

## Imposition of fines in relation to dealing with income resulting from the allocation of interconnection

### Decision

The Energy Markets Inspectorate (Ei) orders Baltic Cable AB, 556420-6026, no later than **three months** after serving this decision

1. to place income from the allocation of interconnection totalling SEK 98,480,864 for the period 1 July 2013-30 June 2014 in a separate internal account line until such time as it can be spent on the following purposes:
  - a) guaranteeing the actual availability of the allocated capacity; and/or
  - b) maintaining or increasing interconnection capacities through network investments, in particular in new interconnectors.
2. to place income from the allocation of interconnection totalling SEK 128,944,497 for the period 1 July 2014-30 June 2015 in a separate internal account line until such time as it can be spent on the following purposes:
  - a) guaranteeing the actual availability of the allocated capacity; and/or
  - b) maintaining or increasing interconnection capacities through network investments, in particular in new interconnectors.
3. produce an extract from accounts and an audit certificate confirming that the amount totalling SEK 98,480,864 for the period 1 July 2013-30 June 2014 has been placed in a separate internal account line.
4. produce an extract from accounts and an audit certificate confirming that the amount totalling SEK 128,944,497 for the period 1 July 2014-30 June 2015 has been placed in a separate internal account line.

The imposition in accordance with 3-4 is combined with a fine of five million kronor (SEK 5,000,000) for each commenced month that the imposition is not followed, calculated three months from when Baltic Cable AB has been notified of this decision.

### Description of the case

Baltic Cable AB (the company) owns and operates a 600 MW direct current line which was commissioned in December 1994 and which links the electricity grids in Sweden and Germany. A network concession for the line (no. 8200A) was announced on 23 July 1992. The line is connected to Svenska Kraftnät's transmission system on the Swedish side and to the German main grid owner TenneT's transmission system on the German side. Since 10 May 2010, the line's total capacity has been placed at the disposal of the market through market coupling via Multi-Regional price Coupling (MRC).

Regulation (EC) No. 714/2009 of the European Parliament and of the Council on conditions for access to the network for cross-border exchanges in electricity (the Electricity Ordinance) includes specific rules on how network congestion should be managed between such interconnectors as in the case in question and on how income

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from interconnections (congestion income) should be used. This means that reservation prices (network tariffs) are not permitted within the framework of capacity allocation methods for this interconnector. The company may not therefore charge specific fees for the transmission of electricity. Instead, income derives from the capacity income in the event of congestion that the interconnector is allocated through market coupling via MRC.

In accordance with the Electricity Ordinance, Ei publish a report every year reporting the income from congestion that has been obtained between 1 July of the previous year and 30 June of the current year. This report should also include a description of how this income has been used, as well as confirmation that it has been used in a manner that is compatible with the Ordinance.

In accordance with the Electricity Ordinance, Ei shall also ensure that the actual use of income from congestion is compatible with the Electricity Ordinance and its guidelines, and that the income obtained from congestion as a result of the allocation of transmission capacity is used exclusively for one or more of the purposes described in the Ordinance. Against this background, Ei has – in so far as concerns the present case – requested that the company shall provide information regarding income from congestion for the periods 1 July 2013-30 June 2014 and 1 July 2014-30 June 2015. The company has submitted such accounts and has stated what the income from congestion amounted to and what it was used for.

In the annual report submitted to the Commission, Ei has – for both 2014 and 2015 – stated that the authority is of the opinion that there is a need to analyse the company's use of the income from congestion in closer detail in order to be able to determine whether the company's use complies with the provisions of the Electricity Ordinance. Ei's report has been published on Ei's website.

With reference to the received accounts, Ei has therefore requested that the company should additionally account for how the company's income from congestion is distributed between the purposes established by the Ordinance. In a request for information submitted to the company dated 19 November 2014, Ei has also clarified that it is of the opinion that the company should be regarded as a system operator in accordance with the Electricity Ordinance (ref. no. 2014-101661).

### **The company's statement and position**

The company has reported income by month during the period 1 July 2013-30 June 2014, and has stated that the income has 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. The board then proposes to the annual meeting how the remaining profit should be disposed of. The company has submitted the annual report for 2013 as documentation for the company's costs, and a table for 2013 and the first six months of 2014 containing information about the costs involved in securing and balancing the transactions on the day-ahead market.

The company also states that the Electricity Ordinance's provisions on reporting and using income from congestion are not applicable at the company, since the company should not be regarded as a system operator for a transmission system. Its investments

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and costs cannot be allocated in accordance with the article referred to in any relevant manner.

Based on the provisions of the Electricity Ordinance, the company has nevertheless allocated the income from congestion to the purposes in accordance with article 16.6 a) and b) of the Electricity Ordinance as follows.

Table 1 The company's income for 1 July 2013-30 June 2015

	1 July 2013 to 30 June 2014	1 July 2014 to 30 June 2015
Total income from congestion	SEK 159,542,374	SEK 177,939,624
Used in accordance with a)	SEK 61,016,510	SEK 48,995,127
Used in accordance with b)	SEK 98,480,864	SEK 128,944,497

The first permitted purpose, "a) guaranteeing the actual availability of the allocated capacity", involves – according to the company – ensuring that the capacity is always available to buyers despite the fact that there may be impediments in the actual transmission (firmness). Such firmness may be financial, i.e. the capacity buyer receives financial compensation for its loss of earnings, or physical, i.e. the cable owner takes over and deals with the corresponding energy imbalance on each side of the interconnection. The company provides physical firmness in relation to allocated capacity. Baltic Cable's capacity is allocated for the following day through the market coupling process, which is now dealt with by the power exchanges in the NWE region. The company meets the full cost of imbalance if, after allocation has taken place, an outage occurs in the cable or a grid owner limits capacity.

The other permitted purpose is "b) maintaining or increasing interconnection capacities through network investments, in particular in new interconnectors". If the income cannot be used in an effective manner for purposes a or b, it may be used to reduce network tariffs, provided that the regulatory authorities of the Member States involved approve this.

According to the company, it is clear that the legislator has only thought about normal grid owners that operate a grid with one or more interconnectors. The intention was that the grid owners would cover all their costs, including costs for financing and operating the interconnectors, through their tariffs and not through their income from congestion. The costs and risks for these interconnectors would thus be borne by the collective grid users. Income from congestion constituted extra income for the grid owners. The legislator intended to earmark such surplus income for financing interconnection capacity and not normal grid operation. The company does not have any network customers, and thus has no income from network tariffs. This means that it is the company and not the collective grid users that bears all costs (operating costs and capital costs) and all risks attributable to the original investment in Baltic Cable. These risks relate to both technological risks (e.g. the risk that the cable will be affected by faults or damage and need to be repaired, while at the same time no income is generated) and market risks (e.g. the risk that there will be no price differences between Germany and Sweden). The company is also exposed to the risk that the grid owners Svenska Kraftnät and TenneT could limit capacity to remedy bottlenecks in their own networks. In the company's case, income from congestion must therefore be used to compensate the

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company for the fact that it bears all the costs and risks attributable to the existing interconnection.

Finally, the company is of the opinion that Article 16.6 can be applied to the company as an individual interconnection company if the initial network investment is also taken into account. In contrast to an interconnection that is owned by a normal grid company, this does not involve any surplus income for the company, since no costs are transferred to any network user and since the company does not have any guaranteed income. This is in line with the wording of Article 16.6 and is faithful to the provision's aim to consider all income that is not used for firmness costs as being used for network investments to maintain interconnection capacities.

### **The provisions that form the basis for the decision**

#### **The Electricity Ordinance (714/2009)**

'Interconnector' means a transmission line which crosses or spans a border between Member States and which connects the national transmission systems of the Member States (Article 2.1).

'Congestion' means a situation in which an interconnection linking national transmission networks cannot accommodate all physical flows resulting from international trade requested by market participants, because of a lack of capacity of the interconnectors and/or the national transmission systems concerned (Article 2.2 c).

'Transmission system operator' means a natural or legal person responsible for operating, ensuring the maintenance of and, if necessary, developing the transmission system in a given area and, where applicable, its interconnections with other systems, and for ensuring the long-term ability of the system to meet reasonable demands for the transmission of electricity (Article 2.1, compared with Article 2.4 of Directive 2009/72/EC of the European Parliament and of the Council concerning common rules for the internal market in electricity (the Internal Market in Electricity Directive)). Any revenues resulting from the allocation of interconnection shall be used for the following purposes:

- a) guaranteeing the actual availability of the allocated capacity; and/or
- a) maintaining or increasing interconnection capacities through network investments, in particular in new interconnectors.

If the revenues cannot be efficiently used for the purposes set out in points a) and/or b) above, they may be used up to a maximum amount to be decided by the relevant regulatory authorities (Ei for Sweden) as income to be taken into account by the regulatory authorities when approving the methodology for calculating network tariffs and/or fixing network tariffs. This can take place provided that the regulatory authorities in the Member State concerned give their approval. The regulatory authority shall inform the agency of this approval.

The remainder of the revenue shall be placed in a separate internal account line until such time as it can be spent on the purposes set out in points a) and/or b) above (Article 16.6).

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The system operators should clearly establish in advance how they will use any income from congestion that they may obtain and report on the actual use of this income. The regulatory authority shall ensure that this use is compatible with the Ordinance and its guidelines, and that the combined income from congestion as a result of the allocation of transmission capacity is used for one or more of the three purposes described in Article 16.6 (point 6.4 in Appendix I).

The regulatory authority shall publish a report no later than 31 July each year in which the amount of income that has been obtained during the twelve-month period up until 30 June of the same year is established. This report should also include a description of how this income is used and confirmation that this use is compatible with the Ordinance and its guidelines, and that the combined income from congestion is used for one or more of the three prescribed purposes (point 6.5 in Appendix I).

### **The Swedish Electricity Act (1997:857)**

The network authority (Ei) is the regulatory authority in accordance with the Electricity Ordinance (Chapter 12, § 1, paragraph four).

A regulatory authority may announce the impositions needed in order to ensure compliance with the regulations and conditions covered by its supervision. An imposition may be combined with fines (Chapter 12, § 3, paragraph one).

### **Ei's justification for the decision**

Baltic Cable is an interconnection in accordance with Article 2.1 of the Electricity Ordinance, and the company is a transmission system operator (TSO) for the transmission system between Sweden and Germany in accordance with Article 2.4 of the Internal Market in Electricity Directive. Because Baltic Cable is an interconnection in accordance with the Electricity Ordinance, income from the interconnection may only be used in accordance with the provisions of Article 16.6. The fact that the company is a TSO is also stated in a Commission Opinion to the German regulatory authority Bundesnetzagentur (Commission Opinion dated 23 January 2014, C(2014) 424 final). The Commission Opinion also states that the German regulatory authority Bundesnetzagentur is of the opinion that the company is a TSO, and in November 2014 Ei informed the company that it has made the same assessment. The fact that the company has now stated that it should not be regarded as a TSO does not warrant any other assessment. The provisions of the Electricity Ordinance shall therefore be applied to Baltic Cable.

In accordance with the provisions of the Electricity Ordinance, the company may only use income from congestion to guarantee the actual availability of the allocated capacity and/or to maintain or increase interconnection capacities through network investments, in particular in new interconnectors. In accordance with the Electricity Ordinance, Ei shall ensure that the company's use of income is compatible with the Electricity Ordinance and that the combined income from congestion is used for one or more of the purposes stated above.

The company's account of how it ensures physical firmness in relation to allocated capacity is a way of guaranteeing that the allocated capacity is actually available. The

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way in which the company uses the income in this respect therefore corresponds with how the Ordinance requires the income from congestion to be used. Ei is therefore of the opinion that SEK 61,016,510 for the period 1 July 2013 to 30 June 2014 and SEK 48,995,127 for the period 1 July 2014 to 30 June 2015 has been used in a manner that is compatible with the provisions of the Electricity Ordinance.

The company is of the opinion that the remaining income is comparable with network investments to maintain or retain interconnection capacities and that the Ordinance should be applied taking the initial network investment into account. Such an interpretation is not compatible with what is stated in Article 16.6 of the Electricity Ordinance. The provisions of the Ordinance aim to give the company an incentive to invest in order to maintain or increase interconnection capacities, particularly in new interconnectors. Operating and maintenance costs for an existing cable are not the same thing as network investments to maintain or increase interconnection capacities. The company has thus obtained income that has not been used in accordance with the provisions of the Ordinance. In accordance with Article 16.6 of the Electricity Ordinance, this income should be placed in a separate internal account line until such time as it can be spent on the purposes set out in point a) and/or b) of Article 16.6. The company has not done this. This income totals SEK 98,480,864 for the period 1 July 2013 to 30 June 2014, and SEK 128,944,497 for the period 1 July 2014 to 30 June 2015.

In its annual reports to the Commission for both 2014 and 2015, Ei has informed the Commission that it is doubtful that the company is using income correctly. Ei's report has been published, and the company has thus received information and knowledge from the outset that Ei has not approved the company's account of how the income has been used and that further investigation of the use of the income's compliance with the provisions of the Electricity Ordinance will take place. Ei is therefore of the opinion that the proposed measure to order the company to place income from congestion in an internal account line for the entire period 1 July 2013 to 30 June 2015 in accordance with the below is necessary with regard to the purpose, and it therefore does not contravene the principle of proportionality.

Against this background, Ei finds that the company shall be ordered to place income from congestion of SEK 98,480,864 for the period 1 July 2013-30 June 2014 and SEK 128,944,497 for the period 1 July 2014-30 June 2015 in a separate internal account line until such time as it can be spent on the purposes set out in points a) and/or b) of Article 16.6 of the Ordinance. It should be certified that these amounts have been placed in a separate internal account line by the company producing an extract from accounts and an audit certificate confirming that this has been done.

The income from the allocation of interconnection totals large amounts, and it is important that the income is used for the specified purposes in order to develop an effective European electricity market in which interconnection capacities between countries are maintained and/or increased. The imposition in accordance with points 3-4 shall therefore be combined with a fine amounting to five million kronor (SEK 5,000,000) for each commenced month that the imposition is not followed, calculated three months from when Baltic Cable AB has been notified of this decision.

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### How to appeal

See Appendix 1, How to appeal the decision.

This decision has been made by Director-General Anne Vadasz Nilsson. Chief Economist Therése Hindman Persson, special advisor Göran Morén and analyst Mathilda Lindersson (report submitter) also took part in the final case handling.

Anne Vadasz Nilsson

Mathilda Lindersson

Appendices:

Appendix 1 How to appeal the decision

Distribution list:

The European Commission (for information)

The European Agency for the Cooperation of Energy Regulators (for information)

Die Bundesnetzagentur (for information)

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