



## **FRENCH – GERMAN INTERCONNECTION CAPACITY ACCESS RULES**

**Draft Version 1.0**

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## **Section 0 Introduction**

### **0.1. Status of this Introduction**

This introductory Section is an integral and binding part of these Regulations.

### **0.2. General Context**

These Regulations contain the terms and conditions for the auctioning of available interconnection capacity which is jointly offered in form of Physical Transmission Rights (PTRs) by the French and German Transmission System Operators (TSOs) EnBW Transportnetze AG (EnBW TNG), RTE-EDF-Transport S.A. (RTE) and RWE Transportnetz Strom (RWE TSO) with regard to the interconnections between France and Germany in both directions. The auctioning of interconnection capacity is not a commercially motivated activity but one aimed at providing a transparent market based method of congestion management. The importance of the interconnections for the liberalisation of the EU electricity market requires a strict policy with regard to the collection of payments and default consequences.

### **0.3. Auction Procedure**

The aforementioned TSOs are jointly carrying out the auction. All relevant information is made available on the auction websites of the TSOs according to Article 1.09.

### **0.4. The Auction Regulations (General Aspects)**

These Regulations describe (among other aspects) the various types of auctions, the requirements which Users must fulfil to participate in the auctions, the auction proceedings, the awarding of PTRs as a result of the auction and the utilisation of interconnection capacity after the auction. Article 7.02 contains a limitation of liability. As a matter of course this liability limitation is in line with all relevant national and European legislation. These Regulations may be amended jointly by the TSOs along the way in order to improve or clarify provisions and procedures and to fill gaps.

### **0.5. Legal Qualification of the Awarding of Interconnection Capacity Pursuant to an Auction**

The auctioning is in respect of interconnection capacity only. The auctioning and awarding of PTRs and the financial settlement of the auction results do not involve energy transports or any rights, liabilities or financial aspects pertaining to energy transports. PTR holders can invoke vis-à-vis the TSOs no other right than that interconnection capacity is made available to them subject to the provisions in these Regulations. Notably, the awarding of PTRs cannot be considered or construed to mean or imply that a PTR holder is entitled to have electricity transports carried out or that transport failures or restrictions are a failure to comply with the terms of the Regulations. It is the responsibility of the PTR holder to take the necessary steps to have transports carried out. A successful Bid for interconnection capacity commits both the TSOs and the User to fulfil their respective duties: The TSOs are obliged to make interconnection capacity for electric energy transfer available to the PTR holder while the PTR holder is under the obligation to pay the price for the PTR that was awarded to her (interconnection capacity price). In fact, PTRs are not physical goods which can be bought but are contractual rights to be exerted vis-à-vis the TSOs to make interconnection capacity for electric energy transfer available on the interconnection. These Regula-

tions constitute the terms and conditions of the aforementioned contract. At the same time the Regulations set forth the terms and conditions on which the the TSOs are willing to allow Users to enter Bids for these contracts and the terms and conditions on which the TSOs are willing to consider these Bids. It is noted in this respect that contracts concerning interconnection capacity from Germany to France are governed exclusively by German law and contracts concerning interconnection capacity from France to Germany are governed exclusively by French law (see Article 7.05).

## **0.6. Collection of Debts / Waiver of Right to Compensate**

RWE TSO collects on behalf of the TSOs all debts resulting from the auction of PTRs from Germany to France. RTE collects on behalf of the TSOs all debts resulting from the auction of PTRs from France to Germany. Although RTE and RWE TSO collect these payments on behalf and in the name of the TSOs, Users accept by participating in the auctions that they can only be discharged of their debts through payment to the appropriate Transmission System Operator (either to RTE for PTRs from France to Germany or to RWE TSO for PTRs from Germany to France) and that payment of a debt to another Transmission System Operator will not release them from this obligation. Moreover, as payment by compensation would thwart the administrative structure of the co-operation between the TSOs, Users waive the right to offset any debts that arise in connection with an auction to claims that those Users have on a Transmission System Operator, whether or not arising out of an auction (see Article 6.03).

## **Section I. General**

### **Article 1.01 Definitions**

**ANC:** automatic discrepancy report by the Transmission System Operator to a PTR holder in the event of interconnection capacity overrun and interconnection capacity shortfall (anomaly capacity)

**Auction:** a yearly, monthly or daily auction held under these Regulations.

**Auction operator:** RTE operates the joint auction of PTRs from France to Germany. RWE TSO operates the joint auction of PTRs from Germany to France. Both RTE and RWE TSO are referred to as auction operators.

**Auction specification:** information on the auction provided by the TSOs as defined in Article 3.01, in Article 3.02 and Article 3.03.

**Auction websites:** the websites of the TSOs referred to in Article 1.09 of these Regulations.

**Auctioning Day:** all calendar days, on which auctions take place. Bids can be submitted up to this day.

**Bid:** a Bid, in Euro (€) per MW, for a PTR, submitted in a yearly, monthly or daily auction, which complies with the requirements of these Regulations.

**Bid file:** the Bid file includes all Bids submitted by a trader in electronic form.

**Bilanzkreisvertrag:** the agreement between a market party on the one hand and EnBW Transportnetze or RWE TSO on the other, containing, inter alia, a mechanism for settling imbalance between energy injection into and energy extraction out of the electricity grid

**Clearing Price:** the price per MW of available interconnection capacity of a PTR resulting from an auction.

**Daily auction:** the PTR auctioning for each hour of the respective following day.

**Daily interconnection capacity:** the interconnection capacity to be allocated in the daily auction in form of PTRs. It is part of the overall transmission capacity available at the French-German border.

**Day of Execution:** the day on which electricity transports using the PTR obtained in an auction takes place.

**Force Majeure:** any event or circumstance which is beyond the reasonable control of a Transmission System Operator, which that Transmission System Operator could not prevent or overcome with reasonable diligence and foresight, and which results in or causes the failure of that Transmission System Operator to perform its obligations under these Regulations. Such a failure may further result of or be caused by reason of any act of God, fire, flood, strike, act of any governmental or state authority or any other cause whether similar or dissimilar to those enumerated, which is beyond the reasonable control of the Transmission System Operator and cannot be overcome by the taking of reasonable measures. Without prejudice to the preceding full sentences, congestions that are caused by circumstances beyond the direct influence of the Transmission System Operator and which cannot be solved by measures which from a technical, financial and/or economic point of view are reasonably possible for the Transmission System Operator to take are considered as Force Majeure.

**German bank guarantee:** a bail in form of an irrevocable and directly enforceable bank guarantee valid for an unlimited period waiving any exceptions or set-offs. The bank guarantee must be subject to German law and be provided by a major bank with a registered office located in a member state of the European Union.

**Interconnection capacity:** the transmission capacity for cross-border electricity transfers between France and Germany.

**Interconnection capacity Price:** the price payable by a PTR holder as a result of the successful Bid in the auction, being the product of the Clearing Price and the awarded underlying interconnection capacity of the PTR.

**Interconnection capacity:** cross-border electric energy transfer capacity on the interconnections between France and Germany.

**Monthly auction:** the PTR auctioning for the respective following month.

**Monthly interconnection capacity:** the interconnection capacity to be allocated in the monthly auction. It is part of the overall interconnection capacity available at the French-German border.

**Physical Transmission Right (PTR):** the right to use interconnection capacity for electricity transfers

**PTR holder:** the legal entity (User) which has obtained a PTR in the auction.

**Regulations:** these auction Regulations

**Transmission System Operators (TSOs):** the Transmission System Operators who offer PTRs for auctioning under these Regulations: (Germany) EnBW Transportnetze ("EnBW TNG") • (France) RTE-EDF-Transport S.A. ("RTE") • (Germany) RWE Transportnetz Strom ("RWE TSO")

**User:** a legal person which participates, intends to participate or has participated in an auction by submitting one or more Bids and which has been registered for that purpose in accordance with the procedures and requirements set forth in Article 2.01 of these Regulations.

**Yearly auction:** the PTR auctioning for annual electricity transports from 1 January through 31 December of a calendar year.

**Yearly Interconnection Capacity:** the interconnection capacity to be allocated in the yearly auction. It is part of the overall interconnection capacity available at the French-German border.

## **Article 1.02      Operation of the Auction**

The auctions are conducted jointly by the TSOs. RTE operates the auction of PTRs for the export direction from France to Germany on behalf of the TSOs. RWE TSO operates the auction of PTRs for the export direction from Germany to France on behalf of the TSOs. In these rules, both RTE and RWE TSO are referred to as auction operators.

## **Article 1.03      PTRs auctioned / yearly, monthly and daily Auctions**

(1) Separate auctions are held for PTRs for each direction from France to Germany and from Germany to France.

(2) The following auctions take place:

- a. yearly auctions in respect of PTRs for annual electricity transports from 1 January through 31 December of a calendar year;
- b. monthly auctions in respect of PTRs for monthly electricity transports from the first through the last day of a calendar month;
- c. daily auctions in respect of PTRs for daily electricity transports during each hour of a calendar day

## **Article 1.04      Quantities available for Auctioning**

(1) Based on capacity calculations the interconnection capacity available for auctioning in form of PTRs is determined jointly by the TSOs as part of the overall interconnection capacity available at the border and is published on the auction website of each Transmission System Operator. The interconnection capacity available for auctioning in form of PTRs relates to export and imports between Germany and France without any distinction being made between the control areas of EnBW TNG and of RWE TSO.

(2) Any annual or monthly PTRs not nominated/reserved according to Article 5.02 are re-auctioned in the daily auction and thereby increase the respective quantity available for auctioning (daily interconnection capacity). Annual or monthly PTRs nominated/reserved according to Article 5.02 are considered as counterflows in the capacity calculation described in Article 1.04 (1) increasing the daily interconnection capacity.

(3) Users will be timely informed by publication on the auction websites of the TSOs of the interconnection capacity available for each auction.

## **Article 1.05      Basis on which Interconnection Capacity is offered**

(1) PTRs are offered in units of 1 MW with a minimum of 1 unit.

(2) Annual and monthly PTRs are offered for every hour of the entire year and the entire month respectively.

(3) Daily PTRs are offered on an hour-by-hour basis.



## **Article 1.06 Firmness of PTRs**

(1) Annual PTRs are offered on a firm basis except for cases where reductions are necessary due to circumstances that constitute Force Majeure or if safe network operation can only be secured by curtailing PTRs after having taken all other available measures according to relevant national and European legislation. In any case of PTR reductions except for reasons of Force Majeure, the PTR holder is compensated at 110% of the total payments effectuated for the hours of reduced PTRs that refer to the first month the reduction takes place, and at 100% of the total payments effectuated for the hours of reduced PTRs that refer to all other months.

(2) Monthly PTRs are offered on a firm basis except for the cases where reductions are necessary due to circumstances that constitute Force Majeure or if safe network operation can only be secured by curtailing PTRs after having taken all other available measures according to relevant national and European legislation. In any case of PTR reductions except for reasons of Force Majeure, the PTR holder is compensated at 110% of the total payments effectuated for the hours of reduced PTRs.

(3) Unless reductions are induced by circumstances which constitute Force Majeure, daily PTRs are offered on a firm basis.

(4) In the event of a failure to make interconnection capacity available to the extent of its being offered firm the TSOs shall only be obliged to pay a refund in accordance with paragraph (1) or (2); it shall not be liable to a PTR holder for any incidental, direct, indirect or consequential damages caused by such failure.

## **Article 1.07 Capacity Reductions**

In case PTR reductions are necessary, monthly and annual PTRs are reduced on a 'pro rata' basis (in proportion to the underlying interconnection capacity).

PTR holders affected by capacity curtailments are entitled to receive financial compensation according to the principles described in Article 1.06.

## **Article 1.08 Guarantee of Schedules**

(1) Upon reception of the authorisation to schedule as stipulated in Article 5.01 the allocated annual and monthly PTRs for exports from France to Germany become firm except for cases that constitute Force Majeure. With effect from the reception of reservations of PTRs from Germany to France by the TSOs according to Article 5.02 the reserved monthly and annual PTRs become firm except for cases that constitute Force Majeure.

(2) The TSOs guarantee the realisation of the exchange programmes corresponding to firmly allocated PTRs, except for cases that constitute Force Majeure.

## **Article 1.09 Auction Websites**

The TSOs each maintain a website for this auction (auction websites). On these auction websites the following publications are made:

- a. these Regulations, and any alterations thereof
- b. announcements pursuant to these Regulations
- c. information on the auction proceedings

- d. names, fax and telephone number(s) e-mail address(es) of contact persons of the auction operators
- e. formats of documents to be used by Users
- f. the interconnection capacity available for each auction
- g. NTC values (at all time horizons)
- h. the results of an auction (Clearing Price-quantity for all products)
- i. aggregated nominations
- j. number of participants (number of participants with successful Bids and overall number of participants)
- k. programmed curtailments
- l. other relevant information

#### **Article 1.10      Conduct of Users**

(1) Prior to, during and after an auction Users must refrain from any action or behaviour which adversely affects or threatens to adversely affect competition in the bidding proceedings or which aims at gaming or which in any other way disrupts or threatens to disrupt the auction proceedings, or the transparency, cost-effectiveness or fairness thereof.

(2) EnBW TNG, RTE and RWE TSO are separately entitled to exclude from participation or further participation in an auction or a fixed or indefinite number of subsequent auctions those who act or behave or have acted or behaved in violation of the first paragraph, who misuse any right or position obtained pursuant to an auction or who do not comply with any other provision of these Regulations.

#### **Article 1.11      Currency**

Financial securities, price settlement and payments with respect of the auction as well as financial information are in Euro (€).

## **Section II. Participation requirements**

### **Article 2.01 Registration Requirements**

(1) Prior to an auction the User must register with any of the TSOs submitting the following documents:

- a. completed registration form given in ANNEX[...] and published on the auction websites
- b. a statement by an authorised functionary to the effect that the User has received, read and accepted these Regulations;

(2) The registration and the statement mentioned in paragraph (1) are valid for an indefinite number of auctions, notwithstanding the obligation for the User to inform the TSOs forthwith of any changes and notwithstanding the right of the TSOs to request a renewal of the registration and/or the documents to be submitted.

### **Article 2.02 Provision of Bank Guarantees**

For participating in the auction the User must provide a bank guarantee according to the French Import/Export Rules (ANNEX[...]) covering all debts resulting from the auction of PTRs for exports from France to Germany (French bank guarantee).

An additional bank guarantee has to be provided covering all debts resulting from the auction of PTRs for exports from Germany to France (German bank guarantee).

### **Article 2.03 Requirements in Respect of Grid Access**

For participating in the auction, the User:

- a. must have entered into a balancing agreement (Bilanzkreisvertrag) in Germany with at least one involved German Transmission System Operator (EnBW TNG and/or RWE TSO).
- b. must be signatory of an Import/Export Rules contract with RTE (contrat de participation aux règles d'accès au RPT pour des importations et des exportations - ANNEX[...]), and satisfy all clauses specific to the French-German interconnection in this contract.

In case of interpretation, the present Regulations prevail over the French Import/Export Rules.

### **Article 2.04 Suspension**

The User may be excluded from the auction and lose the right to nominate/reserve already allocated PTRs in any of the following events :

- a. The Import/Export Rules contract with RTE is terminated or suspended for any reason.
- b. The Balancing Agreement (Bilanzkreisvertrag) in Germany is terminated or suspended for any reason.
- c. If outstanding debts resulting from the auction of PTRs for exports from Germany to France are not covered by the German bank guarantee.
- d. The User persistently breach these Rules.

## **Section III. Auction proceedings**

### **Article 3.01 Time-Schedule Yearly Auctions**

(1) No later than one week prior to the Auctioning Day the TSOs will publish the auction specifications for the yearly auction. The auction specifications consist of information regarding the:

- Auctioning Day
- Auctioned interconnection capacity (PTR volume)
- Gate openings and closures
- Publication of the results
- Other information

(2) Bids which have been submitted by Users are only accepted if they meet the requirements of these Regulations, in particular those of Article 3.04 and Article 3.05.

### **Article 3.02 Time-Schedule Monthly Auctions**

(1) No later than one week prior to the Auctioning Day the TSOs will publish the auction specifications for the monthly auction. The auction specifications consist of information regarding the:

- Auctioning Day
- Auctioned interconnection capacity (PTR volume)
- Gate openings and closures
- Publication of the results
- Other information

(2) Bids which have been submitted by Users are only accepted if they meet the requirements of these Regulations, in particular those of Article 3.04 and Article 3.05.

### **Article 3.03 Time Schedule Daily Auctions**

(1) The interconnection capacity available for a daily auction is published on the auction websites of the TSOs before 9h00 on the Auctioning Day.

(2) Daily auctions are held on the day preceding the Day of Execution.

(3) Bids must have been received by the respective auction operator (see Article 1.02) before 09h30 on the Auctioning Day.

(4) Only those Bids submitted by Users which meet the requirements of these Regulations, in particular those of Article 3.04 and Article 3.06 are considered in the auction.

(5) Each User is informed of the outcome of his Bid(s) by 10h00 on the Auctioning Day. The results of the Auctions are announced on the auction websites of the auction operators immediately after the Users have been informed individually.

(6) The TSOs may announce different time schedules as those outlined above e.g. by submitting or publishing alternative specifications.

### **Article 3.04      Format of Bids and Bid Limitations**

(1) Bids are submitted by Users using a Bid file of coinciding formats for auctions in both directions. A detailed specification of the Bid file format is given in ANNEX[...].

(2) In yearly, monthly and daily auctions each User may submit a Bid file with a maximum of 10 Bids.

(3) In yearly and monthly auctions, for each Bid the underlying interconnection capacity must not exceed seven per cent of the overall interconnection capacity available for the respective yearly or monthly auction.

(3) In daily auctions, for each Bid the underlying interconnection capacity per hour must not exceed one hundred percent of the overall daily interconnection capacity available and published by the auction operator.

### **Article 3.05      Submission of Bids for the yearly and monthly Auction**

(1) The Bid submission procedure for the yearly and monthly auction of PTRs from France to Germany is specified in the French Import/Export Rules (ANNEX[...]).

(2) The Bid submission procedure for the yearly and monthly auction of PTRs from Germany to France is specified in ANNEX[...].

### **Article 3.06      Submission of Bids for the daily Auction**

(1) The Bid submission procedure for the daily auction of PTRs from France to Germany is specified in the French Import/Export Rules (ANNEX[...]).

(2) The Bid submission procedure for the daily auction of PTRs from Germany to France is specified in (ANNEX[...]).

## **Section IV. Determination of Auction Results**

### **Article 4.01 Awarding of PTRs**

The interconnection capacity available for the yearly, monthly and daily auction is auctioned in each direction jointly by the TSOs under uniform terms and conditions (one Clearing Price for each transfer direction) in form of PTRs. Should any fees arise over and above this auction process for the use of the PTRs purchased by the User as a result of the auction, this shall have no influence on the Clearing Price to be paid by the User in the event of an award.

The auction operators classify all Bids received for the joint auction as follows:

#### **Case 1:**

The sum of all Bids submitted for a given Bid year, month or hour of a day falls short of the total interconnection capacity available:

No Clearing Price is charged in this case.

#### **Case 2:**

The sum of all Bids submitted for a given Bid year, month or hour of a day equals exactly or exceeds the interconnection capacity available:

A Clearing Price is charged in this case. For this purpose, the Bids are arranged by the prices offered, starting with the highest price and ending with the lowest. The requested interconnection capacities of the Bids are added up. Up to the Bid (marginal Bid) which represents the level above which the sum of the interconnection capacity requested by the Users reaches or exceeds the interconnection capacity available, each User receives the interconnection capacity requested at the price of this marginal Bid in form of a PTR. The remaining interconnection capacity is allocated to the marginal Bid. If the interconnection capacity is reached with several Bids of the same price, the remaining interconnection capacity is distributed pro-rata in proportion to the requested interconnection capacity of the Bids.

The Clearing Prices determined according to the above principle are used as a basis for calculating the charges for PTRs allocated (interconnection capacity price) and apply to all Users which PTRs have been allocated to. The PTR holders are not obliged to use the PTR purchased in the yearly, monthly or daily auction; the respective interconnection capacity price, however, must be paid at any rate once PTR has been allocated.

PTRs are considered to have been awarded to a successful User at the moment that User has been informed.

## Section V. Capacity Usage Rules

### Article 5.01 Capacity Usage Authorisations

(1) For PTRs in export direction from France to Germany an explicit Capacity Usage Authorisation will be provided by RTE. The following principles apply:

- a. RTE will communicate to the Users their Capacity Usage Authorisation as stipulated in Article 5.02 and Article 5.03.
- b. The Capacity Usage Authorisation refers only to exchange programmes between RTE and RWE TSO, and between RTE and EnBW TNG.
- c. The User must respect these Authorisations when nominating his exchange programme.

(2) The counterparty of a User for an exchange programme must be the User himself.

### Article 5.02 Usage of annual and monthly PTRs

For PTRs in export direction from France to Germany sections (1) to (3) apply:

(1) The PTR holder must notify the TSOs on a weekly basis the repartitioning of the allocated yearly and monthly capacity to/from RWE TSO and to/from EnBW TNG.

(2) RTE will communicate to the PTR holders their long-term Capacity Usage Authorisation as the result of the yearly and monthly auctions and the TSO repartitioning notification, at 16h00 two working days before the Day of Execution.

(3) The PTR use must be nominated according to the modalities defined in the French Import/Export Rules (ANNEX[...]) in case of PTRs from France to Germany (nomination).

For PTRs in export direction from Germany to France section (4) applies:

(4) PTR holders announce until 8h30 on the day before Day of Execution the use of their PTR purchased in the monthly and yearly auction for the respective following day (reservation).

For PTRs in both export directions sections (5) and (6) apply:

(5) If no nomination/reservation is made at all or if capacities are announced which fall short of the sum of the PTR volume purchased in the yearly and monthly auction or of the long-term Capacity Usage Authorisation according to section (2), the claim to all PTRs purchased in the auction by the PTR holder and/or to parts thereof shall lapse ("use it or lose it" principle). Unused PTRs will be sold on the market by way of the daily auctions. The auction proceeds generated in this way will not be reimbursed to the respective former PTR holder.

(6) If the nomination/reservation exceeds the PTR volume purchased in the yearly and monthly auction or the long-term Capacity Usage Authorisation, the auction operator will inform the respective PTR holder requesting a revised nomination/reservation. If no revised and valid nomination/reservation is submitted in due time the nomination/reservation of the PTR holder will be set to zero.

### **Article 5.03 Usage of daily PTRs**

For PTRs in export direction from France to Germany sections (1) to (3) apply:

(1) RTE will communicate to the PTR holders their daily Capacity Usage Authorisation as the result of daily auctions shortly after the daily auction gate closure.

(2) The PTR holders nominate to RTE until 14h00 on the day before Day of Execution the use of their PTRs purchased at the daily auction for the respective Day of Execution day. (nomination)

(3) The PTR use must be nominated according to the modalities defined in the French Import/Export Rules (ANNEX[...]).

For PTRs in export direction from Germany to France section (4) applies:

(4) Exchange programmes must be notified by 14h30 for exports from Germany to France. These exchange programmes must not fall short of the value announced with the reservation at 8h30 according to Article 5.02 (4) minus the PTR volumes for exports from France to Germany (opposite direction) awarded in the daily auction. Moreover, when notifying the exchange programme, the value announced at 8h30 with the reservation according to Article 5.02 (4) plus any PTR volumes for exports from Germany to France (same direction) purchased in the daily auction must not be exceeded.

In both cases (exceedance and shortfall of the described limits) the respective PTR holder will be informed by an ANC message that she has announced a value not conforming to the reservation and the respective exchange programme will be adapted by the responsible Transmission System Operator.

### **Article 5.04 Matching of Exchange Programmes**

PTR holders are obliged to firmly notify the usage of their PTRs according to Article 5.02 and Article 5.03, Such notifications consist either of nominations indicating electricity transfers in both directions or of netted exchange programmes indicating the net transfers across the interconnection. If such notifications which are submitted to different auction operators are not compliant with each other, the auction operators are entitled to consider the submitted information only partially and at their discretion.

### **Article 5.05 Use it or lose it**

If PTR holders fail to notify the usage of their annual and/or monthly PTRs according to Article 5.02 their right to use this capacity is forfeited without compensation ("use it or lose it" principle).



## **Section VI. Settlement / Payment of the Interconnection Capacity Price**

The amount charged for the PTRs purchased in the auction (interconnection capacity price) is determined by multiplying the Clearing Price [€/MW] by the purchased interconnection capacity in form of a PTR [MW]. Interconnection capacity prices for PTRs from France to Germany will be invoiced by RTE according to the French Import/Export Rules (ANNEX[...]). Interconnection capacity prices for PTRs from Germany to France will be invoiced by RWE TSO according to Article 6.01 and Article 6.02.

### **Article 6.01 Billing**

RWE TSO usually invoices the auction charge immediately once the auction is complete. Sales tax is added as required by law to the invoice amount and charged. The invoices must be paid within two weeks of the invoice date at no extra charge and without discount. The receipt of the total amount on the account of the auction operator is relevant for the payment to be on time.

### **Article 6.02 Late Payment / Default**

Any doubts about the correctness of invoiced amounts can only entitle to postpone the payment if an obvious error is presented. In such a case, RWE TSO must be informed immediately. Objections to the correctness of an invoice are only acceptable if made within 30 calendar days following the invoice date, or if the invoice is identified as incorrect, within two years following the invoice date, provided that it was impossible to identify this incorrectness without intention or negligence on the part of the PTR holder within the 30-day period. Such objections entitle to postpone or deny the payment, while these rights also have to be asserted within the above periods, provided that the circumstances reveal that obvious miscalculations have occurred. In the event of belated payment, RWE TSO is entitled, without prejudice to any other claim, to charge default interest in the amount of 5 percentage points above the base interest rate according to § 247 BGB (German Civil Code) starting from the date when the period expires. If the PTR holder defaults and RWE TSO renews his demand for payment or has the amount collected by an agent, RWE TSO is entitled to charge the costs incurred to the PTR holder, also as a lump sum. Furthermore, RWE TSO is entitled in such a case to withdraw the purchased interconnection capacity from the PTR holder and to offer it on the market.

### **Article 6.03 Exclusion of Set-off**

A User is in principle not entitled to offset any debts that arise in connection with an auction to any claim on a Transmission System Operator, whether or not arising out of an auction. Claims of the TSOs can only be set off against claims of the User which are uncontested or legally enforced.

## **Section VII. Miscellaneous**

### **Article 7.01 Information / Notices**

Any notice given under these Regulations is to be in writing and must be addressed to all TSOs at the address mentioned in ANNEX[...], except where these Regulations provide otherwise.

### **Article 7.02 Limitation of Liability**

(1) The TSOs, either jointly or severally, shall not be liable to a User for any damages resulting from a User's participating or not being able to participate in an auction or from the results of the auction or from an auction not being held and a User shall hold harmless and indemnify the TSOs, jointly and severally, in respect of claims regarding such damages from third parties,.

(2) The TSOs will provide the PTRs awarded by the auction within the scope of their possibilities. This provision is subject to the technical possibility of transmitting electricity which can be affected by Force Majeure, unexpected external influences (e.g. extreme load flow changes) or other serious operational conditions (e.g. power plant outages on an unexpected scale). The impairment will only be remedied by technically/economically feasible and appropriate actions complying with the relevant national and international requirements.

(3)The TSOs do not guarantee completion of the auction. The auction may be interrupted especially in the event of technical problems with the auction process.

(4) The TSOs shall only be liable for any damage or loss incurred by Users if it is the result of intent or gross negligence or culpable dereliction of an essential duty under these Regulations in a way putting the conduct of the auction at risk. If the TSOs are liable for the dereliction of an essential duty under these Regulations without gross negligence or intent, the liability shall be limited to that extent of loss which the TSOs typically had to expect to arise during the conduct of the auction on the basis of the circumstances they were aware of at this time. This limitation of liability shall apply in the same way to any damage or losses caused by the gross negligence of employees of the TSOs who are no managing directors, Executive Board members or executive staff of these companies.

(6) In no way shall the awarding of PTRs pursuant to these Regulations be considered or construed to mean or imply that the User is entitled to have electricity transports carried out, or that transport failures or restrictions are or imply a failure to supply interconnection capacity which has been awarded in an auction.

(7) The TSOs, either jointly or severally, do not assume responsibility for the arrival of Bids in time nor do they warrant – although they will try to prevent to the best of their abilities – that the information contained therein, despite being treated as confidential, will not come to the knowledge of third parties.

### **Article 7.03 Confidentiality**

(1) The TSOs shall treat all information disclosed to them pursuant to these Regulation as confidential and they will refrain from disclosing such information to any third party without the prior consent of the User concerned.

(2) Paragraph (1) shall not apply to disclosure of information to European Union institutions, governmental and regulatory authorities insofar as such disclosure is mandatory, nor to the disclosure of information

to a court-of-law or an arbitrator insofar as such disclosure is ordered by the court or the arbitrator or is necessary for supporting a claim or defending against a claim.

(3) Notification pursuant to § 33 para. 1 of the German Data Protection Act (Bundesdatenschutzgesetz): the data required to conduct the auctions will be stored by the auction operators.

#### **Article 7.04 Severability**

If any part of these Regulations is by a public authority or court found to be invalid, illegal or unenforceable, the remaining part shall continue to be valid and enforceable to the extent permitted by law.

#### **Article 7.05 Applicable Law and Disputes**

(1) Disputes concerning the rights and duties arising for the auction operator and the Users under these Regulations shall be settled by an ordinary court.

(2) These Regulations and auctions that take place thereunder are governed exclusively by German law for interconnection capacity from Germany to France and by French law with regard to interconnection capacity from Germany to France.

(3) Any disputes with regard to interconnection capacity for exports from Germany to France will be brought before the competent courts in Dortmund (Germany) and any disputes concerning interconnection capacity for exports from France to Germany will be brought before the competent courts in France.

(4) The application of the UN Convention on Contracts for the International Sale of Goods (CISG) shall be excluded.

#### **Article 7.06 Amendment of Regulations**

These Regulations are subject to the technical and legal conditions at the time of their creation. If these conditions change materially, in particular due to legal requirements, action by authorities or Regulations imposed by the regulatory authority and/or agreements between the associations of the electricity industry at national or international level, or if the auctioning process is enhanced, the rules will be amended. Such amended rules will become effective upon publication by the TSOs, after consulting with the Users and approval by the Regulatory bodies in both countries.