Council of
European
Energy
Regulators

CEER Position Paper

Principle 5 for Congestion Management

Principle

Since some congestion management methods generate revenues in situations where there is congestion, Member States and regulatory authorities should ensure that appropriate incentives, notably financial incentives, are given to both market parties and TSOs to act in a rational and economic way with regard to network use and investment decisions. Therefore, all systems for congestion management should comply with the next principle on the application of congestion revenues:

PRINCIPLE #5.	Congestion management procedures may only generate revenue in case of congestion. The procedure for its distribution should neither distort the allocation process in favour of any party requesting capacity or energy nor provide a disincentive to TSOs to decrease the amount of congestion.

Proposal of Rules

RULE 5.1. For TSOs, any revenues resulting from the allocation of interconnection capacity should be used for one or more of the following purposes:

- Guaranteeing the actual availability of the allocated capacity.
- Network investments required for maintaining or increasing the interconnection capacities.
- As an income to be taken into account in the process of calculating the network tariffs.

National regulators could establish the priority in the use of these revenues.

RULE 5.2. Establishing minimum prices in capacity allocation methods shall not be allowed.

RULE 5.3. The use of congestion rents for investments in maintaining or increasing the interconnection capacity should preferably be assigned to specific predefined projects with a clear compromise to accomplish them in a reasonable time. In the case of TSOs belonging to a holding that owns other companies performing liberalized activities at the same time, complying with this recommendation must be verified and approved by the responsible regulator. In case of merchant lines, the regulator will decide on whether or not an affiliate carrying out Merchant Line activities is sufficiently separated from any other market activities.

RULE 5.4. TSOs should clearly establish beforehand the use they will make of any congestion rent they may obtain, and report on the actual use of these rents. Regulatory authorities should verify that this applications comply with this principle and rules and that the total amount of congestion rents resulting from the allocation of interconnection capacity are devoted to any of the three purposes considered.

RULE 5.5. When taken into account in the process of calculating the network tariffs, congestion rents resulting from the allocation of interconnection capacity should lead to a reduction of tariffs on top of any other regulatory method used for the calculation of tariffs.

RULE 5.6 Transmission network expansion with merchant investment

- Merchant lines will have transparent and non-discriminatory access to the networks of the TSOs under an adequate regulatory framework which will notably ensure that any externalities induced on the TSOs' grids are properly taken into account in the proposed investment and operation scheme. These externalities may notably include the impact on network losses, on flow repartition, on congestions, on reliability, on security of supply and on market power.
- There will be open access to both regulated and merchant network facilities on non-discriminatory conditions. Any network charges or collection of congestion rents must be set – or determined by market mechanisms- in a non-discriminatory and transparent manner. The regulatory authorities must have the responsibility for ensuring this.
- Initial long-term contracts for transmission capacity may be authorized, if they respect the basic principles expressed by CEER on congestion management, notably the use-it-or-lose-it rule.
- The remuneration of the owner of a merchant network facility will not be regulated but, in principle, it will have to follow the same rules on open access, transparency and non discrimination that apply to regulated facilities. However, while the remuneration of a regulated network facility is determined a priori on the basis of incurred costs or the results of an open tender for construction, the remuneration of a merchant network facility will be based on the congestion rents earned by the facility and there will be no regulated limit to its value. This notably implies that the existence of a merchant line cannot prevent the construction of an additional regulated or merchant line, even if it induces a decrease of the congestion rent levied by the merchant line. Equally, the conditions under which any such additional regulated line may be built need to be set out in advance in order to minimize regulatory risk for the Merchant investor. Congestion rents will be the result of an allocation mechanism compliant with the regulation.

- Since the merchant facility is subject to a totally different economic regime than regulated facilities, merchant facilities will not receive an inter-TSO compensation. However, the flows in these lines will be considered when calculating the contribution of each country to the inter TSO payment fund and its compensation.
- Since there is no regulated remuneration there is no regulated cost to be allocated. The remuneration of the merchant investment is obtained from congestion rents and long-term contracts.

(The treatment of merchant lines has been proposed and described in detail by the Infrastructure TF of the CEER Working Group Electricity and is contained in the Infrastructure TF document "Regulatory control and financial reward for electricity transmission infrastructure", dated 2004-05-04.

Remaining issues, to be covered within the Guidelines

- Rules for use of congestion rents incurred for maintaining the reserved capacity
- Possible revision of the Principle 4 (on assuring maximum capacity on interconnections) to be applicable to merchant lines.
- Clarification on the use it or loose it concept involved
- Possibly necessary revision of Principles 1 to 3 in terms of the proposed treatment of merchant lines

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