All TSOs' proposal for Use of Congestion Income Methodology in accordance with Article 19(4) of the Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity

For Public Consultation

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DISCLAIMER

This document is released only for the purposes of the public consultation on the All TSOs' proposal for Use of Congestion Income methodology in accordance with Article 19(4) of the Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity. This version of the Proposal does not in any case represent a firm, binding or definitive TSOs' position on the content.

Content

Whereas

(1) This document is a common Methodology developed by all Transmission System Operators (hereinafter referred to as "TSOs") for the use of congestion income (hereafter referred to as "UCI Methodology" or "This Methodology") in accordance with Article 19(4) of the Regulation (EU) 2019/943 of the European Parliament and Council of 5 June 2019 on the internal market for electricity (recast) (hereinafter referred to as "Regulation (EU) 2019/943")

(2) The UCI Methodology takes into account the general principles and goals set in the Regulation (EU) 2019/943 as well as Directive (EU) 2019/944 of the European Parliament and of the Council of 5 June 2019 on common rules for the internal market for electricity hereafter referred to as "Directive (EU) 2019/944", Regulation (EU) 2015/1222 establishing a guideline on capacity allocation and congestion management (hereafter referred to as "CACM Regulation"), Regulation (EU) 2016/1719 establishing a guideline on forward capacity allocation (hereafter referred to as "FCA Regulation"), Regulation (EU) 2017/1485 establishing a guideline on electricity transmission system operation (hereafter referred to as "SO Regulation"), Regulation (EU) 2019/972 establishing a European Union Agency for the Cooperation of Energy Regulators (recast) hereafter referred to as "Regulation (EU) 2019/972" and Regulation (EU) No 347/2013 of the European Parliament and of the Council of 17 April 2013 on guidelines for trans-European energy infrastructure hereafter referred to as "Regulation (EU) 347/2013".

(3) The goal of the Regulation (EU) 2019/943 is to establish rules to ensure the functioning of the internal market for electricity including requirements related to the development of renewable forms of energy and environmental policy.

(4) To facilitate this goal, it is necessary to determine how any congestion income will be used pursuant to a methodology developed according to Article 19(4) of the Regulation (EU) 2019/943. Additionally, Article 19(4) formulates the minimum requirements for a methodology for use of congestion income.

(5) The implementation of the UCI Methodology might impact the level of national network tariffs. Fixing or approving the network tariff is a duty of the national regulatority authority (hereafter referred to as "NRA"), as set out in Article 59 of Directive (EU) 2019/944.

(6) Tax regimes and accounting regimes vary across Member States and are defined by the Member States themselves. The way various revenue sources of a TSO may be considered by tax administration can be different. As a general principle, set out in EU law, tariffs must reflect TSO costs, as ruled by national standards and as validated by the relevant NRA. Depending on these national standards, some cost items might be considered differently. The UCI Methodology shall take tax regimes and accounting regimes into account so that it can be efficiently implemented.

(7) In regulated TSO business models, investment decisions to maintain and increase interconnection and cross-zonal capacities are not based on congestion income only, but are justified by network development plans with comprehensive analyses of their technical and economic impact and/or a cost / benefit analysis. Operational expenses (which may include redispatching or countertrading) shall be incurred as deemed efficient.

Article 1
Subject matter and scope

1. This UCI Methodology defines how to use congestion income (hereafter referred to as "CI") generated from cross-zonal capacity allocation as described in Articles 19(2) and 19(3) of Regulation (EU) 2019/943 such that each TSO can fulfill the priority objectives defined in the Regulation. The UCI Methodology shall cover, in accordance with article 19 of Regulation (EU) 2019/943:

   a. the conditions under which CI may be used for the purposes of Article 19(2);
   b. the conditions under which those revenues may be used as an income to be taken into account by the regulatory authorities when approving the methodology for calculating network tariffs or fixing network tariffs, or both, or placed on a separate internal account line for future use; and
   c. for how long those revenues may be placed on an internal account line.

2. The UCI Methodology shall apply to
   a. all existing and future bidding zone borders to which Regulation (EU) 2019/943 applies and where CI is collected;
   b. interconnectors which are owned by TSOs or by other legal entities;
   c. CI derived from capacity allocation based on the coordinated NTC approach and the FB approach.

Article 2
Definitions and interpretation

1. For the purpose of the UCI Methodology, terms used in this document shall have the meaning given to them in Regulation (EU) 2019/943, CACM Regulation, FCA Regulation and the SO Regulation.
2. The following terms shall apply:
   a. ‘Allowed revenue’ means the revenue a TSO is allowed to recover its efficiently incurred costs, generally via tariff and/or CI, over a given year. This allowed revenue, or the methodology to set the allowed revenue, is determined by the NRA.
   b. ‘Cross-zonal asset’ means network element used to link bidding zones;
   c. ‘Internal asset’ means network element in the internal grid which is not a cross-zonal asset;
   d. ‘Operational Expenditures’ (OPEX) means operational and maintenance expenses related to existing grid assets.
3. In this Methodology, unless the context requires otherwise:
   - the singular indicates the plural and vice versa;
   - the table of contents and headings are inserted for convenience only and do not affect the interpretation of this Methodology; and
   - any reference to legislation, regulations, directives, orders, instruments, codes or any other enactment shall include any modification, extension or re-enactment of it then in force.

Article 3
Cost categories contributing to priority objectives

1. In pursuit of the fulfilment of the priority objectives (a) and (b) of Article 19 (2) of Regulation (EU) 2019/943, TSOs shall allocate CI to one or some of the following cost categories complying either with Article 19(2) (a) and / or Article 19(2) (b) of the Regulation (EU) 2019/943. For each TSO, the exact list and the detailed measures for the definition of such costs categories depend on national regulatory framework.

- **System operation costs, including inter alia:**
    i. Firmness costs meant as costs related to measures activated by TSO(s) that guarantee cross-zonal schedules resulting from firm allocated capacity, in accordance with CACM and FCA Regulations, while complying with the safety standards of secure network operation.
    ii. Firmness compensation costs: TSOs' costs related to compensation of the owners of curtailed transmission rights which cannot be used in order to ensure system security, in accordance with FCA and CACM Regulations.
    iii. Costly Remedial actions activated to maintain or increase capacities with the objective of maximising available capacity in accordance with Article 16 of Regulation (EU) 2019/943..
    iv. Financial net costs associated to hedging options: costs related to hedging products against volatile market spreads, different from long-term transmission rights, offered by TSOs to market operators in accordance with FCA regulation.
    v. Remuneration of non-nominated Long-Term Physical Transmission Rights and Financial Transmission Rights as provided by the FCA Regulation.
    vi. Costs of regional security coordinators (RSCs) and regional coordination centres (RCCs) which perform tasks related to TSO regional coordination in one or more capacity calculation regions.
- **Costs resulting from network investments that are relevant to reduce interconnector congestion, including inter alia:**
    vii. Investments costs
        - Investment expenditures for reinforcement of existing assets or new assets which contribute to maintaining or increasing cross-zonal capacity.
        - Costs included in the TSO's Allowed revenue, usually made of:
            i. Capital expenditure costs during the depreciation period of the asset: depreciation and capital remuneration (equity and/or debt) related to investments which contribute to maintaining or increasing cross-zonal capacity.
            ii. Remuneration of assets under construction related to investments which contribute to maintaining or increasing cross-zonal capacity.
            iii. Where appropriate, cost of long-term leasing of network elements that increase cross-zonal capacity.
    viii. Other costs resulting from network investments included in the Allowed revenue:
        - Maintenance OPEX related to assets which contribute to maintaining or increasing cross-zonal capacity.
        - Taxes directly linked to assets which contribute to maintaining or increasing cross-zonal capacity and are thus considered as OPEX.
        - Electrical losses resulting from assets contributing to cross-zonal capacity (excluding those losses covered by the Inter-TSO Compensation mechanism).
        - Other costs related to the optimisation of usage of new and existing interconnectors, where it is duly justified by the TSO and NRA how such costs are of cross-zonal relevance.

    Investments considered when allocating CI include:

    - Interconnectors

- Cross-zonal assets
- Internal assets that contribute to maintaining or increasing cross-zonal capacity.

2. Such costs categories shall be incurred only of they are considered efficient by the relevant NRA at national level.
3. The TSO shall duly justify the reason why concerned cost categories associated to investments are of relevance to the priority objectives set out in Article 19(2) of the Regulation (EU) 2019/943. The justification can be based inter alia on:
    - The Ten-Year-Network-Development-Plan,
    - the Union list of projects of common interest as defined in Regulation (EU) 347/2013,
    - National Development Plans,
    - Action plans in accordance with Article 15 of the Regulation (EU) 2019/943,
    - Solutions to the issues that the derogation in accordance with Article 16(9) of the Regulation (EU) 2019/943 seeks to address; and,
    - Any applicable provision from the national regulation in force.
4. Based on the cost categories listed above, TSOs shall clearly establish, in advance, for which of the cost categories CI will be used, as requested by Article 19(5) of Regulation 2019/943.
5. The requested information shall be provided by the TSO to the NRA in accordance with the national regulatory practices or any other method decided by the NRA, and according to a frequency decided by the NRA.
6. The NRA shall assess and approve the cost categories identified by the TSO in terms of their relevance in contributing to the priority objectives set out in Article 19(2) of Regulation 2019/943.

Article 4
Congestion Income Allocation

1. CI shall cover all or a part of the costs resulting from the fulfilment of the priority objectives pursuant to Article 19(2) of the Regulation (EU) 2019/943. Depending on the national applicable regulation:
    - Above cost categories might be part of TSO's allowed revenue or investment expenditures,
    - CI and some of above cost categories might be pass-through item in the TSO's financial statement, in particular system operation costs.
2. CI shall be allocated to cost categories approved by the NRA pursuant to Article 3(6) of this Methodology.
3. Where some of the CI is used when calculating network tariffs, the NRA shall assess if the TSO(s) under their regulatory oversight has/have adequately fulfilled Article 19(2) priority objectives during the 12-month period ending on 31 December of the previous year. This assessment shall be based on the approved cost categories as per Article 3(6) of this Methodology.
4. Where the priority objectives set out in Article 19(2) of the Regulation (EU) 2019/943 have been adequately fulfilled, and CI exceeds expenditures corresponding to the cost categories which were approved by the NRA pursuant to Article 3(6) of this Methodology, remaining CI may be used according to possibility (i) and / or (ii) below:
    i. As income to be taken into account by the regulatory authorities when approving the methodology for calculating network tariffs or fixing network tariffs, or both,

   ii. Placed on a separate internal account line for any future financing requirements associated to objectives set out in Article 19(2) of the Regulation (EU) 2019/943 TSO may face.

5. Where the priority objectives set out in Article 19(2) of the Regulation (EU) 2019/943 have not been adequately fulfilled, and CI exceeds expenditures corresponding to the cost categories which were approved by the NRA pursuant to Article 3(6) of this Methodology, residual CI shall be placed on a separate internal account line.
6. For determining the features of the separate internal account line, inter alia the accounting and tax rules applying to the Member State where the TSO is settled and the impact of a separate account line on the national network tariff level shall be duly considered. Ultimately, the most efficient way of implementing the internal separate account line shall be chosen among the two following possible features:
   - A separate account line in TSO's account book, or a functionally equivalent facility,
   - Or separate account line for reporting purpose, or a functionally equivalent facility, of income and expenditure related to cross-zonal capacities.
7. Where expenditures corresponding to the cost categories which were approved by the NRA pursuant to Article 3(6) of this Methodology exceed CI a given year, the amount of the separate account line shall be reduced by the difference between those expenditures and CI. Should this result in the amount of the separate account line be negative a given year, this amount shall be sent to zero and, where the separate account line is for reporting purpose, the difference shall be carried forward to the next year(s).
8. The CI may remain placed in the separate account line for a period defined by the NRA depending on TSO's situation. If after this period no present or future effective use within the constraints of the priority objectives is possible, CI from the internal account line may be used to calculate and/or fix network tariffs. The resulting tariff reductions may be distributed over a period clearly defined beforehand at the proposal of the TSO.

Article 5
Implementation of the UCI Methodology

The UCI Methodology shall be considered implemented when the European Union Agency for the Cooperation of Energy Regulators has approved the UCI Methodology in accordance with Article 19(4) of the Regulation (EU) 2019/943 and with Article 4(4) of the Regulation (EU) 942/2019.

Article 6
Language

The reference language for this Methodology shall be English. For the avoidance of doubt, where TSOs need to translate this Methodology into their national language(s), in the event of inconsistencies between the English version published by ACER in accordance with Article 19(4) of the Regulation (EU) 2019/943 and any version in another language, the relevant TSOs shall be obliged to dispel any inconsistencies by providing a revised translation of the Methodology to their relevant NRA.