



DECISION

In the administrative proceedings pursuant to section 29(1) Energy Industry Act (EnWG) in conjunction with section 56 first sentence para 2, second and third sentences Energy Industry Act in conjunction with Article 6(11) and Article 7(3) of Regulation (EC) No 715/2009 in conjunction with Article 4(1), Article 5(1), Article 6(1) and (4)(a), (b) and (c), Article 10(7), Article 26(1), Article 27(1), Article 29 and Article 30(1) of Regulation (EU) No 2017/460, section 30(2) para 7 Gas Network Charges Ordinance (hereinafter "GasNEV"), section 32(1) para 11 Incentive Regulation Ordinance (hereinafter "ARegV") in conjunction with section 28 first sentence para 3, 4 ARegV and Article 22(1) of Regulation (EU) No 2017/459

concerning the determination of requirements for implementation of the network codes on harmonised transmission tariff structures (Regulation (EU) No 2017/460) and on capacity allocation mechanisms in gas transmission systems and repealing Regulation (EU) No 984/2013 (Regulation (EU) No 2017/459) in incentive regulation

Ruling Chamber 9 of the Bundesnetzagentur für Elektrizität, Gas, Telekommunikation, Post und Eisenbahnen, Tulpenfeld 4, 53113 Bonn,

represented by

its Chair

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issued the following Determination on 19 July 2017:

1. The economic test for each offer level of an incremental capacity project in accordance with Article 22 of Regulation (EU) No 2017/459 shall be carried out by the Bundesnetzagentur.
2. The cost allocation assessment in accordance with Article 5 of Regulation (EU) No 2017/460 and publication of the assessment as part of the final consultation in accordance with Article 26 of Regulation (EU) No 2017/460 shall be carried out by the Bundesnetzagentur.
3. The final consultation referred to in Article 26 of Regulation (EU) No 2017/460 and submission of the consultation documents to the Agency within the meaning of Article 1(1) of Regulation (EC) No 713/2009 shall be carried out by the Bundesnetzagentur.
4. The respective transmission system operator shall carry out adjustments in accordance with Article 6(4)(c) of Regulation (EU) No 2017/460 at all entry and exit points with the aim of being able to collect transmission services revenue in actual fact. The respective transmission system operator shall include in the report any other equalisation or adjustment referred to in Article 6(4)(a), (b) and (c) of Regulation (EU) No 2017/460 as a reasoned request in accordance with point 7 below.
5. The reference price methodology proposed for the final consultation referred to in Article 26 of Regulation (EU) No 2017/460 is the conversion of the revenue caps set in accordance with section 32(1) para 1 ARegV into tariffs for access to energy supply networks according to the rules stipulated in part 2(2) and (3) of GasNEV with corresponding application of sections 16, 27 and 28 GasNEV and under section 17(2) and (3) ARegV in the form of normally uniform entry tariffs for identical capacity products on the entry side and normally uniform exit tariffs for identical capacity products on the exit side (independent of distance; so-called postage stamp tariffs). This entails dividing the transmission services revenue by the daily average of the contracted capacity at all entry and exit points forecasted for the calendar year. No capacities shall be taken into account and no entry tariffs charged for the input of biogas. Conditions for firm capacity products and any discounts on the tariffs resulting from these conditions shall be included in the report in accordance with point 7.

6. For the purpose of the consultation in accordance with Article 26 of Regulation (EU) No 2017/460, meter operation, which also includes metering, the biogas charge according to section 20b GasNEV, the market area conversion charge according to section 19a(1) Energy Industry Act and the alternative nomination procedure according to section 15(3) Gas Network Access Ordinance (hereinafter "GasNZV") are classified as non-transmission services within the meaning of Article 4 of Regulation (EU) No 2017/460. Any other non-transmission services may be included in the report in accordance with point 7. Justification for their classification as non-transmission services must be provided.
7. The transmission system operators are obliged to submit all documents necessary for the cost allocation assessments according to Article 5 of Regulation (EU) No 2017/460 and for assessment of the final consultation according to Article 26(1) of Regulation (EU) No 2017/460 to the Bundesnetzagentur by 31 January 2018; the documents must be complete and submitted in both German and English. The documents to be submitted consist of a report and an annex.
 - a) The structure and the contents of both the report and the annex must conform to the specifications set out in Annex 1 of this Decision.

(Annex 1 can be downloaded from the Bundesnetzagentur website at: <http://www.bundesnetzagentur.de>; menu items: "Beschlusskammern" → "Beschlusskammer 9" → "Festlegungen" → "BK9-17/609 Festlegung von Vorgaben zur Umsetzung der Verordnung (EU) Nr. 2017/460")
 - b) The documents must be submitted in both electronic and written form, with the exception of the data entry form included in the annex to the report.
 - c) The data entry form included in the annex to the report must be sent in electronic form only, using the latest updated XLSX file provided by the Bundesnetzagentur ("BNetzA_BK9-17-609.xlsx") and must be fully and correctly completed. No changes may be made to the structure of the XLSX file in the course of completing the form. Other files must be submitted in formats such as PDF, Word or similar, with no security restrictions (eg copy protection).

(The XLSX file is available for download from the Bundesnetzagentur website at: <http://www.bundesnetzagentur.de>; menu items: "Beschlusskammern" → "Beschlusskammer 9" → "Festlegungen" → "BK9-17/609 Festlegung von Vorgaben zur Umsetzung der Verordnung (EU) Nr. 2017/460")
 - d) When sending documents electronically, network operators must always use the Bundesnetzagentur Energiedaten-Portal, which can be accessed via the website <http://www.bundesnetzagentur.de>.

(The Bundesnetzagentur Energiedaten-Portal can be accessed directly at: <https://app.bundesnetzagentur.de/Energie/>, the title of the procedure is “Datenübermittlung im Rahmen des Art. 26 der Verordnung (EU) 2017/460 (NC TAR”).)

Before being sent via the Energiedaten-Portal, all documents must be encrypted using the encryption program provided on the internet.

(The encryption program is available on the Bundesnetzagentur website at: <http://www.bundesnetzagentur.de>; menu items: “Elektrizität und Gas” → “Unternehmen/Institutionen” → “Datenaustausch und Monitoring” → “Erhebung von EEG-Daten” → “Energiedatenportal” → “Download Verschlüsselungs-Programm 2007”).

8. *The information referred to in Article 29 and Article 30 of Regulation (EU) No 2017/460 in compliance with the requirements set out in Article 31 and Article 32 of Regulation (EU) No 2017/460 shall be published by the respective transmission system operator.*

Rationale

I.

The Ruling Chamber has officially introduced proceedings to establish the requirements for implementation of the network codes on harmonised transmission tariff structures (Regulation (EU) No 2017/460) and on capacity allocation mechanisms in gas transmission systems and to repeal Regulation (EU) No 984/2013 (Regulation (EU) N 2017/459) in incentive regulation.

The draft decision was published on the Bundesnetzagentur website on 3 May 2017 and in the Official Journal 08/2017 of 3 May 2017 in order to give the affected companies the opportunity to comment. In keeping with section 73(1a) first sentence Energy Industry Act and section 28(2) para 4 of the Administrative Procedure Act (VwVfG), the publication of the draft replaced the individual consultations with specific addressees which are required in principle according to section 67(1) Energy Industry Act.

Four transmission system operators and four associations submitted comments.

Two transmission system operators, namely Gascade and Gasunie Deutschland, and the association of gas transmission system operators (FNB Gas e.V.) commented on the economic test established in accordance with Article 22 of Regulation (EU) No 2017/459 and suggested that, because of the complexity of network expansion projects and their particular economic importance for transmission system operators, the economic test should be carried out jointly by the Bundesnetzagentur and the respective transmission system operator involved in the project. In this regard Gascade states that a joint economic test is the only means of achieving a link in such a form as is necessary to ensure legal certainty and security of investment for projects of major economic importance. FNB Gas e.V. states that a joint economic test and its confirmation by the Bundesnetzagentur can only be carried out reliably within the short time limits if the parameters of and method of calculation for the economic test have been precisely agreed upon in advance. FNB Gas e.V. points out that the exact terms under which the joint test is carried out may be elaborated at a later date by the Bundesnetzagentur and the transmission system operators.

Insofar as this matter was addressed, the proposed reference price methodology of postage stamp tariffs was welcomed. The deadline originally proposed for submission of the documents, 15 December 2017, was criticised. A comment relating to biogas entry points stated that non-pricing may not be covered by Article 6(4)(b) of Regulation (EU) No 2017/460 and that this aspect should instead be part of the reference price methodology. The querying of revenues from the biogas charge for 2020 was criticised because, according to the comments, the relevant costs incurred by other transmission system operators were not available to the

individual transmission system operators. It was suggested that instead, the Bundesnetzagentur itself should calculate the indicative biogas charge using the data submitted.

There were contrasting comments on the issue of whether the reference price methodology should be applied jointly or separately. While some transmission system operators are in favour of the joint application of a reference price methodology as envisaged as the standard in Regulation (EU) No 2017/460, other market participants consider that the joint approach will jeopardise marketing competition and fear a possible socialisation of investment costs and risks. Other comments suggested that the decision according to Article 10(1) of Regulation (EU) No 2017/460 should be based on broader data collection and include a compensation mechanism referred to in Article 10(3) of Regulation (EU) No 2017/460 and that the consultation should take into account the currently valid entry postage stamp regime.

Comments on the cost allocation assessments according to Article 5 of Regulation (EU) No 2017/460 and on the capacity weighted distance reference price methodology calculation according to Article 8 of Regulation (EU) No 2017/460 stated that meaningful results could only be expected if the above were carried out at the market area level.

Clarifications were requested with respect to the procedural steps to be taken after application of the reference price methodology, ie the compensation mechanism according to Article 10(3) of Regulation (EU) No 2017/460 and the pricing of capacity at a virtual interconnection point according to Article 22 of Regulation (EU) No 2017/460.

The transmission system operators reacted positively to the assignment of publication obligations to the transmission system operators as stipulated in Articles 29 and 30 of Regulation (EU) No 2017/460. Other market participants recommended that publication of the data should be harmonised.

On 26 April 2017 the Bundesnetzagentur notified the regulatory authorities of the federal states in accordance with section 55(1) second sentence Energy Industry Act that it had initiated proceedings and had offered the opportunity to comment on the intended determination in accordance with section 58(1) second sentence Energy Industry Act. Likewise, the Bundeskartellamt was given opportunity to comment on the intended determination on 12 May 2017 in accordance with section 58(1) second sentence Energy Industry Act.

On 27 April 2017 the committee of representatives of the federal state regulatory authorities was given the opportunity to comment in accordance with section 60a(2) first sentence Energy Industry Act.

For further details, reference is made to the file.

II.

1 Through this determination the Bundesnetzagentur sets preliminary requirements for the implementation of Regulations (EU) No 2017/460 and (EU) No 2017/459 to be met by all transmission system operators within the meaning of section 3 para 5 Energy Industry Act.

The decisions taken fall within the competence of the Bundesnetzagentur in accordance with section 29(1) Energy Industry Act in conjunction with section 56 first sentence para 2, second and third sentences Energy Industry Act in conjunction with Article 6(11) and Article 7(3) of Regulation (EC) No 715/2009 in conjunction with Article 4(1), Article 5(1), Article 6(1) and (4)(a), (b) and (c), Article 10(7), Article 26(1), Article 27(1), Article 29 and Article 30(1) of Regulation (EU) No 2017/460, section 30(2) para 7 GasNEV, section 32(1) para 11 ARegV in conjunction with section 28 first sentence para 3, 4 ARegV and Article 22(1) of Regulation (EU) No 2017/459. The competence of the Ruling Chamber derives from section 59(1) first sentence Energy Industry Act.

2 According to operative provision 1 the Bundesnetzagentur shall carry out the economic test for each offer level of an incremental capacity project in accordance with Article 22 of Regulation (EU) No 2017/459.

3 This decision is based on section 29(1) Energy Industry Act in conjunction with section 56 first sentence para 2, second and third sentences Energy Industry Act in conjunction with Article 22(1) of Regulation (EU) No 2017/459. Accordingly, the national regulatory authority may decide whether the economic test for each offer level of an incremental capacity project as described in Article 22 of Regulation (EU) No 2017/459 shall be carried out by the transmission system operator(s) or by the national regulatory authority. The Bundesnetzagentur has exercised the discretion granted to it in that it shall carry out the economic test described in Article 22 of Regulation (EU) No 2017/459.

4 The Bundesnetzagentur can understand the points raised in the comments made by the transmission system operators and, for the reasons given in the comments, considers it necessary to carry out the economic test in close consultation with and with close involvement of the transmission system operators. However, the Bundesnetzagentur shall refrain from including a joint economic test in an operative provision for the following two reasons: carrying out the economic test jointly is firstly not prescribed in the wording of Article 22(1) of Regulation (EU) No 2017/459 and, secondly, is not considered to be useful by the Bundesnetzagentur. In order to ensure that legal certainty and security of investment are achieved within the short deadlines stipulated in Article 11(10) and Article 29(3) of Regulation (EU) No 2017/459, the Bundesnetzagentur considers it necessary for there to be unequivocal clarity as to who makes the final decision in the event of disagreements. The Bundesnetzagentur considers this a particular necessity because often more than one transmission system operator is involved in one and the same project. In addition, the Bundesnetzagentur deems it useful for the economic

test to be carried out by an independent body tasked with balancing the interests of all involved parties in an independent and transparent way. The Bundesnetzagentur is of the opinion that the approval procedure according to Article 28(1) of Regulation(EU) No 2017/459, which among other things deals with the parameters of the economic test, already formally ensures that the interests of the transmission system operators are taken into account when the economic test is carried out. In the opinion of the Bundesnetzagentur, all fundamental issues related to the economic test must be clarified as part of the above procedure at the latest.

- 5 However, since Article 27(3) of Regulation (EU) No 2017/459 stipulates that a consultation on a cost estimate and the f-factor shall take place earlier, during the planning phase, the Bundesnetzagentur plans to develop the methodology for the economic test calculations (in particular calculation of the individual present values of the estimated increase in the allowed revenue that is attributable to the incremental capacity of a respective offer level) jointly with the transmission system operators in advance of the granting of approval and to convert the methodology into a calculation tool.
- 6 With respect to the eventual implementation of the economic test itself, the Bundesnetzagentur plans to arrange a detailed consultation process with the transmission system operators to confirm the result of the economic test. In this connection the Bundesnetzagentur would like to clarify that operative provision 1 does not cover the publication of the fulfilment of the criteria for the repetition of an auction in accordance with Article 29(3) Regulation (EU) No 2017/459 nor the publication of the results of the economic test in accordance with Article 11(10) second and third sentences Regulation (EU) No 2017/459. Publication remains a matter for the transmission system operators.
- 7 The decision pursuant to section 29(1) Energy Industry Act in conjunction with section 56 first sentence para 2, second and third sentences Energy Industry Act in conjunction with Article 10(2)(a), (3) and (4) of Regulation (EU) No 2017/460 on the separate application of the reference price methodology within an entry-exit system, as envisaged in operative provision 1 in the consultation version, has been deleted. The decision on whether the methodology should be applied jointly or separately shall be consulted on and taken at a later date together with the decision on a compensation mechanism in accordance with Article 10(3) of Regulation (EU) No 2017/460. This will also be linked to references to the procedural steps for the reference price methodology, the compensation mechanism and the pricing of capacity at virtual interconnection points. In order to ensure that the collection of data in this context is as broad as possible, the obligations to report data referred to in operative provision 7 were extended accordingly.
- 8 The directives in operative provisions 2 and 3 are issued on the basis of section 29(1) Energy Industry Act in conjunction with section 56 first sentence para 2, second and third sentences

Energy Industry Act in conjunction with Article 5(1), Article 6(1), Article 10(7), Article 26(1) and Article 27(1) of Regulation (EU) No 2017/460.

- 9 Operative provisions 2 and 3 determine that the Bundesnetzagentur shall carry out the cost allocation assessment according to Article 5 of Regulation (EU) No 2017/460 and publish it as part of the final consultation referred to in Article 26 of Regulation (EU) No 2017/460, and that the Bundesnetzagentur shall carry out the final consultation itself according to Article 26 of Regulation (EU) No 2017/460 and send the consultation documents to the agency.
- 10 Within the scope of the discretion granted to the Bundesnetzagentur, a central, uniform consultation by the Bundesnetzagentur was deemed expedient. This is particularly the case against the background of the efficiency-enhancing pooling of procedural steps in the event of a large number of transmission system operators having to be involved and the strict time limits set in Article 27(4) of Regulation (EU) No 2017/460. As the Bundesnetzagentur's ultimate decision in accordance with Article 27(4) of Regulation (EU) No 2017/460 has a direct chronological link with the end of the consultation referred to in Article 26 of Regulation (EU) No 2017/460, a procedure uniformly established by the Bundesnetzagentur is preferable.
- 11 The final consultation referred to in Article 26 of Regulation (EU) No 2017/460 may be conducted by the national regulatory authority, regardless of whether the reference price methodology is applied jointly or separately, Article 10(7) first and second sentences of Regulation (EU) No 2017/460. A preliminary ruling on the question of joint or separate application of the reference price methodology would only be necessary in the case of a consultation by the transmission system operators.
- 12 The directives in operative provision 4 are issued on the basis of section 29 (1) Energy Industry Act in conjunction with section 56 first sentence para 2, second and third sentences Energy Industry Act in conjunction with Article 6(4)(a), (b) and (c) of Regulation (EU) No 2017/460.
- 13 Adjustments in accordance with Article 6(4)(c) of Regulation (EU) No 2017/460 are necessary because only forecasted daily average contracted capacities are used in the reference price methodology calculations, with no account being taken for example of adjustments according to Article 9(1) of Regulation (EU) No 2017/460 at entry and exit points from/to storage facilities, multipliers according to Articles 13 and 14 of Regulation (EU) No 2017/460 or discounts according to Article 16 of Regulation (EU) No 2017/460 for weighting the capacities.
- 14 This aside, the transmission system operators are free to include other equalisations or rescaling pursuant to Article 6(4)(b) and (c) of Regulation (EU) No 2017/460 in the report according to operative provision 7. If an application is made for any other equalisation or adjustment, firm justification must be provided and the suitability of the equalisation or adjustment with respect to the requirements set out in Regulation (EU) No 2017/460 must be shown. The approval of these equalisations or adjustments will be the object of the decision

according to Article 27(4) of Regulation (EU) No 2017/460. The same applies to all information required for possible benchmarking in accordance with Article 6(4)(a) of Regulation (EU) No 2017/460.

- 15 Within the scope of the discretion granted to the Bundesnetzagentur, the Ruling Chamber considers an equalisation or adjustment by the transmission system operator under the supervision of the Bundesnetzagentur to be appropriate for the purpose of quick calculation of tariffs. The equalisation at biogas entry points included in the consultation version in point 4 was deleted. Instead the calculation of tariffs at biogas entry points is now considered to be part of the proposed reference price methodology.
- 16 The decision pursuant to operative provision 5 on the reference price methodology proposed for the consultation is based on section 29(1) Energy Industry Act in conjunction with section 56 first sentence para 2, second and third sentences Energy Industry Act in conjunction with Article 6(1) and Article 26(1) of Regulation (EU) No 2017/460 and on section 29(1) Energy Industry Act in conjunction with section 30(2) para 7 GasNEV.
- 17 Regulation (EU) No 2017/460 does not as such stipulate the consultation of a specific reference price methodology, instead in Article 7 of Regulation (EU) No 2017/460 limiting itself to imposing general requirements for the reference price methodology. In the event of a reference price methodology being chosen other than the capacity weighted distance reference price methodology referred to in Article 8 of Regulation (EU) No 2017/460, there is merely an obligation as laid down in Article 26(1)(a)(vi) of Regulation (EU) No 2017/460 for the proposed reference price methodology to be compared against the capacity weighted distance methodology.
- 18 Within the scope of its regulatory discretion, pursuant to section 30(2) para 7 GasNEV and Article 6(1), Article 26(1) of Regulation (EU) No 2017/460 the Ruling Chamber refrained from making it mandatory for the capacity weighted distance methodology to be used as the appropriate means of calculating the network tariffs for the final consultation in accordance with Article 26(1) of Regulation (EU) No 2017/460. The reference price methodology proposed for the final consultation referred to in Article 26 of Regulation (EU) No 2017/460 is the conversion of the revenue caps set in accordance with section 32(1) para 1 ARegV into tariffs for access to energy supply networks according to the rules stipulated in part 2(2) and (3) of GasNEV with corresponding application of sections 16, 27 and 28 GasNEV and under section 17(2) and (3) ARegV in the form of normally uniform entry tariffs for identical capacity products on the entry side and normally uniform exit tariffs for identical capacity products on the exit side (independent of distance; so-called postage stamp tariffs). This entails dividing the transmission services revenue by the daily average of the contracted capacity at all entry and exit points forecasted for the following calendar year. No capacities shall be taken into account and no entry tariffs charged for the input of biogas for the purposes of determining the reference prices.

- 19 The statutory provisions laid down in section 21(1) Energy Industry Act and the regulatory requirements laid down in sections 11 ff GasNEV in conjunction with section 17(1) second sentence ARegV provide ample scope for the tariffication methodology in the determination of the entry and exit tariffs. Section 21(1) Energy Industry Act states that tariffs for network access must be appropriate, non-discriminatory and transparent. Section 15(2) first sentence and (3) first sentence GasNEV in conjunction with section 17(1) second sentence ARegV stipulates that, if at all possible, entry and exit tariffs must be calculated according to causation following recognised principles of finance and accounting. In each case it is necessary to fulfil the requirements of ensuring security of supply and the safe operation of networks, observing the principle of non-discrimination and providing incentives for efficient use of existing transmission network capacities, section 15(2) second sentence GasNEV in conjunction with section 15(3) third sentence GasNEV in conjunction with section 17(1) second sentence ARegV.
- 20 Whereas despite these provisions in the case of exit points according to section 15(6) first sentence GasNEV in conjunction with section 17(1) second sentence ARegV uniform charges in the form of postage stamp tariffs are perfectly possible on the exit side, section 15(4) first sentence GasNEV in conjunction with section 17(1) second sentence ARegV requires mutually independent tariffs on the entry side as a general principle. However, irrespective of the above, according to section 15(4) third sentence GasNEV in conjunction with section 17(1) second sentence ARegV uniform tariffs can be set for groups of entry points provided that capacity use at different points within a specific group does not result in considerable differences in the strain on the transmission network. Based on the information currently available, there are no such considerable differences in the strain on transmission networks, so uniform tariffs can also be set on the entry side. This is also in line with recognised business management procedures within the meaning of section 15(2) first sentence GasNEV in conjunction with section 17(1) second sentence ARegV because it is usually not possible to apportion the network costs or revenues that have to be covered by entry tariffs any more precisely to individual entry points.
- 21 The decision pursuant to operative provision 5 merely constitutes a proposal for a reference price methodology to be used in the consultation, regardless of whether this methodology is ultimately applied separately or jointly in accordance with Article 10(1) and (2) of Regulation (EU) No 2017/460 and regardless of which compensation mechanism is established in accordance with Article 10(3) of Regulation (EU) No 2017/460.
- 22 Within the scope of the discretion granted to the Bundesnetzagentur it was decided that the postage stamp tariffication methodology shall be determined as the reference price methodology proposed for the final consultation according to Article 26 of Regulation (EU) No 2017/460. The postage stamp tariffication methodology has become established as a uniformly applied, appropriate tariffication methodology among most transmission system operators.

- 23 Within the framework of the consultation and of the decision according to Article 27(4) of Regulation (EU) No 2017/460 it will be necessary to examine whether this methodology meets the requirements of Article 7 of Regulation (EU) No 2017/460 in particular. Article 26(1)(a)(vi) of Regulation (EU) No 2017/460 will ensure an open and transparent comparison of the postage stamp reference price methodology against the capacity weighted distance methodology.
- 24 Furthermore, in accordance with section 30(2) para 7 GasNEV, the regulatory authority may issue determinations in accordance with section 29 Energy Industry Act to ensure appropriate setting of network tariffs pursuant to section 15(2) to (7) GasNEV, including any business management procedures to be applied, also in accordance with section 20(1) GasNEV. The decision taken here serves as preparation for this determination by presenting a specific tariffication methodology for consultation.
- 25 No entry tariffs shall be set for the input of biogas, in conformance with section 19(1) third sentence GasNEV. Because as a result no reference prices are to be determined at these points, it is not necessary to include the corresponding entry capacities in the postage stamp reference price methodology.
- 26 Whereas the reference price methodology pursuant to Article 3 second sentence paras 1 and 2 of Regulation (EU) No 2017/460 results in reference prices for firm capacities with a duration of one year and Regulation (EU) No 2017/460 proposes various adjustments in Article 6(4), Article 9(1) and (2) and Article 13 to 16 of Regulation (EU) No 2017/460, Article 4(2) of Regulation (EU) No 2017/460 is the only provision on the pricing of conditional firm capacity products. Within the framework of the consultation according to Article 26(1) of Regulation (EU) No 2017/460 and within the scope of the decision according to Article 27(4) of Regulation (EU) No 2017/460 it will be necessary to examine whether this pricing of conditional firm capacity products is compatible with the provisions of Regulation (EU) No 2017/460. To this end, the discounts resulting from the given conditions must be entered in the data entry form for each entry and exit point. The report must explain in detail the conditions and their background and the grounds for the discounts. In addition to the special form of network usage in the form of short-distance tariffs as provided for in section 20(1) GasNEV, this includes in particular capacity with conditional firmness and allocability, temperature-dependent capacity, firm capacity with restricted allocability and firm, dynamically allocable capacity.
- 27 The decision pursuant to operative provision 6 on the non-transmission services proposed for the consultation is based on section 29(1) Energy Industry Act in conjunction with section 56 sentence 1 para 2, first and second sentences Energy Industry Act in conjunction with Article 4(1) and Article 26(1) of Regulation (EU) No 2017/460.
- 28 In order to prepare for the consultation in accordance with Article 26(1) of Regulation (EU) No 2017/460 it is necessary to classify the regulated services provided by transmission system operators as either transmission services or non-transmission services. In addition to the

definition of transmission services given in Article 3 second sentence para 12 of Regulation (EU) No 2017/460 and the definition of non-transmission services given in Article 3 second sentence para 15 of Regulation (EU) No 2017/460, the relevant criteria in this context are those stated in Article 4(1)(a) and (b) of Regulation (EU) No 2017/460.

- 29 Transmission services are the regulated services that are provided by the transmission system operator within the entry-exit system for the purpose of transmission, Article 3 second sentence para 12 of Regulation (EU) No 2017/460. Transmission tariffs are the charges payable by network users for transmission services provided to them, Article 3 second sentence para 7 of Regulation (EU) No 2017/460. According to Article 3 second sentence para 15 of Regulation (EU) No 2017/460, non-transmission services are the regulated services other than transmission services and other than services regulated by Regulation (EU) No 312/2014 that are provided by the transmission system operator. Non-transmission tariffs are the charges payable by network users for non-transmission services provided to them, Article 3 second sentence para 13 of Regulation (EU) No 2017/460. In addition, Article 4(1) of Regulation (EU) No 2017/460 defines further criteria for transmission services and non-transmission services. A given service is considered to be a transmission service if costs of the service are caused by the cost drivers of technical or forecasted contracted capacity and distance and the costs of such service are related to the investment in and operation of the infrastructure which is part of the regulated asset base for the provision of transmission services. Where any of the criteria are not complied with, a given service may be attributed to either transmission or non-transmission services in accordance with Article 4(1) second sentence of Regulation (EU) No 2017/460. This is subject to the findings of the periodic consultations in accordance with Article 26 and 27 of Regulation (EU) No 2017/460 and decisions by the national regulatory authority.
- 30 In order to enable this consultation to be carried out, in accordance with operative provision 6 meter operation, which also includes metering, the biogas charge according to section 20b GasNEV, the market area conversion charge according to section 19a(1) Energy Industry Act and the alternative nomination procedure according to section 15(3) GasNZV are classified as non-transmission services for the purpose of the consultation. Whether these and other services are classified as transmission services or non-transmission services according to the stated criteria and definitions is a matter for the final decision according to Article 4(1) and Article 27(4) of Regulation (EU) No 2017/460.
- 31 The provisions in operative provision 7 are based on section 29(1) Energy Industry Act in conjunction with section 32(1) para 11 in conjunction with section 28 first sentence paras 3 and 4 ARegV, section 30(2) para 7 GasNEV and on section 29(1) Energy Industry Act in conjunction with section 56 first sentence para 2, second and third sentences Energy Industry Act in conjunction with Article 26(1) of Regulation (EU) No 2017/460.

- 32 The decisions pursuant to operative provisions 2 and 3 are associated with the fact that although the burden on the transmission system operators is reduced by the removal of the obligation to carry out cost allocation assessments in accordance with Article 5 of Regulation (EU) No 2017/460 and the final consultation in accordance with Article 26 of Regulation (EU) No 2017/460, the documents that the transmission system operators are required to submit in accordance with operative provision 7 are necessary for the corresponding procedural steps that the Bundesnetzagentur has to carry out.
- 33 Accordingly, transmission system operators are obliged to submit all completed documents necessary for the cost allocation assessments according to Article 5 of Regulation (EU) No 2017/460 and for assessment of the final consultation according to Article 26 of Regulation (EU) No 2017/460 to the Bundesnetzagentur by 31 January 2018. This opens up the possibility for the obligations laid down in this Decision to be enforced, after an appropriate warning, by the imposition of a penalty payment pursuant to section 94 Energy Industry Act.
- 34 In order to ensure speedy analysis of the information provided, the documents required for the analysis must be sent electronically in accordance with section 29(1) Energy Industry Act in conjunction with section 32(1) para 11 in conjunction with section 28 first sentence para 3 and 4 ARegV.
- 35 Determination of the scope of data to be collected in accordance with section 28 paras 3 and 4 ARegV is based on section 29(1) Energy Industry Act in conjunction with section 32(1) para 11 in conjunction with section 28 first sentence para 3 and 4 ARegV. The transmission of data is necessary in order to ensure that there is a sufficient amount of data for the cost allocation assessment in accordance with Article 5 of Regulation (EU) No 2017/460 and the final consultation in accordance with Article 26 of Regulation (EU) No 2017/460. In addition, it is essential for the data to be available in a format that is as structured and as uniform as possible in order to ensure and simplify the analysis of the data by the Bundesnetzagentur. Further requirements regarding appropriate determination of network tariffs in line with European law are set on the basis of section 29(1) Energy Industry Act in conjunction with section 30(2) para 7 GasNEV. In order to assess whether the tariffs are determined appropriately and in line with European law through Regulation (EU) No 2017/460, it is necessary to collect all the information specified in Article 26(1) of Regulation (EU) No 2017/460 to conduct the consultation.
- 36 These provisions are applied to the consultation in accordance with Article 26 of Regulation (EU) No 2017/460 in advance of the decision pursuant to Article 27(4) of Regulation (EU) No 2017/460, which in accordance with Article 27(5) of Regulation (EU) No 2017/460 does not take effect with respect to tariffication until 1 January 2020, such that until that time the previous tariffication methodology by transmission system operators remains in place. Thus reference must be made in particular to the continuously updated information from the Ruling Chamber on the calculation of tariffs in accordance with part 2(2) and (3) GasNEV and the documentation.

- 37 Insofar as operative provision 7 specifies that the documents shall be submitted in German and in English, this decision is based on Article 26(1) of Regulation (EU) No 2017/460 and section 32(1) para 11 in conjunction with section 28 first sentence paras 3 and 4 ARegV. According to Article 26(1) of Regulation (EU) No 2017/460, therefore, it would have been entirely feasible to require the addressees to conduct the entire consultation including the preparation of consultation documents in English. Although according to Article 26(1) of Regulation (EU) No 2017/460 the Bundesnetzagentur shall carry out the final consultation itself, section 32(1) para 11 ARegV allows the Bundesnetzagentur to set requirements on among other things the amount and the format of data which according to section 28 paras 3 and 4 ARegV are needed to examine the network tariffs according to section 17 ARegV. Within the European context this also includes the language used for the documents to be submitted, as derived directly from Article 26(1) of Regulation (EU) No 2017/460. There are no clear indications that the transmission system operators should not be able to submit the documents in English or that this constitutes an undue burden. After this determination enters into force the Bundesnetzagentur shall provide English translations of the determination and the annexes.
- 38 In accordance with section 29(1) Energy Industry Act in conjunction with section 32(1) para 11, section 28 first sentence paras 3 and 4 ARegV, the Bundesnetzagentur can also make decisions on the design of the data collection and data transmission process, in particular relating to the form of information to be transmitted to it. In exercising this power the Bundesnetzagentur makes it mandatory for the XLSX file that it provides on the internet to be used for completing and transmitting the data entry form. The provision of this uniform data format makes for simplified data entry on the basis of a user-friendly user interface. The data format also ensures that uniform data sets are produced within the respective procedures and is thus an essential prerequisite for swift and reliable performance of the cost allocation assessment according to Article 5 of Regulation (EU) No 2017/460 and the final consultation according to Article 26 of Regulation (EU) No 2017/460.
- 39 The data entry form must be fully and correctly completed with no changes to its structure – for example by unduly inserting or removing individual spreadsheets, columns or rows – before being sent to the Bundesnetzagentur via the Energiedaten-Portal. The files are solely entry forms, made available in write-protected format. This is the only way to ensure swift and reliable further analysis, as has been shown in particular by experience from previous gas network tariff approval procedures and revenue cap determination procedures. The instruction to use the Energiedaten-Portal provided by the Bundesnetzagentur for the transmission of data facilitates the error-free and structured return of data to the greatest extent possible. Written notifications pertaining to changes to individual fields of a data entry form or the sending of parts of a form or a different data entry form by email or on data media will not satisfy the necessary minimum requirements and cannot be taken into consideration for technical and administrative reasons. In the event of a failure to comply

with the above-mentioned obligations, the Bundesnetzagentur may also exercise the powers according to section 94 Energy Industry Act. Submitters should not send a paper printout of the data entry form in addition.

40 Insofar as any other files need to be submitted electronically, they must be in a standard format (PDF, Word or similar) and not have any security restrictions (eg copy protection). The instruction rules out the submission of files with security restrictions that ostensibly prevent further processing.

41 The power to collect data also derives from directly applicable provisions under European law in Article 26(1) of Regulation (EU) No 2017/460. Where the regulatory authority decides to carry out the consultation referred to in Article 26(1) of Regulation (EU) No 2017/460 itself, the logical conclusion is that a data set must first be requested from the relevant transmission system operators to enable the consultation to take place.

42 The Bundesnetzagentur shall review the information in the documents, carry out its own calculations based on the data and add its own deliberations to the documents, for instance on the assessment of the proposed reference price methodology according to Article 7 of Regulation (EU) No 2017/460. Prior to publication in the form of final consultation documents, the affected transmission system operators shall be given the opportunity to comment.

43 Operative provision 8 stipulates that the respective transmission system operators must publish the information referred to in Articles 29 and 30 of Regulation (EU) No 2017/460 in compliance with the requirements set out in Articles 31 and 32 of Regulation (EU) No 2017/460.

44 The decision is based on Article 29 and Article 30(1) of Regulation (EU) No 2017/460. Accordingly, the publication obligations pursuant to Articles 29 and 30 of Regulation (EU) No 2017/460 can be imposed on the transmission system operators. Within the scope of the discretion granted to the Bundesnetzagentur it was considered appropriate for the publication of transmission system operator specific data to be decentralised. It is the network operators who have the relevant data at their disposal, so interposition of the authority would be an unnecessary intermediate step. In addition, Article 36(1) of Regulation (EU) No 2017/460 stipulates that ENTSOG must ensure that all relevant data pursuant to Articles 29 and 30 of Regulation (EU) No 2017/460 to be submitted by the transmission system operators is complete and correct. To this end, in accordance with Article 36(2) of Regulation (EU) No 2017/460 the transmission system operators must send all necessary information to ENTSOG in consideration of Articles 29 and 30 of Regulation (EU) No 2017/460. Against this background, direct publication by the transmission system operators is preferable. Notwithstanding the above, the Bundesnetzagentur shall check the completeness and correctness of the network operator information to be published. Article 31(1) of Regulation (EU) No 2017/460 further ensures that the published information in each case shall be linked via a central platform.

- 45 The information on the entry-exit split in accordance with Article 30(1)(b)(v)(2) of Regulation (EU) No 2017/460 shall initially be published for each transmission system operator separately. No different publication obligations are permissible until Article 10(8) of Regulation (EU) No 2017/460 enters into force on 31 May 2019, depending on the decision to apply the reference price methodology either jointly or separately.
- 46 Annex 1 and the XLSX file ("BNetzA_BK9-17-609.xlsx") published on the internet form part of this Decision.
- 47 A separate notice regarding the costs will be issued in accordance with section 91 Energy Industry Act.
- 48 As the determination is directed at all transmission system operators within the meaning of section 3 para 5 Energy Industry Act, pursuant to section 73(1a) first sentence Energy Industry Act the Ruling Chamber replaces notification according to section 73(1) first sentence Energy Industry Act with public notice of the determination. According to section 73(1a) second sentence Energy Industry Act this public notice is effected by publication of the operative part of the determination, the information on rights of appeal and a reference to the publication of the full decision on the regulatory authority's website in the Official Journal of the Bundesnetzagentur. In accordance with section 73(1a) third sentence Energy Industry Act the determination is considered to have been served as of the date two weeks after the publication in the Official Journal of the regulatory authority.

Information on rights of appeal

An appeal may be filed against this decision within one month of service of the decision. The appeal must be submitted in writing to the Bundesnetzagentur, Tulpenfeld 4, 53113 Bonn, Germany. It is sufficient if the appeal is received by the Oberlandesgericht (Higher Regional Court) Düsseldorf, Cecilienallee 3, 40474 Düsseldorf, Germany within the specified period.

The appeal must be accompanied by a written statement setting out the grounds of appeal. The written statement must be provided within one month of filing the appeal; this deadline may be extended by the court of appeal's presiding judge upon request. The statement of grounds must state the extent to which the decision is being contested and its modification or revocation sought and must indicate the facts and evidence on which the appeal is based. The appeal and the written statement of grounds must be signed by a lawyer.

The appeal has no suspensory effect (section 76(1) Energy Industry Act).

Bonn, 19 July 2017

Chair

Vice Chair

Vice Chair

Helmut Fuß

Dr Jörg Mallossek

Anne-Christine Zeidler