



Agency for the Cooperation of Energy Regulators (ACER)
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SI-1000 Ljubljana
SLOVENIA

The Hague, 16 august 2024

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Our reference : ACM/UIT/623931
Subject : ACM/16/031317

Dear Mr. Zinglersen,

The Netherlands Authority for Consumers and Markets (ACM) is writing to the European Agency for the Cooperation of Energy Regulators (ACER) with regard to the task of adopting a coordinated decision on cross-zonal risk hedging opportunities under Article 30(2) of the Commission Regulation (EU) 2016/1719 of 26 September 2016 establishing a guideline on forward capacity allocation ("the FCA GL").

The ACM and Norwegian Energy Regulatory Authority (NVE-RME) have agreed to request ACER and the EFTA Surveillance Agency (ESA) respectively to adopt a decision regarding possible measures either under Article 30(5)(a) or under Article 30(5)(b) of the Commission Regulation (EU) 2016/1719 ("FCA GL") pursuant to Article 6(10) of Regulation (EU) 2019/942 of the European Parliament and of the Council of 5 June 2019 establishing a European Union Agency for the Cooperation of Energy Regulators (Regulation 2019/942) (for ACER) and point 47 of Annex IV of the EEA Agreement¹, in particular the adaptations set out in paragraph (d) thereof adapting Article 8(1)(b) of Regulation (EC) No 713/2009 of 13 July 2009 establishing an Agency for the Cooperation of Energy Regulators (for ESA).

Pursuant to Articles 30(5)(a) and 30(5)(b) of the FCA GL, the Dutch and Norwegian NRAs were not able to adopt coordinated decisions either to issue long-term transmission rights or to agree on other solutions to make sure that other long-term cross-zonal hedging products are made available to support the functioning of wholesale electricity markets within 6 months as prescribed in FCA GL article 30(2). ACM and NVE-RME thus requested and were granted an extension of six months until 19 August 2024.

General background

In accordance with Article 30 of the FCA GL, the 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 do so. This decision shall be based on an assessment, which shall identify whether the electricity forward market provides sufficient hedging opportunities in the concerned bidding zones. The assessment shall be carried out in a coordinated manner by the competent regulatory authorities of the bidding zone border.

In case the assessment shows that there are insufficient hedging opportunities in one or more bidding zones, the competent regulatory authorities shall request the relevant TSOs to issue long-term transmission rights or

¹ Inserted by Decision of the EEA Joint Committee No 93/2017

to make sure that other long-term cross-zonal hedging products are made available to support the functioning of wholesale electricity markets.

Acting in accordance with Article 30(3) of the FCA GL, the NRAs have conducted these assessments.

The Dutch, NRA ACM, has assessed the NL bidding zone and concluded that there is insufficient basis to conclude that sufficient hedging opportunities are available in the electricity forward markets. On the other side of the border the Norwegian NRA, NVE-RME, has assessed the hedging possibilities and concluded that the opportunities are insufficient.

The following is a brief outline of the individual NRAs' assessments.

ACM's assessment

ACM has carried out the update of the liquidity indicators and has assessed the updated analysis with data from 1 January 2019 through 30 June 2024. In accordance with Article 30(4) of the FCA GL, the evaluation consists of two parts.

In the first part of the evaluation, ACM has specifically investigated if the yearly, quarterly, and monthly products for the Dutch bidding zone that are traded via the exchanges (EEX and ICE Endex) and Over The Counter (OTC) represent an appropriate hedge against the risk of change in the Dutch day-ahead price (as prescribed by Article 30(4)(a) of the FCA GL). ACM concluded for the updated analysis that these products represent appropriate hedges against the risk of change in the Dutch day-ahead price.

In the second part of the evaluation, ACM has assessed for these products (i) the trading horizon, (ii) the bid-ask spread, (iii) the traded volumes in relation to physical consumption, and (iv) the open interest in relation to physical consumption (as prescribed by Article 30(4)(b) of the FCA GL). ACM added the data from the period 1 January 2024 through 30 June 2024 to its original assessment of the indicators. Based on this updated assessment, ACM still cannot conclude that these products are efficient. The assessment by ACM, following Article 30(3) of the FCA GL which contains the legal framework for the assessment, including the evaluation on hedging opportunities, the evaluation of the efficiency of the products for the Dutch bidding zone and the final conclusion, can be found as an attachment to this letter.

Furthermore, as prescribed by Article 30(3)(a) of the FCA GL, ACM carried out a consultation in September 2023 among market participants about their needs for cross-zonal risk hedging opportunities on the concerned bidding-zone borders.² The conclusion of this consultation was that there is a need for cross-zonal risk hedging opportunities for the bidding-zone border NO2-NL.³ The responses to the consultation have also unequivocally shown that the market participants that have responded are favorable to transmission rights. In addition, an introduction of transmission rights on the NO2-NL bidding-zone border is also a logical step given the presence of transmission rights on all other Dutch bidding-zone borders.

Given the above, ACM concludes that there is insufficient basis to be able to conclude that the electricity forward market provides sufficient hedging opportunities for the Dutch bidding zone.

NVE-RME's assessment

NVE-RME has assessed whether the electricity forward market in all five Norwegian bidding zones (NO1, NO2, NO3, NO4 and NO5) provides sufficient hedging opportunities. The period NVE-RME analysed prior to NVE-RME's decision of 16 February 2024 was from the end of 2021 until July 2023. NVE-RME has analysed for the organised power derivatives market (Nasdaq). The analysis followed the evaluation guidelines agreed between the Nordic countries in NordREG. Since there also is extensive bilateral, or TC, trade among market parties, and the majority of trade in Norwegian EPADs is conducted bilaterally, NVE-RME also requested 11

² [ACM consultation regarding long-term hedging opportunities \(FCA Regulation\) | ACM.nl](#).

³ See [Reacties consultatie ACM LT indekkingsmogelijkheden \(FCA Verordening\) | ACM.nl](#).

market parties to report volumes of this trade. In line with FCA GL Article 30(3), NVE-RME has also consulted the market participants. The consultation was conducted as a survey during the autumn 2023, and NVE-RME received 39 responses.

The results of the assessment for the bidding zones made on data from Nasdaq revealed negative liquidity trends. The bid-ask spread has increased for system price contracts and EPADs from 2019. NVE-RME analysis also shows an imbalance between supply and demand of EPADs in some bidding zones, and there was a lack of either supply or demand for several EPADs by the end of the trading day for longer periods. Open interest has decreased significantly during the analysed period, particularly for system price contracts. The correlation between the system price and the bidding zone price in the three southern bidding zones has been stable. As regards the two northern bidding zones, the correlation with the system price has decreased significantly⁴.

The period NVE-RME has analysed has from end of 2021 until July 2023 been characterized by extraordinary conditions affecting the market. The prices have in general been more volatile, and the price difference between northern and southern bidding zones has been larger compared to other periods. There are thus some uncertainties related to the development of the price hedging possibilities in a more stable market. NVE-RME has carried out an analysis with an extended period from July 2023 through May 2024 to the original assessment. With the addition of new data, NVE-RME cannot change its previous conclusion from February 2024.

Furthermore, the results from the survey conducted among Norwegian market players shows that the price hedging possibilities are not perceived as sufficient. This particularly applies to the possibility of hedging the bidding zone price, and too little supply of contracts is stated as the main challenge. This is in line with the analyses NVE-RME has carried out, which show low liquidity in EPADs and a large buy-sell spread in all bidding zones.

Based on the results of the survey, the analysis of data from the organised power derivatives market as well as information on bilateral contracts, it is NVE-RME's overall assessment that the products and the combination of products offered in the forward markets today do not provide effective hedging possibilities against the volatility of the day-ahead price in Norwegian bidding zones.

Finally, the consultation with Norwegian market participants about their needs for cross-zonal risk hedging opportunities on the concerned bidding zone borders conducted during the autumn 2023, shows that most of the market participants does not find LTTRs as a suitable instrument for hedging in Norwegian bidding zones. The majority of the respondents made it clear that they support strengthening the current hedging system with system price contracts and EPADs or zonal futures as an alternative. Further, the Norwegian market participants mainly need hedge within a bidding zone, and not cross-zonal.

The introduction of LTTRs has some market specific disadvantages in Norway compared with countries with larger bidding zones and an already established practice with LTTRs. NVE-RME refers to the section on NVE-RME's position for further explanation.

Consequently, NVE-RME has issued a decision towards Statnett stating that LTTRs should not be introduced on borders between Norwegian bidding zones or towards Sweden or Denmark. Since there is a need for enhanced hedging opportunities in Norway, NVE-RME has requested Statnett to assess other hedging products. Auction of EPADs and zonal futures between Norwegian bidding zones, and support to market makers, are measures Statnett must assess. When the new measure is implemented, NVE-RME considers that sufficient hedging possibilities are made available in Norwegian bidding zones.

⁴ [Statnett må utrede tiltak for å bedre prissikringsmulighetene - NVE \(in Norwegian\)](#)

ACM and NVE-RME have not been able to agree and adopt coordinated decisions

If the hedging opportunities are deemed insufficient in one bidding zone the competent regulatory authorities should pursuant to Articles 30(5)(a) and 30(5)(b) of the FCA GL decide either to issue long-term transmission rights or to make sure that other long-term cross-zonal hedging products are made available.

ACM and NVE-RME have discussed the current situation on several occasions during 2023 and 2024 but have not been able to agree on adopting coordinated decisions on the abovementioned bidding zone borders. ACM and NVE-RME could not agree on the measure to be taken. An overview of the positions of NVE-RME and ACM per measure is presented below.

NVE-RME's position

In NVE-RME's opinion, market participants will have sufficient cross-zonal hedging possibilities when there are sufficient hedging possibilities on both sides of the border, i.e. for market participants in both relevant bidding zones. This means that a possible measure is to ensure that hedging products are made available *within* both bidding zones in question.

In the Nordic electricity forward market, a cross-zonal hedge is ensured by buying and selling EPAD contracts in the relevant bidding zones. This provides a sufficient price hedge across bidding zones, even if the hedging product itself is not a cross-zonal product. Accordingly, a cross-zonal hedge between NO2 and the Netherlands can be ensured by an EPAD contract in NO2 and a contract with sufficient correlation with the Dutch day-ahead price in the Netherlands. The FCA Regulation does not define 'cross-zonal products' or, more specifically, 'long-term cross-zonal hedging products', and only refers to the latter in the context of a request pursuant to Article 30(5)(b) of the FCA Regulation. Hedging products which, in combination with other hedging products, are able to provide a full hedge against a cross-zonal price risk are not excluded from possible measures to improve hedging opportunities.⁵ As stated above, when the new measure to improve hedging possibilities in the Norwegian bidding zones is implemented, NVE-RME considers that sufficient hedging possibilities are made available in NO2. Similarly, new measures could be implemented on the Dutch side if the existing products is not considered to ensure sufficient hedging possibilities.

Given this interpretation, ACM and NVE-RME may respectively implement measures to ensure availability of sufficient hedging possibilities in the Dutch and relevant Norwegian bidding zone, independent of the other NRA's decision. This is NVE-RME's preferred solution.

LTTRs

LTTRs are not well-suited for hedging in Norway and the rest of the Nordics, since the market consists of several smaller bidding zones, and it would be complicated to hedge between non-adjacent bidding zones.⁶ Futures with the system price (the unconstrained day-ahead market clearing price for the Nordic region) as a reference price and EPAD contracts are well-established products for hedging and well-suited in the Nordic market. EEX has introduced zonal futures in the Nordic market from March 2024. Zonal futures are equivalent to a combination of a system price contract and an EPADs and are expected to function accordingly. Furthermore, an introduction of LTTRs will split the market on two different instruments, and this leads to reduced efficiency and may, all in all, decrease the hedging possibilities.

NVE-RME does not support LTTR options. In the case of an introduction of LTTRs, NVE-RME is in favour of LTTR obligations. Options are more commonly used for speculation than hedging, and often results in an underpayment to the TSO.

Hedging Product Coupling

Auctions of EPADs (or zonal futures) are well-suited within the Nordic countries. It supports the existing markets for hedging products. NVE-RME has thus required Statnett to investigate this measure further. In an EPAD auction, the TSO becomes counterparty to an agreement with a seller in one bidding zone and an

⁵ See as well paragraph 131 of ACER Decision 12-2020

⁶ See paragraph 206 of ACER Decision 12-2020

agreement with a buyer in the other bidding zone. The price is determined in the auction by the bids from the seller and buyer and the capacity.

Since the TSO buys an EPAD in one bidding zone and sells an EPAD in the other bidding zone, it equals an LTTR obligation for the TSO. The TSO's position and interest related to auctions of EPADs or zonal futures is thus equal to the issuance of LTTR obligations. The advantage of auctions of EPADs (or zonal futures) is that market participants can buy and sell corresponding contracts in the organized market, and this will increase the liquidity in these existing markets for power derivatives.

Market-making

The possibility of TSO support to a market-maker is another option that NVE-RME has required Statnett to investigate further. Also, this measure will increase liquidity in existing markets and improve the efficiency in market-developed products, and could subsequently lead to sufficient hedging possibilities.

ACM's position

LTTRs

ACM believes that the best option is a decision in line with Article 30(5)(a) of the FCA GL, in which long-term transmission rights (LTTRs) are introduced on the NO2-NL bidding-zone border. ACM prefers FTR options over FTR obligations. Experiences on other bidding-zone borders have proven that FTR options are a suitable instrument for providing cross-border hedging opportunities. In addition, market parties are familiar with this product and are in favour of introducing LTTRs according to the reactions to our consultation. Moreover, the technology to introduce FTR options is already in place and the implementation is therefore expected to be relatively simple compared with introducing FTR obligations, which would be a new product and would require much more effort to implement without proven advantages over FTR options. FTR options would give Dutch parties the opportunity to trade in Norwegian products, and Norwegian parties could trade in Dutch products while having a perfect hedge for their own bidding zone. Therefore, LTTRs form a better product to prevent discrimination between the internal European market and national markets compared to products focused on strengthening hedging possibilities within the bidding zone.

Hedging Product Coupling

ACM is strongly against the introduction of Hedging Product Coupling (HPC) by TenneT TSO B.V. (TenneT) and Statnett. First, there are legal concerns about this product as TenneT is not allowed to buy and sell futures because it is an unbundled TSO. TenneT should not be in a position where it creates an interest with regard to the electricity price. According to the Electricity Directive, member states need to ensure full independence of network operation from supply and generation interests. In the Netherlands, this requires TSOs to be independent from suppliers (Section 10b of the Dutch Electricity Act 1998). In addition, ACM does not think HPC is in line with Article 30(5)(b) of the FCA GL. If HPC is introduced, TenneT will offer futures for the Dutch bidding zones to Dutch market parties. Hence, HPC is not a cross-zonal hedging product. Apart from these legal concerns, ACM does not see any welfare advantages HPC offers compared with introducing LTTRs, while implementation will cost more resources and time compared with introducing LTTRs.

Market-making

ACM recognizes that appointing a market-maker could increase liquidity in the Dutch forward market. Yet, ACM does not see market-making as an option under Article 30(5)(b) of the FCA GL, as it cannot be described as introducing cross-zonal hedging products. Furthermore, ACM has legal concerns about the TSOs functioning as or appointing a market-maker considering that TenneT is an unbundled TSO. TenneT should not be in a position where it creates an interest with regard to the electricity price. According to the Electricity Directive, member states need to ensure full independence of network operation from supply and generation interests. In the Netherlands, this requires TSOs to be independent from suppliers (Section 10b

of the Dutch Electricity Act 1998). Last, it is unclear whether ACM has the power to appoint TenneT as a market-maker.

Improving allocation on other borders

Irrespective of this case, ACM would be in favour of improving allocation on other Dutch bidding-zone borders than NO2-NL where LTTRs are already in place. This measure is expected to increase liquidity in the Dutch forward market and improve the functioning of the Dutch forward market. Yet, ACM has legal concerns about such a decision under Article 30(5)(b) of the FCA GL for the NO2-NL bidding zone border as this measure does not introduce a cross-zonal hedge for the NO2-NL bidding zone border. ACM interprets Article 30 of the FCA GL in such a way that the cross-zonal product mentioned in Article 30(5)(b) should see on the bidding zone border where no LTTRs are present yet. Another concern is how to improve allocation on Dutch bidding zone borders where LTTRs already exist if the NRAs on the other side of the bidding zone border do not want to implement any changes. Last, LTTRs on the NO2-NL bidding zone border remain ACM's preferred option, and the market participants have expressed an interest in LTTRs specifically on the NO2-NL bidding-zone border.

Request for ACER to take a decision

ACER is requested to adopt a decision addressed to TenneT regarding possible measures either under Article 30(5)(a) or under Article 30(5)(b) of the FCA Guideline. In accordance with Article 6(10) of Regulation 2019/942, ACER shall be competent to adopt individual decisions on the basis of a joint request from the competent regulatory authorities.

We remain available to assist ACER in its preparation of the decision, including by providing any additional information as appropriate.

Yours sincerely,

the Netherlands Authority for Consumers and Markets,

Michiel Denkers
Director
Energy Department