



DELIBERATION N° 2019-271

Deliberation of the Commission de régulation de l'énergie (French Energy Regulatory Commission) dated 12 December 2019 granting derogations from the minimum levels of available capacity for cross-zonal trade in the Core, Italy North and South-West Europe capacity calculation regions

Present: Jean-François CARENCO, Chairman, Christine CHAUVET, Catherine EDWIGE, Ivan FAUCHEUX and Jean-Laurent LASTELLE, commissioners.

1. CONTEXT, LEGAL FRAMEWORK AND REFERRAL TO CRE

1.1 Introduction and legal framework of minimum levels of capacity available for cross-zonal exchanges and the possibility of derogation

Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity (hereinafter referred to as the "Regulation on the internal market for electricity") came into force on 5 July 2019. It notably sets the rules intended to ensure the smooth operation of the internal market for electricity. Chapter III of the Regulation sets down the conditions for network access and congestion management.

In particular, Article 16(8) of the Regulation on the internal market for electricity provides that: "*transmission system operators shall not limit the volume of interconnection capacity to be made available to market participants as a means of solving congestion inside their own bidding zone or as a means of managing flows resulting from transactions internal to bidding zones [...], this paragraph shall be considered to be complied with where the following minimum levels of available capacity for cross-zonal trade are reached:*

- a) *for borders using a coordinated net transmission capacity approach, the minimum capacity shall be 70% of the transmission capacity respecting operational security limits after deduction of contingencies [...];*
- b) *for borders using a flow-based approach, the minimum capacity shall be a margin set in the capacity calculation process as available for flows induced by cross-zonal exchange. The margin shall be 70% of the capacity respecting operational security limits of internal and cross-zonal critical network elements, taking into account contingencies [...].*

The total amount of 30% can be used for the reliability margins, loop flows and internal flows on each critical network element."

Pursuant to Article 71 of the Regulation on the internal market for electricity, transmission system operators (hereinafter referred to as "TSOs") must make available to market participants the minimum levels of available capacity for cross-zonal trade (hereinafter referred to as the "minimum capacity levels") from 1 January 2020 onwards.

However, Article 16(9) of the Regulation on the internal market for electricity introduces the possibility for TSOs, within a capacity calculation region¹ defined according to the provisions of Commission Regulation (EU) 2015/1222 of 24 July 2015 establishing a guideline on capacity allocation and congestion management (referred to hereinafter as "CACM"), to obtain a derogation from minimum levels of capacity. Under the terms of this Article, TSOs may request derogations if they consider that the application of minimum levels of capacity would result in an inability

¹ Decision of the Agency for the Cooperation of Energy Regulators (ACER) n°06/2016 of 17 November 2016 determining capacity calculation regions. This decision was amended in 18 September 2017 (to assign the NEMO Link between Belgium - Great Britain to the Channel region). A second amendment was introduced on 1 April 2019 (to assign the Cobra link between the Netherlands and Denmark to the Hansa region).

to maintain operational security on foreseeable grounds. It stipulates that “*the extent of such derogations shall be strictly limited to what is necessary to maintain operational security and they shall avoid discrimination between internal and cross-zonal exchanges*”.

Pursuant to the aforementioned Article, a derogation requested by a TSO in a given Member State must be granted by the relevant regulatory authority of that State. A regulatory authority which receives a request for derogation from its TSO is required to consult “*the regulatory authorities of other Member States forming part of the affected capacity calculation regions*”. Where one of the regulatory authorities concerned opposes a specific request for derogation, the final decision on whether it should be granted will be taken by the Agency for the Cooperation of Energy Regulators (hereinafter referred to as “ACER”). Regulatory authorities may grant a derogation for “*no more than one-year at a time, or, provided that the extent of the derogation decreases significantly after the first year, up to a maximum of two years*”.

1.2 Competence and referral to CRE

Pursuant to the provisions of Article 16(9) of the Regulation on the internal market for electricity, the Commission de régulation de l'énergie (French Energy Regulatory Commission, hereinafter referred to as “CRE”) is competent to grant derogations from the minimum levels of available capacity for cross-zonal trade made by the French TSO, Réseau de Transport d'Electricité (“RTE”), in the various capacity calculation regions to which it belongs.

In the case in point, RTE submitted the following documents to CRE:

- for the Core capacity calculation (which notably includes the perimeter of the historic Central Western Europe region, also known as “CWE”)², a request for derogation received by post on 4 November 2019;
- for the Italy North capacity calculation region³, a request for derogation received by post on 13 November 2019; and
- for the South West Europe capacity calculation region (hereinafter referred to as “SWE”)⁴, a request for derogation received by post on 10 December 2019.

To coordinate requests for derogation within capacity calculation regions and to enable regulatory authorities to consult one another on requests submitted by TSOs, the regulatory authorities of interconnected EU Member States have agreed to share requests for derogation submitted to them through the ACER's All Regulatory Authorities Working Group (hereinafter referred to as “ARAWG”). The regulatory authorities were thus able to declare an interest, give their remarks and, where appropriate, state their opposition to one or more requests for derogation.

The requests for derogation submitted by RTE were referred to the ARAWG for consultation between 4 and 25 November 2019 for the Core region, between 19 November and 4 December 2019 for the Italy North region, and between 27 November and 6 December 2019 for the SWE region. The regulatory authorities made no remarks and stated no opposition to these requests.

2. ANALYSIS OF REQUESTS FOR DEROGATION SUBMITTED BY RTE

2.1 Status on French borders

Pursuant to Articles 20 et seq. of the CACM Regulation, RTE develops and implements coordinated capacity calculation with the TSOs of the capacity calculation regions to which it belongs, based on methods approved by the regulatory authorities of the capacity calculation region concerned.

In the CWE region, the TSOs implemented flow-based coordinated capacity calculation in May 2015 on a voluntary basis. Under the minimum Remaining Available Margin principle introduced by TSOs in April 2018 and approved by CRE on 6 September 2018, cross-border exchanges in the CWE region are guaranteed a minimum of 20% of the thermal capacity on network elements taken into account in the capacity calculation (“20% minRAM”)⁵.

² The Core capacity calculation region includes Germany, Austria, Belgium, Croatia, France, Hungary, Luxembourg, Netherlands, Poland, Romania, Slovakia, Slovenia and Czechia. It covers the perimeter of the historic CWE region, which includes Germany, Austria, Belgium, France, Luxembourg and Netherlands.

³ The Italy North capacity calculation region includes Austria, France, Italy and Slovenia. Switzerland is included as a technical counterparty.

⁴ The SWE capacity calculation region includes Spain, France, and Portugal.

⁵ <https://www.cre.fr/Documents/Deliberations/Approbation/Methodologie-de-calcul-de-capacite-a-l-echeance-journaliere-dans-la-region-Centre-Ouest-Europe>

The flow-based capacity calculation, established as the target model by the CACM Regulation, was approved by ACER on 21 February 2019 for the Core region⁶ and slated for implementation in December 2020.

In the other capacity calculation regions to which RTE belongs, namely Italy North, SWE and Channel⁷, the TSOs proposed a coordinated capacity calculation method based on net transfer capacity (hereinafter referred to as “NTC”).

The coordinated capacity calculation methods used in these three regions were approved by CRE on 14 November 2019⁸, 15 November 2018⁹ and 13 December 2018¹⁰ respectively, for implementation in November 2019 in Italy North¹¹, Q1 2020 for SWE, and initially expected for Q3 2019 for the Channel region¹². Currently, these methods do not include the principle of a minimum level of capacity to be made available for cross-zonal exchanges.

As a result, these capacity calculations - in their current state - are either unsuitable for assessing whether the minimum capacity levels set by the Regulation on the internal market for electricity have been met, or have not yet been implemented by the TSOs. In both cases, it is difficult to estimate the historic levels of capacity made available on the markets, and therefore to determine whether they are compliant with the Regulation on the internal market for electricity.

ACER conducted a study intended to determine historic capacity levels in Europe in the autumn of 2019. The study is of theoretical interest, but was necessarily based on highly simplified hypotheses, and consequently any practical interpretation of its findings is problematic. Levels of capacity supplied to the markets can only be evaluated accurately by using a database established using tools developed specifically for this purpose.

2.2 Content of requests for derogation

2.2.1 Grounds for requests for derogation

In support of its request for derogation, RTE puts forward several grounds which could potentially endanger the operational security of the network, in the event that the minimum capacity levels provided for by Article 16(8) of the Regulation on the internal market for electricity are applied.

Firstly, making available to the markets an interconnection capacity greater than or equal to the minimum capacity levels provided by Article 16(8) of the Regulation on the internal market for electricity may, in certain situations, require greater use of corrective actions, including costly measures, to maintain operational security of the network. However, RTE has limited operational experience in the deployment of significant volumes of corrective actions, and very limited experience in terms of high-cost corrective actions, given the low levels of congestion observed on the French network.

Secondly, owing to the limited time between the entry into force of the Regulation on the internal market for electricity and 1 January 2020, the tools needed to assess and validate the availability of corrective actions to guarantee operational security, as stipulated by Article 16(3) of the Regulation, have not been developed and finalised for the capacity calculation regions (Core, Italy North and SWE), nor by RTE for France.

Moreover, as regards the requests for derogation for the Core and Italy North regions, there is a lack of coordination of capacity calculation with the borders of neighbouring capacity calculation regions or non-EU Member States. As a result, it is difficult to forecast flows from and to these zones, which are referred to as “external flows”. The reliability margin RTE must maintain in order to manage the contingencies represented by these external flows may therefore potentially exceed the level permitted by Article 16(8) of the Regulation on the internal market for electricity, i.e. 30% of the network elements taken into account in the capacity calculation process.

2.2.2 Extent and duration of the requests for derogation

The request for derogation for the Core region covers a period of six months, from 1 January 2020 to 30 June 2020. RTE undertakes to continue to guarantee the level of 20% minRAM implemented in the CWE region since April 2018.

⁶ https://www.acer.europa.eu/Official_documents/Acts_of_the_Agency/Pages/Individual-decision.aspx

⁷ The Channel capacity calculation region includes Belgium, France, Netherlands and the United Kingdom.

⁸ <https://www.cre.fr/Documents/Deliberations/Approbation/calcul-de-capacite-aux-echeances-journaliere-et-infra-journaliere-dans-la-region-italie-nord>

⁹ <https://www.cre.fr/Documents/Deliberations/Approbation/Approbation-de-la-methodologie-de-calcul-de-capacite-aux-echeances-journaliere-et-infra-journaliere-dans-la-region-Europe-du-sud-ouest>

¹⁰ <https://www.cre.fr/Documents/Deliberations/Approbation/Approbation-de-la-methodologie-de-calcul-de-capacite-aux-echeances-journaliere-et-infra-journaliere-dans-la-region-Manche>

¹¹ In the Italy North region, the TSOs have applied a daily calculation since 2015 on a voluntary basis. The November 2019 implementation referred to here concerns the new version of the capacity calculation method.

¹² Owing to uncertainties to do with Brexit and pan-European delays in the developing of common network models notably used as a basis for coordinated capacity calculation, the development of coordinated capacity calculation for the Channel region has been suspended.

The requests for derogation for the Italy North and SWE regions cover a period of twelve months, from 1 January 2020 to 31 December 2020. In both cases, RTE undertakes to guarantee the minimum capacity level defined in Article 16(8) of the Regulation on the internal market for electricity, i.e. 70% for 70% of the relevant hours covered by the derogation period.

RTE will use this time to create a specific tool for monitoring margins on the network elements included in capacity calculations¹³, and to continue developing and testing the tools needed to assess and validate the availability of corrective actions. RTE will also use this time to train its operators to use these new tools, and to acquire additional experience in potential new uses of corrective actions to guarantee the continued operational security of its network.

In practice, RTE will implement a parallel run to assess the impact on operational security of higher minimum capacity levels than those applied in the past.

RTE indicates that it could submit further requests for derogation to CRE, if the above issues have not been resolved by the time the present derogations expire.

3. CRE'S ANALYSIS AND CONCLUSIONS

Article 16(9) of the Regulation on the internal market for electricity provides that TSOs may request derogations from the minimum levels of capacity available for cross-zonal exchanges, where there are foreseeable grounds preventing these levels from being achieved while maintaining operational security. The extent of such derogations must be strictly limited to what is necessary to maintain operational security.

CRE observes that the implementation periods provided for by the Regulation on the internal market for electricity have not allowed RTE sufficient time to develop experience and tools enabling it systematically to guarantee minimum capacity levels. Furthermore, RTE is not currently able to monitor accurately the levels of capacity actually given to the markets, or to verify that corrective actions are available in sufficient quantities as to allow the minimum capacity levels to be achieved. Consequently, were RTE to make the minimum capacity levels stipulated by Article 16(8) of the Regulation on the internal market for electricity available to the markets on 1 January 2020, this would be likely to endanger the operational security of the network.

Moreover, CRE welcomes RTE's undertaking to continue to apply the capacity calculation implemented thus far, and in all cases to comply with the minimum levels specified in its three requests for derogation, which are restated in point 2.2.2 of this decision. CRE takes the view that this undertaking will serve to limit the derogations to what is strictly necessary by, at a minimum, ensuring the continuity of the capacity levels made available by RTE. CRE will ensure that this principle is properly applied.

In view of the above, CRE considers the requests for derogation submitted by RTE to be duly justified on foreseeable grounds, by an operational security risk, and to be proportionate.

CRE will monitor closely the progress of developments by RTE and the levels of capacity made available by RTE for cross-zonal exchanges on the French borders. At the end of the derogation periods granted by this deliberation, CRE expects RTE to submit a report describing these elements. Were RTE to submit further requests for derogation to CRE, the report should also include a description of the measures envisaged to further improve the network capacity levels that can be made available for cross-zonal trade.

¹³ In the specific cases of the Italy North and SWE regions, RTE will need to begin by developing a tool to calculate the margin made available on these network elements. This difference justifies the requests for longer derogations for the Italy North and SWE regions.

DECISION

Pursuant to the provisions of Article 16(9) of the Regulation on the internal market for electricity, national regulatory authorities are competent to grant derogations to their transmission system operators from the minimum levels of capacity available for cross-zonal exchanges in capacity calculation regions introduced by Article 16(8) of said Regulation.

RTE submitted to CRE requests for derogation for the capacity calculation regions Core (which notably includes the historic Central Western Europe region), Italy North and South West Europe, on 4 November 2019, 13 November 2019 and 10 December 2019, respectively. In the Core region, the request for derogation covers a period of six months, from 1 January 2020 to 30 June 2020, during which RTE undertakes to continue to guarantee the level of 20% minRAM implemented in the CWE region since April 2018. In the Italy North and SWE regions, the requests for derogation cover a period of twelve months, from 1 January 2020 to 31 December 2020, during which RTE undertakes to guarantee the minimum capacity level defined in Article 16(8) of the Regulation on the internal market for electricity, i.e. 70% for 70% of the relevant hours.

CRE consulted the regulatory authorities concerned about these requests. These authorities made no particular remarks and stated no opposition.

It is CRE's view that these derogations are necessary for RTE to be able to develop the tools required in order to apply the minimum capacity levels imposed by Article 16(8) of the Regulation on the internal market for electricity. Furthermore, there are insufficient grounds to create an action plan, given the absence of structural congestion identified on the French network. CRE therefore considers these derogations to represent an appropriate solution. Finally, CRE considers the requests for derogation submitted by RTE to be duly justified on foreseeable grounds, by an operational security risk, and to be proportionate.

Consequently, CRE grants the derogations submitted by RTE. These derogations, appended to this deliberation, shall enter into force on 1 January 2020.

CRE will monitor closely the progress of developments by RTE and the levels of capacity made available by RTE for cross-zonal exchanges on the French borders. At the end of the derogation periods granted by this deliberation, CRE expects RTE to submit a report describing these elements. Were RTE to submit further requests for derogation to CRE, the report should also include a description of the measures envisaged to further improve the network capacity levels that can be made available for cross-zonal trade.

This deliberation will be published on CRE's website and sent to the Minister for Ecological and Inclusive Transition.

It will also be notified to RTE and the Agency for the Cooperation of Energy Regulators.

Deliberated in Paris, 12 December 2019.

**For the Commission de régulation de l'énergie (French Energy
Regulatory Commission)**

The President

Jean-François CARENCO

ANNEX

The derogations for the Core, South West Europe and Italy North capacity calculation regions are appended to this deliberation.