

Deliberation by the French Energy Regulatory Commission of 3 December 2015 designating day-ahead and intraday electricity market operators in France

Present: Catherine EDWIGE, Hélène GASSIN, Yann PADOVA and Jean-Pierre SOTURA, commissioners.

In accordance with the provisions of Article 4, paragraph 3 of Regulation (EU) 2015/1222 of the Commission of 24 July 2015 establishing a guideline on capacity allocation and congestion management ("capacity allocation and congestion management" regulation, hereinafter referred to as the "CACM regulation"), the French Energy Regulatory Commission (CRE) designates day-ahead and intraday electricity market operators in France ("Nominated Electricity Market Operator"), hereinafter referred to as "NEMO").

1. Background

The CACM regulation was published in the Official Journal of the European Union on 25 July 2015 and entered into effect on 14 August 2015. This regulation deals with the calculation and use of interconnection capacity in day-ahead and intraday timeframes. It provides for the implementation of Union-wide market coupling for these timeframes. Electricity market coupling consists in allocating interconnection capacity together with the purchase of electricity; this is known as "implicit" capacity allocation. This mechanism ensures optimum use of the capacity allocated in these timeframes. As long as there is interconnection capacity available, it enables the least expensive production resources in the entire coupled zone to be used. If interconnection capacity is saturated, it guarantees that all of the capacity is used efficiently, in order to enable electricity to flow from the least expensive zone to the most expensive zone.

Day-ahead and intraday market operators, which collect participants' buy and sell orders, are at the centre of market coupling, and interconnection capacity is allocated to the transactions that they manage. In accordance with the provisions of Article 4 of the CACM regulation, each Member State must designate at least one NEMO within four months after the entry into force of that regulation. Unless otherwise specified by the Member State, this responsibility lies with the regulator, which is the case in France, where CRE is the authority in charge of designating NEMOs.

In order to designate NEMOs in France, CRE launched a call for applications from 28 July 2015 to 2 October 2015, the terms of which are outlined in the deliberation of 28 July 2015.¹

¹Deliberation of 28 July 2015 calling for applications in view of the designation of day-ahead and intraday electricity market operators in France
<http://www.cre.fr/documents/deliberations/communication/appel-a-candidatures-nemo>

2. Applications received

Two applications, the first from EPEX SPOT and the second from NORD POOL SPOT (hereinafter referred to as "NPS"), were addressed to CRE within the deadline (before 2 October 2015). Since all of the supporting documents requested were included in the files, the applications were found to be admissible.

Detailed examination of the compliance of the two files with the designation criteria listed in Article 6 of the CACM regulation was carried out by CRE.

3. Analysis of the applications received by CRE

The goal of the designation process and the criteria used is to ensure that the selected NEMOs will be able to fulfil the tasks assigned to them in accordance with the provisions of Article 7 of the CACM regulation.

In accordance with the provisions of this Article, NEMOs shall act as market operators in national or regional markets in order to ensure, in cooperation with transmission system operators (hereinafter referred to as "TSOs"), single day-ahead and intraday market coupling. To do so, they receive buy and sell orders from market participants and assume the overall responsibility for matching buy and sell orders and allocating capacity in accordance with coupling results. In addition, they are required to publish prices and ensure settlement and clearing of transactions.

In order to successfully carry out these tasks, and in order to be appointed, NEMOs must meet the criteria specified in Article 6 of the CACM regulation and taken up in the deliberation of 28 July 2015 calling for applications with a view to designating day-ahead and intraday electricity market operators in France:

3.1. *Financial, human and technical resources*

Each NEMO must have the financial, human and technical resources necessary for the common, coordinated and compliant management of day-ahead and intraday market coupling.

EPEX SPOT and NPS have sufficient bank and financial guarantees, validated by their statutory auditors. They implement adequate measures for the management of the main financial risks.

EPEX SPOT and NPS have staff members trained in market coupling.

EPEX SPOT already provides coupling services for the day-ahead market, in particular in France, Germany, Belgium and the Netherlands. NPS carries out these functions in the Nordic and Baltic countries. EPEX SPOT and NPS have the technical infrastructure necessary for these coupling operations.

Therefore, CRE considers that EPEX SPOT and NPS have the financial, human and technical resources to fulfil NEMO tasks.

3.2. *Access to information*

Each NEMO must be able to offer to market participants access to information on day-ahead and intraday market coupling and required by the CACM regulation, as well as to communicate in French with all of the stakeholders involved in coupling activities.

CRE notes that EPEX SPOT and NPS are able to communicate information concerning NEMO tasks through their websites and servers devoted to data exchange.

Moreover, EPEX SPOT and NPS have committed to communicating in French with all of the stakeholders involved in coupling activities, at their request.

CRE requests EPEX SPOT and NPS to inform it if they are not able to ensure access by market participants to all of the information requested in the CACM regulation.

3.3. Operational and financial efficiency

Each NEMO must ensure that its operational and financial management and related costs correspond to those of an efficient operator. It must also keep separate accounts in its internal accounting for market coupling operator functions on the one hand, and for other activities on the other hand, in order to prevent cross-subsidisation.

EPEX SPOT and NPS have internal procedures enabling the separation between the costs related to coupling and other activities.

CRE considers that EPEX SPOT's and NPS's internal procedures enable them to ensure efficient and transparent operational and financial management.

Lastly, in order for this operational and financial efficiency to be sustainable, and in compliance with the request made in the call for applications dated 28 July 2015, CRE requests EPEX SPOT and NPS to submit to it each year, a detailed report of the costs and income related to their coupling activities.

3.4. Separation of activities with market participants

Each NEMO must have an adequate level of business separation from other market participants.

EPEX SPOT is 51% owned by the European Energy Exchange (EEX) and 49% by TSOs. NPS is owned exclusively by TSOs.

CRE considers that EPEX SPOT and NPS have a legal and operational separation of their activities with regard to those of their shareholders, and that there is an adequate level of separation of their business from that of other market participants.

CRE requests EPEX SPOT and NPS to keep it informed of any change in their governance that might affect this separation.

3.5. Fees in the case of a national legal monopoly

If a NEMO is a national legal monopoly in a Member State, it must ensure that there is no cross-subsidisation. In particular, it shall not use the fees received as a national legal monopoly to finance its day-ahead or intraday activities in another Member State.

EPEX SPOT and NPS are not legal national monopolies.

3.6. Non-discriminatory treatment of market participants

Each NEMO must be able to treat all market participants in a non-discriminatory way.

EPEX SPOT and NPS propose standard, open and transparent procedures for admission into the organised market. They publish a single set of rules which apply to all market participants.

CRE considers that the current procedures proposed by EPEX SPOT and NPS prevent any risk of discrimination towards market participants.

3.7. Market surveillance

Each NEMO must set up appropriate market surveillance arrangements. The mechanism set up must, in particular, comply with the requirements of Regulation (EU) No 1227/2011 of the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity and transparency (REMIT).

EPEX SPOT and NPS each has a market surveillance department that is independent from the rest of the company, which carries out continuous surveillance of the market and in-depth analyses on a regular basis. In accordance with the provisions of Article 15 of REMIT, EPEX SPOT and NPS have effective procedures to identify breaches of Article 3 or 5 of the regulation and inform the regulators concerned if such a breach is suspected.

EPEX SPOT and NPS have included the REMIT provisions concerning the prohibition of insider trading and market manipulations in their rules of procedure applied to their members.

CRE considers that the market surveillance arrangements set up are appropriate.

3.8. Transparency and confidentiality

Each NEMO must set up appropriate transparency and confidentiality agreements with market participants and RTE.

EPEX SPOT and NPS publish operational rules setting out transparency and confidentiality obligations signed by all market participants.

EPEX SPOT signed with RTE an agreement on day-ahead market coupling in France, which contains a confidentiality and transparency clause.

NPS commits to signing an agreement with RTE as it has done with the TSOs responsible in the markets in which it operates.

CRE considers that the agreements in place guarantee sufficient transparency and confidentiality with regard to market participants.

CRE requests NPS to transmit to it the confidentiality and transparency agreement it has committed to signing with RTE.

3.9. Settlement and clearing services

Each NEMO must be able to provide the necessary settlement and clearing of contracts resulting from the trades related to day-ahead and intraday market coupling.

NPS has its own settlement and clearing house. NPS has also signed agreements with ECC and APX to ensure settlement and clearing for certain interconnections.

EPEX SPOT delegates settlement and clearing tasks to the European Commodity Clearing (hereinafter referred to as ECC), as provided for by the provisions of Article 81 of the CACM regulation which states that a NEMO "may delegate all or part of any task assigned to it".

CRE considers that EPEX SPOT and NPS can provide settlement and clearing services enabling the proper functioning of market coupling.

CRE recalls that, in the case of a task delegation, the NEMO remains in charge of ensuring compliance of the delegated services with the obligations established by the CACM regulation.

3.10. Communication systems between NEMOs and the transmission system operator

Each NEMO must be able to set up the necessary communication systems and automatic procedures for coordination with RTE. It must be able to connect to the existing technical mechanisms.

EPEX SPOT and NPS already use interfaces complying with the procedures common to all coupled countries.

In addition to these common procedures, RTE must be able to communicate specifically with the NEMOs designated.

EPEX SPOT already communicates with RTE within the framework of market coupling in France.

NPS asserts that it will be able to communicate with RTE if it is designated a NEMO.

CRE requests NPS to collaborate with RTE to implement and test these communication procedures. In addition, NPS shall have to transmit to CRE as soon as possible all of the information guaranteeing its capacity to effectively communicate with RTE the information necessary for coupling.

4. Continuation of the process

The designation of NEMOs is the first step in a dual process, both national and European, which will enable effective competition among power exchanges by the end of 2017 at the latest, according to the schedule provided for by the CACM regulation.

In view of the development of competition among power exchanges, a technical solution to have more than one NEMO in France must be implemented. RTE is responsible for the technical implementation of the project to have more than one NEMO in France.

In accordance with the provisions of Articles 45 and 57 of the CACM regulation, CRE requests RTE to submit to it, within four months following the date of publication of this deliberation, a proposal for the implementation of a technical solution for having more than one NEMO in France. The solution adopted must be the most efficient at the technical and financial level.

CRE invites EPEX SPOT and NPS to collaborate with RTE in order to implement and test the communication systems and automatic procedures enabling coordination between EPEX SPOT and NPS on the one hand and with RTE on the other hand.

In accordance with the provisions of Article 7, paragraph 3 of the CACM regulation, CRE requests all of the NEMOs designated to submit to it, as well as to all regulators and the Agency for the Cooperation of Energy Regulators (ACER), a plan stating the arrangements for jointly setting up and performing the market coupling operator functions. This plan will specify in particular, the governance rules, the arrangements for sharing costs and the implementation schedule, which shall not exceed twelve months.

The plan shall be submitted by 14 April 2016 at the latest, i.e. eight months after the entry into force of the CACM regulation.

5. CRE's decision

5.1. Designation of EPEX SPOT

EPEX SPOT meets all of the designation criteria. In accordance with the provisions of Article 6 of the CACM regulation, CRE designates EPEX SPOT as a NEMO in France for a period of four years starting from the date of publication of this deliberation.

CRE reiterates to EPEX SPOT that it must comply with all of the obligations of the CACM regulation which apply to NEMOs and in particular:

- submit to CRE every year, a detailed report of its costs and income related to coupling activities;
- keep CRE informed in the event it is not able to ensure access by market participants to all of the information requested in the CACM regulation;
- keep CRE informed of any changes in its governance which might generate a risk of discriminatory treatment of market participants;
- ensure compliance with the CACM regulation, of the settlement and clearing services it has delegated, in accordance with the provisions of Article 81 of the CACM regulation, to ECC.

5.2. Designation of NORD POOL SPOT

NPS meets all of the designation criteria. In accordance with the provisions of Article 6 of the CACM regulation, CRE designates NPS as a NEMO in France for a period of four years starting from the date of publication of this deliberation.

CRE reiterates to NPS that it must comply with all of the obligations of the CACM regulation which apply to NEMOs and in particular:

- submit to CRE every year, a detailed report of its costs and income related to coupling activities;
- keep CRE informed in the event it is not able to ensure access by market participants to all of the information requested in the CACM regulation;
- keep CRE informed of any changes in its governance which might generate a risk of discriminatory treatment of market participants;
- submit to CRE all of the information guaranteeing its capacity to exchange data with RTE.

5.3. Revocation or renewal of NEMOs

In accordance with the provisions of Article 4, paragraph 8 of the CACM regulation, CRE can revoke the designation of any NEMO that fails to maintain compliance with the designation criteria, six months after that NEMO has been notified of its non-compliance, to no effect.

The NEMOs that wish to renew their term following the initial four-year term shall have to inform CRE six months before the expiry date. They shall provide the elements affirming their compliance with the criteria in Article 6 of the CACM regulation.

5.4. Assessment of new applicants

The CACM regulation provides for the assessment of new applicants at least once a year. CRE shall examine applications as they are submitted in the future. These applications shall be assessed, within a reasonable timeframe, according to the principles and criteria in the deliberation of 28 July 2015 calling for applications with a view to designating day-ahead and intraday electricity market operators in France.

Paris, 3 December 2015

For the Energy Regulatory Commission,
A commissioner,

Jean-Pierre SOTURA