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COMMISSION OPINION

of 16.3.2020

pursuant to Article 20(5) of Regulation (EC) No 2019/943 on the implementation plan of Poland

(ONLY THE POLISH VERSION IS AUTHENTIC)

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I. PROCEDURE

On 5 November 2019 the Commission received an implementation plan from the Polish Ministry of Energy prepared pursuant to Article 20(3) of Regulation (EC) No 2019/943 (hereafter "Electricity Regulation"). Article 20(3) of the Electricity Regulation requires Member States with adequacy concerns to set out measures to eliminate regulatory distortions or market failures on their markets in an implementation plan.

Pursuant to Article 20(5) of the Electricity Regulation, the Commission is required to issue an opinion on whether the proposed measures and the timeline for their adoption are sufficient to eliminate the regulatory distortions or market failures.

II. DESCRIPTION OF THE IMPLEMENTATION PLAN

In its implementation plan, Poland proposes to implement a number of market reforms and measures. We note that the proposed measures are identical with the commitments which Poland has taken within the Commission's state aid procedure approving a capacity mechanism in Poland (State aid No. SA.46100 (2017/N))[1]. The proposed measures are the following:

1. General wholesale price conditions

As of 1 January 2021, all market participants will be able to bid or change their energy bids in the wholesale market at least until the intraday cross-zonal gate closure time.

2. Balancing markets

(a) As of 1 January 2021, energy prices on the balancing market will be based on a marginal pricing scheme as set out in Article 30(1)(a) of the Electricity Balancing Guideline. This will be without prejudice to the possibility of applying locational differentiation within the Polish bidding zone by applying a full transmission network model in price discovery. If technical price limits are applied on the balancing market, they will take into account the maximum and minimum prices set in accordance with Article 30(2) of Commission Regulation (EU) 2017/2195 (hereinafter "Balancing Guideline").

(b) As of 1 January 2021, all Balancing Service Providers will be allowed to update their integrated scheduling bids to the extent possible until the intraday

[1] https://ec.europa.eu/competition/state_aid/cases/272253/272253_1977790_162_2.pdf

cross-zonal gate closure time as provided in Article 24(5) and 24(6) of the Balancing Guideline.

(c) By 1 January 2021, Poland will introduce an administrative scarcity pricing mechanism as referred to in Article 44(3) of the Balancing Guideline. The mechanism will be designed to provide a price adder to the energy prices on the balancing market varying in function of the amount of the reserve margin in the Polish system. The price adder calculation will be based on the Value of Lost Load (VoLL) and the Loss of Load Probability (LOLP), ensuring that when reserves are exhausted (i.e. there are no more available reserves that can be activated by the TSO) the imbalance settlement prices are not lower than the maximum price set in accordance with Article 54(1) of Regulation 2015/1222. This will be without prejudice to Poland applying measures to prevent the exercise of market power and strategic behaviour.

3. Demand side response

By 1 January 2021, Poland will make sure that Demand Side Response (DSR) is eligible to participate in the wholesale electricity markets (including day-ahead and intra-day) as well as the balancing market and will be treated in a similar way as other market participants and balancing service providers. DSR can be represented either individually or via aggregators.

4. Other regulatory issues

(a) The following mechanisms will be terminated before the first delivery year of the capacity market, i.e. 2021:

- Cold Contigency Reserve (Interwencyjna Rezerwa Mocy – IRZ);
- Interventional Operation (Praca interwencyjna – PI);
- Guaranteed Program of Emerency DSR (Gwarantowany Interwencyjny Program DSR – IP DSR);
- Operational Capacity Reserve (Operacyjna rezerwa mocy – ORM).

III. COMMENTS

1. Balancing markets

In its implementation plan Poland proposed a number of adjustments in its balancing system. These measures are essential for a well-functioning electricity market. The Commission therefore invites Poland to implement those measures as proposed.

The Commission understands that the Polish transmission system operator (TSO) is currently a member of the projects developing the future EU platforms for automated frequency restauration reserves (aFRR) “Picasso” and for manual frequency restauration reserves (mFRR) “Mari”. The Commission therefore requests Poland to participate in the EU platforms for aFRR and mFRR on the date when the platforms become operational.

The Commission understands that the Polish TSO is currently a member of the project which has developed the EU platform for replacement reserves (RR) “Terre”. Taking account of the Polish regulatory authority’s decision, granting the Polish TSO an extension to join the platform, the Commission requests Poland to participate in the EU platform for RR as soon as possible but no later than 15 January 2022.

In the EU there are regional initiatives of TSOs to jointly procure resources for frequency containment reserves (FCR). The Commission understands that the Polish TSO does not participate in such initiatives. As the joint procurement of FCR makes better use of available resources across Europe and reduces system costs, the Commission invites Poland to join existing regional initiatives for procuring resources for FCR by 1 January 2021.

The Commission understands that the Polish TSO applies price limits for balancing energy and imbalance settlement of +/- 50 000 PLN/MWh. While these price limits appear to be relatively high, corresponding to the technical price limits applied in the EU's intraday market, it has to be made sure that those price limits do not become a barrier for establishing a balance on the balancing market. Therefore, the Commission requests Poland to make sure that the Polish TSO applies no price limits in the balancing market other than the technical price limits as determined according to Article 30(2) of the Balancing Guideline[2], from the date when those technical price limits become applicable.

In the implementation plan, Poland proposes to put in place an administrative scarcity pricing mechanism. It is important that this mechanism is well designed so that it does not only provide incentives for short term flexibility but also sends appropriate signals for investments to maintain system adequacy. In this context, we invite Poland to make sure that the price adder which the referred function creates in times of scarcity is not only charged to balance responsible parties but is also paid to balance service providers which provide balancing energy to the TSO.

2. Demand-side response

The Commission invites Poland to continue developing demand response. The Commission encourages Poland to swiftly implement the related provisions in Directive (EU) 2019/944 (hereinafter "Electricity Directive") and, in particular, to develop a methodology for the payment of financial compensation in case of activation of demand response as provided for in Article 17(4) of the Directive.

Regarding smart metering, and in line with the related provisions (Articles 19, 20, Annex II) in the Electricity Directive, the Commission invites Poland to promptly proceed in its territory with a large-scale deployment of fit-for-purpose smart metering that would support (near) real time measurements and price-based demand response. Moreover, the national authorities are encouraged to swiftly put in place a simple and transparent framework for access to data by eligible parties, as well as consumers and those with their consent, to effectively operationalise the respective provisions (Articles 23, 24) of the Electricity Directive.

3. Retail markets: regulated prices

In its implementation plan, Poland indicates that there are currently no decisions regarding the deregulation of retail prices. Regulated retail prices apply to households that are supplied by four suppliers of last resort and that have not switched to another supplier. The Commission understands that Poland is also contemplating measures to protect energy poor household

[2] Commission Regulation (EU) 2017/2195 of 23 November 2017 establishing a guideline on electricity balancing, OJ L 312/6, 28.11.2017

customers, which may include additional public interventions in the price setting for the supply of electricity to such customers.

The Commission would like to stress the general principle that suppliers should be free to determine the price at which they supply electricity to customers and that any derogations to this principle should comply with the requirements set out in the Electricity Directive. In particular, any generally applicable price regulation should be transitional in nature and be accompanied by a set of measures to achieve effective competition. This includes the requirement that the regulated price should be above cost, at a level where effective price competition can occur. Poland is invited to ascertain compliance with these conditions. All retail price regulation should also include a statutory review mechanism.

In as regards any public interventions in the price setting for the supply of electricity to energy poor households, particular attention is drawn to the requirement that such interventions should be proportionate as regards their beneficiaries. Under Regulation (EU) 2018/1999 on the Governance of the Energy Union and Climate Action Member States have the obligation to assess the number of households in energy poverty. Poland should also comply with the obligation set out in the recast Electricity Directive whereby public interventions in the price setting for the supply of electricity to energy poor households should be accompanied by an indicative objective to reduce energy poverty, and progress towards meeting the objective should be monitored in the context of Poland's National Energy and Climate Plan.

4. Interconnection

4.1 Interconnection infrastructure

In its implementation plan Poland did not provide commitments to improve its internal grid and interconnection capacity. We understand, however, that the Polish TSO has been developing its transmission network and improving the management of its transmission system. As a result of these efforts and the use of more sophisticated capacity calculation methods the Polish TSO has recently increased its offer of interconnection capacity to market participants. This is encouraging as it will facilitate Poland's integration in the internal electricity market.

To further deepen market integration, the Commission invites Poland to continue developing its transmission system. Within the Commission's Pilot procedure – EUP(2019)9405 Poland has committed to develop the following investment projects:

(a) on the AC synchronous profile

- Krajnik – Baczyna (400 kV)
- Baczyna – Plewiska (400 kV)
- Mikulowa – Czarna – Pasikurowice (400 kV)
- Mikulowa – Swiebodzice (400 kV)
- Ostrow – Kromolice (400 kV)

(b) on DC connections

– (Swedish connection) Slupsk – Zydowo-Kierzkowo – Gdansk-Przyjazn – Pelplin – Grudziadz – Jasiniec – Patnow (400 kV)

– (Lithuanian connection) Ostroleka – Stanislawow (400 kV)

Poland has also committed that by 31 December 2025, it should accomplish this investment program with a view to achieve up to 4 GW import capacities during extreme scarcity events (provided that during such events the flow-based mechanism will ensure that Polish critical network elements are used solely for import into Poland and not for transits).

As an interim step, assuming the implementation of flow-based market coupling in the CORE region, Poland has committed to increase its import capabilities during scarcity events to reach up to 2.5 GW by 1 November 2021.

The Commission invites Poland to continue implementing these commitments.

4.2 Allocation constraints

The Commission understands that Poland currently applies electricity export and import restrictions during periods in which the TSO assesses that it cannot secure enough capacities to balance its system. Technically this means that during those periods the TSO is offering less cross-border transmission capacity for trade, than it otherwise would be. Limiting trade on interconnectors is a recurring pattern, in particularly for imports during periods of low demand (night hours). This practice results in distortions in the price formation in Poland and consequently in the internal market as electricity generated in Poland does not compete at equal terms with electricity generate elsewhere in the Union.

Poland has argued the need for the restrictions with how the TSO secures balancing capacities. Currently the Polish TSO, unlike the vast majority of EU TSOs, secures balancing capacities within an overall power system optimization process, called integrated scheduling process (ISP). This process starts after the day-ahead capacity calculation and coupling process (SDAC) and continues until real-time.

Poland has argued that if balancing service providers (generating units) would be allowed to sell too much energy in the day-ahead market because of high exports they may not be able to provide sufficient upward reserve capacity to the TSO within ISP. This would in turn result in the TSO violating the condition for secure system operation. This argument would apply equally for imports. If generating units would be allowed to sell too little energy in the day-ahead market because of high imports they would switch off generation all together, leaving the TSO without sufficient downward balancing capacity. Therefore, with a view to secure sufficient reserve capacity in the system the Polish TSO sets a limit on how much electricity can be exported or imported in SDAC.

In its decision on the Day-ahead capacity calculation methodology of the Core capacity calculation region, the Agency for the Cooperation of Energy Regulators (ACER) has found that there are alternative ways to address the above operational security problem without the need for limiting the overall export/import capacity.[3] One of the alternatives identified by ACER is procuring reserves explicitly (outside ISP) before SDAC. We understand that the Polish TSO is precisely planning to do this. It is currently consulting market participants about a new balancing capacity procurement process and intends to procure, in a daily procedure, balancing capacities explicitly before SDAC from the beginning of 2021. In our understanding, this would allow the Polish TSO to relax its current approach to applying external constraints in the regional cross-border transmission capacity calculation process and offer the maximum amount of interconnection capacity to market participant as required by EU rules.[4]

Therefore, the Commission requests Poland to make sure that its TSO removes export and import restrictions as referred above as soon as possible and in any event no later than the beginning of 2021 when it introduces the new balancing capacity procurement process.

5. Capacity mechanism

The Commission invites Poland to make sure that the design of its capacity mechanism complies with the requirements of the Electricity Regulation and adapt its mechanism, where necessary, as required by Article 22(5) of the Regulation.

IV. CONCLUSION

Pursuant to Article 20.5 of the Electricity Regulation, Poland shall amend its implementation plan to take utmost account of the above comments of the Commission. Poland is invited to publish its amended plan within two months and inform the Commission.

Pursuant to Article 20.6 of the Electricity Regulation, Poland shall monitor the application of their implementation plan and shall publish the results of the monitoring in an annual report and submit that report to the Commission. In this report, Poland is invited to explain whether and to what extent the market reforms have been implemented according to the planned timeline, and if not explain the reasons why.

The Commission's position on this particular notification is without prejudice to any position it may take on the compatibility of any national implementing measure with EU law.

[3] Page 20 of Annex I of Decision No 02/2019 of ACER of 21 February 2019 on the Core CCR TSOs' proposal for the regional design of the day-ahead and intraday common capacity calculation methodologies (https://www.acer.europa.eu/Official_documents/Acts_of_the_Agency/Individual%20decisions/ACER%20Decision%2002-2019%20on%20CORE%20CCM.pdf)

[4] In particular Article 16(4) of the Electricity Regulation

The Commission will publish this document on its website. The Commission does not consider the information contained therein to be confidential. Poland is invited to inform the Commission within five working days following receipt whether and why they consider that, in accordance with EU and national rules on business confidentiality, this document contains confidential information which they wish to have deleted prior to such publication.

Done at Brussels, 16.3.2020

For the Commission
Kadri SIMSON
Member of the Commission