terms “participating TSOs” and “SEE TSOs” throughout the AR text, having in mind that not all SEE TSOs are “participating TSOs”. Mr Pantic explained that “participating TSOs” are listed in Annex 2 and “SEE TSO” are mentioned for nomination of schedule.

- Mrs Grall further suggested including definitions for “SSI” and “UIOLI”. Mr Pantic explained that the explanation for these abbreviations is mentioned in the AR text (when used).
- With regard to NTC values (Article 2.2. AR), Mr Mijuskovic explained that validation of the SEE CAO will not be responsible for validating the received values.
- Mr Bislimoski asked which timeframe was expected for preparing the IT interfaces between the national TSOs and the SEE CAO. Mr Mijuskovic explained that such preparation is expected to take place during 2014 quarter 1 and 2.
- Mr Milicic questioned the algorithm used for calculation of the marginal price: while the CEE CAO AR make reference to the first not accepted bid, the draft SEE CAO AR refer to the last accepted bid. Mr Pantic explained that reference to the last accepted bid is a commonly used auction principle; other participants agreed with this view.
- Mr Lanza suggested to also include FTR in the future.