

Annual report on Congestion revenues according to Regulation (EC) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity

Background

The National Regulatory Authorities, in Sweden the Energy Markets Inspectorate (Ei), shall in accordance with the Regulation (EC) 2019/943, on an annual basis, and by March 1 each year inform ACER and publish a report on congestion revenues.

The report shall set out the amount of revenue collected by a Transmission System Operator (TSO) and the use made of the revenues in question, together with verification that the use complies with the Regulation and the methodology and that the total amount of congestion income is devoted to the prescribed purposes.

Price mechanisms are used to relieve grid congestion (bottlenecks) between price areas. The TSO receives revenues from the allocation of capacity. The method used in the Nordic region, up to now, is implicit auctions through Nord Pool Spot. The congestion revenues are published on monthly basis at Nord Pool Spot's website (currency EUR).

Affärsverket svenska kraftnät and Baltic Cable AB are TSOs in Sweden. Ei has requested information from the TSOs regarding the amount of revenue collected during the period 1 January 2019 to 31 December 2019 and the use of the revenues.

Affärsverket svenska kraftnät

Affärsverket svenska kraftnät has reported external congestion revenues as follows.

Month	Revenue (kSek)
January 2019	62 433
February 2019	46 228
March 2019	75 005
April 2019	59 580
May 2019	99 251
June 2018	245 290
July 2019	169 894

August 2019	163 774
September 2019	232 966
October 2019	93 233
November 2019	111 587
December 2019	105 900
Total	1 465 141

Baltic Cable AB

Baltic Cable AB has reported congestion revenues as follows:

Month	Revenue (kSek)
January 2019	6 506
February 2019	7 576
March 2019	11 618
April 2019	8 984
May 2019	8 999
June 2019	27 449
July 2019	10 510
August 2019	7 054
September 2019	7 359
October 2019	2 453
November 2019	6 595
December 2019	8 034
Total	113 137

The use of collected congestion revenues

Affärsverket svenska kraftnät

According to Affärsverket svenska kraftnät, collected revenues has been used to guarantee the actual availability of the allocated capacity through counter trading and network investments with the purpose to maintain or increase interconnection capacities in accordance with the Regulation and Affärsverket svenska kraftnät's internal guidelines for handling capacity charges (congestion revenues).

At the end of each year, decisions are made as to which network investments against which the balanced bottleneck revenues can be offset. If it is not possible to use all the congestion revenues for this purpose, the surplus will be placed on a separate account line until it can be spent accordingly to the regulation. No congestion revenues have been used to lower the tariff for year 2019.

Baltic Cable

Baltic Cable refers to the ongoing court action regarding the applicability of the Regulation and points out that it is the old Regulation 714/2009 that is valid until December 31, 2019. Baltic Cable has therefore not considered the new regulation regarding the congestion revenues for 2019. Baltic Cable's view of the legal situation has been developed within the framework of the court process. Baltic Cable understands that Ei not for the moment are processing the corresponding reports on the collected congestion revenues from 2016, 2017, 2018 and 2019 as Ei is awaiting the Court's decision on the earlier matters.

Baltic Cable has also means that all of the collected revenues has been used in accordance with article 16.6 first paragraph (714/2009) and also according to the prioritized objectives set out in article 19.2 in the new regulation (2019/943). Baltic cable receives no revenue from any users and thus has no income from network tariffs. The collected revenues have been used, among other things, to cover costs for exchanges in electricity and to maintain the availability and allocated transfer capacities of the transmission link.

Assessment by the Energy Market Inspectorate

Ei has not found any reason to further investigate Affärsverket svenska kraftnät's use of collected congestion revenues for the above-mentioned period. Ei can from the information presented by Affärsverket svenska kraftnät conclude that the use of the collected revenues complies with the Regulation.

Regarding Baltic Cable Ei concluded in 2014 and 2015 that Baltic Cable AB's reporting of the use of revenues from the allocation of interconnection contained explanations that required further analysis. On this basis, Ei further investigated the company's use of the revenues from allocation of interconnector to be able to conclude whether the use of the collected revenues complies with the Regulation 714/2009.

The result of this investigation was that Ei considered that Baltic Cable's use of the congestions revenues not complied with the Regulation 714/2009. The investigation also resulted in an imposition of fines directed to Baltic Cable on 9 June 2016. Baltic Cable has appealed Ei's decision and it is currently of judicial review in the Administrative Court. On the 5th of July 2018 the Administrative Court decided to obtain a preliminary ruling from the Court of Justice of the European Union regarding the interpretation of the Regulation (EC) No 714/2009. June 20, 2019 was the public hearing in the European Court of Justice. The Advocate General Tanchev delivered his opinion on November 14, 2019 and the final decision was delivered on March 11, 2020. The Final decision concluded that the article 16.6 only targets TSO:s, that Baltic Cable is a TSO according to the Regulation, that operating and maintenance costs do not fall within the scope of Article 16 (6), first subparagraph (b), but that Article 16 (6), second subparagraph, should be interpreted so that it is up to the National Regulatory Authority to approve that Baltic Cable uses part of its congestion revenues for return and for operation and maintenance of the interconnection.

The Swedish Energy Markets inspectorate is now awaiting judgment from the Swedish Administrative Court and needs time to analyze the court's decision before taking actions. This applies both to the cases that are open for the years 2013-2019 based on the old Regulation (714/2009) and to cases concerning Baltic Cable with the new Regulation 2019/943.

This decision has been made by Director General Anne Vadasz Nilsson. Director of Legal Department Göran Morén and Chief Economist Therése Hindman Persson and Head of Section Rebecka Thuresson, who acted as rapporteur, were also involved in the final administration of this matter.



Anne Vadasz Nilsson