Bundesnetzagentur

**Ruling Chamber 9**

BK9-18/612

# DECISION

In the administrative proceedings pursuant to

section 29(1) of the Energy Industry Act (EnWG) in conjunction with section 56(1) first sentence para 2, second and third sentences EnWG in conjunction with Article 6(11) and Article 7(3) of Regulation (EC) No 715/2009 in conjunction with Article 41(6)(a) of Directive 2009/73/EC in conjunction with Article 28 of Regulation (EU) 2017/460

concerning the determination of the level of multipliers, the determination of a discount at entry points from LNG facilities, and at entry points from and exit points to infrastructure developed with the purpose of ending the isolation of Member States in respect of their gas transmission systems and the determination of the level of discounts for interruptible standard capacity products at all interconnection points ("MARGIT")

Party summoned:

Gazprom Export LLC, Ostrovskogo Sq. 2a Litera "A", St. Petersburg, 191023 Russia, represented by its Director General, Elena Burmistrova,

- Party summoned 1)

Uniper Global Commodities SE, Holzstraße 6, 40221 Düsseldorf, legally represented by its management board,

- Party summoned 2) -

Legal representatives of the party summoned: Gleiss Lutz Hootz Hirsch PartmbB Rechtsanwälte, Steuerberater (Sitz Stuttgart, AG Stuttgart PR 136)

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

represented by

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| the Chair | Helmut Fuß, |
| the Vice Chair | Dr. Ulrike Schimmel |
| and the Vice Chair | Anne Zeidler |

decided on 29 March 2019:

1. The following determinations in this Decision are effective from 1 January 2020 to 31 December 2020.
2. For the conversion from yearly standard capacity products to non-yearly standard capacity products, a multiplier is to be applied at all interconnection points. The multiplier of a within-day standard capacity product is 2.0, the multiplier of a daily standard capacity product is 1.4, the multiplier of a monthly standard capacity product is 1.25 and the multiplier of a quarterly standard capacity product is 1.1.
3. A discount at entry points from LNG facilities, and at entry points from and exit points to infrastructure developed with the purpose of ending the isolation of Member States in respect of their gas transmission systems is not applicable.
4. Reserve prices for standard capacity products for interruptible capacity at interconnection points must be calculated by multiplying the reserve prices for the respective standard capacity products for firm capacity calculated as set out in Articles 14 and 15 of Regulation (EU) 2017/460 and Determinations BK9-18/610-NCG and 611-GP ("Regent") by the difference between 100% and the level of an ex-ante discount applicable at every interconnection point for the respective standard capacity product in accordance with Annex I.
5. The right to order payment of costs is reserved.

## Rationale

### I.

1 The Ruling Chamber has opened own-initiative proceedings for the determination of the level of multipliers, the level of any discount at entry points from LNG facilities, and at entry points from and exit points to infrastructure developed with the purpose of ending the isolation of Member States in respect of their gas transmission systems, and the level of discounts for interruptible standard capacity products at all interconnection points.

2 Notification of the opening of proceedings was given in Official Gazette 05/2018 of 14 March 2018 and simultaneously on the Bundesnetzagentur's website.

3 The background to these proceedings is the network code on harmonised transmission tariff structures for gas (Regulation (EU) 2017/460), which entered into force on 6 April 2017 and which constitutes directly applicable European law yet also requires several implementing acts from the national regulatory authority. These acts need to undergo a comprehensive consultation process.

4 1. Pre-consultation

The draft decision in German was published on the Bundesnetzagentur's website on 15 June 2018 for pre-consultation. The publication was accompanied by a brief statement that the final consultation required under Article 28(1) and Article 26(1) of Regulation (EU) 2017/460 would begin and run for two months as soon as an English version had also been published on the website and in the Official Gazette. Legally binding, however, is solely the German version.

5 This publication and the final consultation, by analogy with section 73(1a) first sentence EnWG and section 28(2) para 4 of the Administrative Procedure Act (VwVfG), take the place of the individual hearing required under section 67(1) EnWG for each person addressed.

6 15 responses to the draft determination were received. Non-confidential versions of these responses have been published on the Bundesnetzagentur website. The responses may be summarised as follows:

7 a. General

A number of respondents said that it was confusing to have several decisions implementing Regulation (EU) 2017/460 and therefore suggested that the Bundesnetzagentur could draw up an explanatory document.

8 One respondent recommended ensuring that the determination would be valid until the next motivated decision, and if necessary beyond the end of the calendar year, so as to avoid a legal vacuum in the event that a decision was delayed.

9 b. Seasonal factors

The fact that seasonal factors at cross-border interconnection points were not provided for under the MARGIT determination, but were allowed at other points under the consulted BEATE 2.0 determination, was regarded by several respondents as unequal treatment. In particular traders were in favour of not applying seasonal factors. The association of storage facility operators, INES, by contrast, called for the introduction of seasonal factors at cross-border interconnection points and LNG terminals.

10 c. Multipliers

There was a divided response to the determination of multipliers itself, depending on whether multipliers were seen as trade and market entry barriers and as a barrier to short-term gas trading or as an expression of the principle of cost-reflectivity. While one group called for multipliers to be abolished, the other group explicitly welcomed multipliers.

11 In particular the transmission system operators stated that the proposed multiplier of 1.5 for within-day standard capacity products was too low. Current evaluations showed the average duration of within-day bookings to be well below 24 hours, and this would be reinforced further with hourly pricing. Thus the multiplier for within-day capacity products should, rather, be at the upper edge of the range. The relatively low factor created an unwanted incentive to make bookings as late as possible.

12 The traders said it should be made clear that when within-day capacity products were booked, only the booked hours, ie the rest of the gas day, could be billed.

13 In addition, one respondent said that the level of the multipliers had not been sufficiently explained. Another respondent called for a clear explanation of how the multipliers were derived.

14 One respondent argued that the multipliers should not be applied to points at storage facilities, so as to highlight the importance of these facilities for the flexibility of the system.

15 Another respondent believed that the principle that, in the event of a (contractual) change to already booked capacities, the previously calculated multiplier remains unchanged, should also apply to the trading on the secondary market of part of a capacity right. It was said that the so-called vacancy costs of the part of the capacity right traded on the secondary market would already have been paid with the primary booking.

16 d. Discounts for interruptible capacity

Several respondents said that looking at past interruptions to determine the probability of interruption would not always produce appropriate results and therefore the expected interruptions should also be factored into the discount. Two respondents considered the present definition of past interruptions to be incorrect because renominations were not taken into account. One respondent also called for greater transparency regarding how the probabilities of

interruption were determined. In addition, one respondent called for a contingency mark-up higher than the proposed 10%.

17 The majority of respondents said that the same reference period should apply in both the BEATE 2.0 and the MARGIT determination for calculating the discount.

18 The transmission system operators argued against setting a separate discount for each standard capacity product. This would not conflict with Article 16 of Regulation (EU) 2017/460, since the type of standard capacity product referred not to the duration of a product but to the fact that in some countries there were different types of standard capacity products for interruptible capacity. Reference was made here to ENTSO-E's implementation guidance document. It was argued that different discounts led to a lack of transparency, a large amount of work for network operators and shippers, and possibly inconsistent and implausible results. In this connection, it was said that the probability of interruption did not depend on the type of standard capacity products booked for a specific day, but on the individual network situation. The differentiation also meant that interruptible daily capacity products would tend to be granted a higher discount than long-term products, which was contrary to the objective of the determined multipliers.

19 The vast majority of respondents welcomed standardising the discounts for each standard capacity product at market area borders. One respondent said it was not logical that this would take place before virtual interconnection points were introduced at the market area borders.

20 Both transmission system operators and other stakeholders pointed out that a differentiation should be made between L-gas and H-gas when standardising the factors at the market area borders. It was argued that it was important for shippers to know whether L-gas or H-gas capacity was being interrupted, as it affected supply to different customer groups. It was therefore necessary to calculate separate probabilities of interruption for each gas quality. This was also taken into account in the implementation of virtual interconnection points in accordance with Article 19(9) of Regulation (EU) 2017/459, which provides for the establishment of two separate virtual interconnection points.

21 One respondent called for a separate, higher factor *A* for storage connection points to adequately reflect the value disadvantage of interruptible capacity at storage facilities.

22 e. <u>Discounts at LNG terminals</u>

Two respondents were in favour of already setting discounts for LNG terminals. It was said that there were currently several projects for LNG terminals and that implementation of these projects was highly dependent on the economic framework conditions such as the network tariffs. With a view to achieving a diversified and secure natural gas supply, effective use should already be made of the existing opportunities to optimise the economic framework for LNG facilities.

By contrast, one respondent argued against applying a discount at LNG terminals, as for cross-border interconnection points.

23 2. Final consultation

24 The draft decision in German and in English was published on the Bundesnetzagentur website on 17 October 2018 for final consultation. The publication was accompanied by a brief statement that the consultation pursuant to Article 28(1) and Article 26(1) of Regulation (EU) 2017/460 would run for two months. Legally binding, however, is solely the German version. At the same time, the consultation documents were submitted to the Agency within the meaning of Article 1(1) of Regulation (EC) No 713/2009 (hereinafter "ACER"). The consultation was scheduled to last for two months. The national regulatory authorities of the neighbouring Member States were informed of the impending start of the consultation in a letter dated 11 October 2018.

25 On 7 November 2018, a workshop took place at the Bundesnetzagentur for the BK9-18/607 (AMELIE), BK9-18/608 (BEATE 2.0), BK9-18/610-NCG (REGENT-NCG), BK9-18/611-GP (REGENT-GP) and BK9-18/612 (MARGIT) determination proceedings. Further details on this workshop have been published online.

26 Comments made by market participants in the final consultation on the draft determination were published on the Bundesnetzagentur website on 17 January 2019. Market participants largely repeated and expanded on the comments they had made in the pre-consultation.

27 The Bundesnetzagentur on 7 June 2018 notified the regulatory authorities of the federal states of the opening of proceedings in accordance with section 55(1) second sentence EnWG and gave the authorities the opportunity to comment on the intended determination in accordance with section 58(1) second sentence EnWG. The Bundeskartellamt on 7 June 2018 was likewise given the opportunity to state its views on the intended determination in accordance with section 58(1) second sentence EnWG.

28 The Committee of representatives of the federal state regulatory authorities on 26 April 2018 was given the opportunity to comment in accordance with section 60a(2) first sentence EnWG. Additionally, the texts of the determination with annexes were transmitted to the Committee on 7 June 2018 for deliberation in the Committee meeting of 14 June 2018.

29 With the decisions of 20 August 2018 and 22 November 2018, the parties 1) and 2) were summoned to the proceedings in response to their application.

30 For further details, reference is made to the content of the implementing acts.

**II.**

31 In accordance with Article 41(6)(a) of Directive 2009/73/EC in conjunction with Article 28(1) of Regulation (EU) 2017/460, the Bundesnetzagentur is issuing a motivated decision on all points mentioned in Article 28(1) sentence 1 of Regulation (EU) 2017/460 by means of this determination.

32 The decisions taken fall under the responsibility of the Bundesnetzagentur as provided for by section 29(1) EnWG in conjunction with section 56(1) first sentence para 2, second and third sentences EnWG in conjunction with Article 6(11) and Article 7(3) of Regulation (EC) No 715/2009 in conjunction with Article 41(6)(a) of Directive 2009/73/EC in conjunction with Article 28(1) of Regulation (EU) 2017/460. The responsibility of the Ruling Chamber ensues from section 59(1) first sentence EnWG.

33 Article 2(1) first sentence of Regulation (EU) 2017/460 shows that the consultation and decision pursuant to Article 28(1) of Regulation (EU) 2017/460 refer to interconnection points, ie to cross-border and market area interconnection points of transmission system operators (see Article 3 para 2 of Regulation (EU) 2017/459). Pursuant to Article 2(1) second sentence of Regulation (EU) 2017/460, the regulatory authority can take a decision that the provisions of Chapter III also apply to entry points from third countries or exit points to third countries, or both. In its determination of 14 August 2015 (BK9-15/001 – "KARLA Gas 1.1"), the Bundesnetzagentur's Ruling Chamber 7 ruled that the provisions of the Network Code on Capacity Allocation Mechanisms (CAM) also applied to entry points from third countries and exit points to third countries within the meaning of Article 2(1) second sentence of the NC CAM from 1 November 2015. The consultation and decision pursuant to Article 28 of Regulation (EU) 2017/460 therefore also refer to these points.

34 Pursuant to Article 28(1) of Regulation (EU) 2017/460, the national regulatory authority must consider the positions of national regulatory authorities of directly connected Member States in its decision. No responses from other national regulatory authorities were received by the Bundesnetzagentur.

1. Period of validity

35 The requirements are to be implemented pursuant to Operative Part 1 as from 1 January 2020 and hence included in the publication referred to in Article 29 of Regulation (EU) 2017/460. Under Article 38 of Regulation (EU) 2017/460, Chapters II, III and IV of the Regulation will apply as from 31 May 2019; thus Articles 13 to 16 of the Regulation are also covered, coming as they do under Chapter III and forming the basis of this decision. Accordingly, the transmission system operators must apply the motivated decision pursuant to Article 28 of Regulation (EU) 2017/460 for the first time in respect of the tariff year 2020, ie from 1 January 2020. In

accordance with Article 28(2) of Regulation (EU) 2017/460, the subsequent consultations will be conducted every tariff period as from the date of the decision. After each consultation and as set out in Article 32(a), the national regulatory authority takes and publishes a motivated decision on the aspects referred to in Article 28(1)(a), (b) and (c). Pursuant to Article 3 second sentence paragraph 23 of Regulation (EU) 2017/460, "tariff period" means the time period during which a particular level of reference price is applicable, which minimum duration is one year and maximum duration is the duration of the regulatory period; in this case it is the calendar year. The Ruling Chamber thus takes and publishes a motivated decision on the aspects referred to in Article 28(1)(a), (b) and (c) each year and the decision is effective for a calendar year. The effectiveness of this decision thus ends at the end of the calendar year 2020.

2. Level of multipliers

36 The decision pursuant to Operative Part 1 on the level of multipliers is based on section 29(1) EnWG in conjunction with section 56(1) first sentence para 2, second and third sentences EnWG in conjunction with Article 6(11) and Article 7(3) of Regulation (EC) No 715/2009 in conjunction with Article 28(1) in conjunction with Article 13 of Regulation (EU) 2017/460.

37 Pursuant to Article 12(1) second sentence of Regulation (EU) 2017/460, for non-yearly standard capacity products, the reserve prices must be calculated as set out in Chapter III of Regulation (EU) 2017/460. With regard to the conversion of tariffs for yearly standard capacity products to tariffs for non-yearly standard capacity products, Article 13(1) of Regulation (EU) 2017/460 specifies ranges within which the multipliers must fall.

38 The multipliers determined by the Bundesnetzagentur fall within the specified ranges. For quarterly standard capacity products and monthly standard capacity products, the level of the respective multiplier must be no less than 1 and no more than 1.5, pursuant to Article 13(1)(a) of Regulation (EU) 2017/460. The multiplier of 1.1 determined for quarterly standard capacity products and the multiplier of 1.25 determined for monthly standard capacity products fall within this range. Pursuant to Article 13(1)(b) of Regulation (EU) 2017/460, for daily standard capacity products and for within-day standard capacity products, the level of the respective multiplier must be no less than 1 and no more than 3. This is the case for the multipliers chosen of 1.4 for daily standard capacity products and 2.0 for within-day standard capacity products.

39 In the event of a (contractual) change to already booked capacities or a withdrawal of capacity, the previously calculated multiplier remains unchanged, even if the original standard capacity product would fall into another category after the change or withdrawal, for example, if a previously quarterly capacity product would become a monthly capacity product. No recalculation takes place; the multiplier is applied according to which product was booked when

the contract was concluded. By contrast, for the capacity product booked for the first time after the change or withdrawal, the "new product", a multiplier corresponding to the duration of the new product must be applied. In this case, too, the multiplier is applied according to which product was booked when the contract was concluded. This provision applies to all scenarios; it therefore affects in particular the return of capacity, the trading on the secondary market of part of the capacity rights, the conversion and the (partial) termination of capacity.

40 In its decision on the level of multipliers, pursuant to Article 28(3)(a) of Regulation (EU) 2017/460 the Ruling Chamber has taken into account the following aspects in particular:

41 The selected multipliers promote short-term gas trading and also provide long-term signals for efficient investment in the transmission system. The Ruling Chamber introduced multipliers for all entry and exit points for which capacity tariffs are applied with effect from 1 January 2016 in its Determination of 24 March 2015 (ref BK9-14/608, hereinafter referred to as BEATE). The multipliers determined in this Decision correspond to the level of the multipliers determined in 2015; additionally, a multiplier for within-day standard capacity products is now introduced. Since the multipliers were introduced in 2016, it has become clear that they do not jeopardise liquidity in short-term trading, as it was neither the case that daily bookings were replaced by long-term bookings on a significant scale nor were they simply not made at all. The introduction of multipliers has not led to a reduction in trading activities in the past. There are no indications that this will change in the future. At the same time, the multipliers lead to a moderate price rise compared to the reference price so signals showing which point of the network it would be appropriate to invest in, for example because of congestion, are not obscured.

42 Moreover, the introduction of the chosen multipliers has no influence on the extent to which transmission services revenue is covered by the reference or reserve price. In particular, at the same time as this Determination, the Ruling Chamber will determine rescaling pursuant to Article 6(4)(c) of Regulation (EU) 2017/460 at all entry and exit points of transmission system operators with the aim of actually being able to recover the transmission services revenue (BK9-18/610-NCG and 611-GP).

43 The determined multipliers improve the cost-reflectivity of reserve prices by reducing cross-subsidisation between user groups caused by duration. Cost-reflectivity in tarification means in this context that the level of tariffs for using a certain capacity must reflect the costs caused by using and providing this capacity. This in turn means that the level of network tariffs to be paid by a certain user group for capacity bookings should, as far as possible, reflect the costs caused by this user group through a specific contribution based on the corresponding costs. Put simply, the principle of cost-reflectivity means that whoever has caused certain costs should themselves, as far as possible, also pay these costs in the form of the network tariffs levied on them and these costs should not be subsidised by other user groups. A network user booking non-yearly capacity of different durations causes vacancy costs. The option of non-yearly

booking allows network users to make structured bookings, ie they can book different amounts of capacity for different periods, whether within-day, daily, monthly or quarterly. If a network user books "x" amount of capacity on a particular day, month or quarter of a year, the network operator will generally keep at least this amount of capacity available (for the whole year). This applies even if the network user only books smaller amounts of capacity than "x" on the other days of the year. Moreover, it is not just one network user that books "x" amount of capacity for a quarter, a month, a single day or within-day in the course of the year, but many other network users book a certain amount of non-yearly capacity during the year as well. The network operator therefore keeps capacity available for all non-yearly capacity bookings from all network users making such bookings. The network operator incurs vacancy costs from keeping available capacity for network users with non-yearly bookings. These costs should, in accordance with the principle of cost-reflectivity, also be borne by the network users responsible for the capacity being kept available.

44 The determined multipliers will ensure that the vacancy costs in the gas network will be distributed in a largely cost-reflective manner. Network users whose non-yearly capacity bookings cause the network operator to keep certain capacity available also contribute to covering the costs incurred through the increased network tariff calculated using the multiplier. However, in the view of the Ruling Chamber, the sum of the tariffs for non-yearly capacities should be prevented from corresponding to the tariff for the yearly capacity. This would lead to the vacancy costs of the network being borne by all network users and in particular by the group of users that does not cause such costs on account of long-term capacity bookings.

45 It is appropriate to specify different multiplier values because doing so differentiates between the non-yearly capacity products in a way that appropriately reflects the different effects that the individual products have on vacancy costs. The result that the "multiplier for the within-day capacity product is higher than the multiplier for the daily capacity product is higher than the multiplier for the monthly capacity product is higher than the multiplier for the quarterly product" is due to the fact that the shorter the product duration, the greater the effects on the vacancy costs. The longer the period for which no capacity is booked, the higher the volume of vacant capacity based on a twelve-month period. The vacancy costs thus depend on the booking duration. Network users can make more structured capacity bookings if overall they book capacity for shorter periods. If, ultimately, they only book capacity specifically on a few days, they inevitably cause vacancy costs on more days. This must be taken into consideration appropriately in setting the multipliers, so that the multiplier is higher the shorter the capacity booking, in accordance with the ranking given in Operative Part 2.

46 The chosen multipliers ensure that the difference between the individual contributions to the costs is adequately expressed. This applies in particular also to the multiplier of 2.0 for within-day capacity products. The Ruling Chamber therefore takes the view that it is appropriate to

determine a higher multiplier than for daily capacity products because, according to the principles stated, the vacancy costs rise further with the option of booking within-day capacity. In particular the transmission system operators stated in their responses to the pre-consultation that the proposed multiplier of 1.5 for within-day capacity products was too low. One of the arguments put forward was that the average duration of within-day bookings in the first half of 2018 was well below 24 hours, and this would be reinforced further by applying hourly pricing to within-day capacity products. In addition, it would create an unwanted incentive for network users to make bookings as late as possible. Thus a multiplier at the upper edge of the range should be set. Other respondents, in turn, were in favour of abolishing multipliers altogether. In setting a new multiplier of 2.0, the Ruling Chamber has taken account of the fact that, contrary to its assumption in the pre-consultation, within-day capacity products do not often have a duration of a whole day or – as they are always booked for the rest of the gas day – nearly a whole day. Furthermore, the Chamber assumes that the duration of the products could decrease further as a result of hourly billing. The Ruling Chamber takes the view that the determined multiplier of 2.0 appropriately reflects this fact. In particular, the multiplier of 2.0 reconciles the conflicting interests – on the one hand, the calls from several respondents to abolish multipliers and, on the other hand, the call for a multiplier much higher than 1.5 and up to the maximum possible of 3.0.

47 The Ruling Chamber does not expect the multipliers to cause or expand physical or contractual congestion. In order to evaluate the effects of introducing multipliers on congestion, the BEATE determination requires transmission system operators to notify in writing, by 1 January each year, whether and to what extent in the previous gas year there had been excess demand or, due to long-term booking, no capacity offer at all at market area or cross-border interconnection points. The network operators must also include in their notification information about the ratio of non-yearly booking vacancies (structural vacancy) to permanent yearly bookings (capacity completely sold in the year) and permanent booking vacancies (capacity not sold throughout the whole year). An evaluation of these notifications has shown that the introduction of multipliers has not contributed to the expansion or creation of physical or contractual congestion. There are no indications that this will change in the future.

48 The chosen multipliers have no effect on cross-border gas flows. In particular, there is no discriminatory, excessive participation of the network users that depend on cross-border gas flows (ie in particular those network users which execute cross-system bookings) in the addressed vacancy costs. The intention of Determination BK9-18/608 with regard to requirements for converting yearly capacity prices into capacity prices for non-yearly capacity rights and requirements for appropriate arrangements for setting network tariffs pursuant to section 15(2) to (7) GasNEV ("BEATE 2.0") is to introduce identical multipliers for corresponding non-yearly capacity products at points other than interconnection points. Regulation (EU) 2017/460 focuses on the possibly differing (and therefore potentially discriminatory) treatment of

cross-system and intra-system network use in several provisions, for example in Article 5 on the cost allocation assessments, in Article 7(c) and (e) on the assessment of the reference price methodology and in Article 28(3)(a)(v) on the assessment of multipliers. However, no such differing requirement is made with respect to multipliers, so that the approach taken does not indicate any unacceptable effects on cross-border gas flows. For reasons of cost-reflectivity and non-discrimination, the Ruling Chamber does not judge it to be appropriate to apply lower multipliers for cross-border gas flows.

3. Calculation of reserve prices for non-yearly standard capacity products for firm capacity

49 The Ruling Chamber has not made use of the option to determine the level of seasonal factors in accordance with Article 28(1)(c). Therefore, seasonal factors are not applied in the calculation of reserve prices for non-yearly standard capacity products for firm capacity.

50 In accordance with Article 14 of Regulation (EU) 2017/460, the following calculation of reserve prices for non-yearly standard capacity products for firm capacity ensues:

- The following formula is used for quarterly standard capacity products, monthly standard capacity products and daily standard capacity products:

  $P_{st} = (M \times T / 365) \times D$

  Where:

  $P_{st}$ is the reserve price for the respective standard capacity product;

  M is the value of the multiplier for the respective standard capacity product (quarterly standard capacity product: 1.1; monthly standard capacity product: 1.25, daily standard capacity product:1.4)

  *T* is the reference price;

  *D* is the duration of the respective standard capacity product, given in gas days.

  In leap years, the number 365 in the formula is replaced by 366.

- The following formula is used for within-day standard capacity products:

  $P_{st} = (M \times T / 8760) \times H$

  Where:

  $P_{st}$ is the reserve price for the within-day standard capacity product;

  *M* is the value of the multiplier, ie 2.0;

  *T* is the reference price;

  H is the duration of the within-day standard capacity product, given in hours.

In leap years, the number 8760 in the formula is replaced by 8784.

Thus a network user booking a within-day standard capacity product only has to pay for the hours booked for the rest of the gas day, including the multiplier.

4. Level of discounts according to Article 9(2)of Regulation (EU) 2017/460

51 At entry points from LNG facilities, and at entry points from and exit points to infrastructure developed with the purpose of ending the isolation of Member States in respect of their gas transmission systems, pursuant to Article 9(2) of Regulation (EU) 2017/460 a discount may be applied to the respective capacity-based transmission tariffs for the purposes of increasing security of supply.

52 The Ruling Chamber has used its discretion to decide that such a discount will not be determined. There are currently no LNG facilities or infrastructure developed with the purpose of ending the isolation of Member States in respect of their gas transmission systems in Germany, so there is no experience in them among relevant stakeholders. In the awareness that the consultation pursuant to Article 28(1) of Regulation (EU) 2017/460 will take place each year, the Ruling Chamber has refrained from determining any discount.

5. Level of discounts for standard capacity products for interruptible capacity

53 The decision pursuant to Operative Part 4 on the level of discounts for standard capacity products for interruptible capacity is based on section 29(1) EnWG in conjunction with section 56(1) first sentence para 2, second and third sentences EnWG in conjunction with Article 6(11) and Article 7(3) of Regulation (EC) No 715/2009 in conjunction with Article 28(1) in conjunction with Article 16 of Regulation (EU) 2017/460.

54 Pursuant to Article 12(1) second sentence of Regulation (EU) 2017/460, for both yearly and non-yearly standard capacity products for interruptible capacity, the reserve prices must be calculated as set out in Chapter III of Regulation (EU) 2017/460.

55 Article 16(1) of Regulation (EU) 2017/460 lays down that the reserve prices for standard capacity products for interruptible capacity must be calculated by multiplying the reserve prices for the respective standard capacity products for firm capacity calculated as set out in Articles 14 or 15, as relevant, by the difference between 100% and the level of an ex-ante discount. As an alternative to this, in accordance with Article 16(1) of Regulation (EU) 2017/460, the national regulatory authority may decide to apply an ex-post discount. The Ruling Chamber has not made use of this option.

56 The ex-ante discount determined as per Operative Part 3 ($D_{iex\text{-}ante}$) was calculated in accordance with Article 16(1) of Regulation (EU) 2017/460 separately for each standard capacity product using the following formula:

$Di_{ex\text{-}ante} = Pro \times A \times 100\ \%$

a. *Pro* factor

57 *Pro* is the factor for the probability of interruption which is set or approved in accordance with Article 41(6)(a) of Directive 2009/73/EC pursuant to Article 28, and which refers to the type of standard capacity product for interruptible capacity.

58 The *Pro* factor is calculated for each, some or all interconnection points per type of standard capacity product for interruptible capacity offered in accordance with Article 16(3) of Regulation (EU) 2017/460. The Ruling Chamber has decided in a first step to calculate the *Pro* factor separately for each interconnection point using the prescribed formula. This approach ensures to the greatest extent possible that the probability of interruption, which can vary from point to point, is specifically reflected in the level of *Pro*. In a second step, the *Pro* calculated for each point will be standardised per standard capacity product at all entry and all exit points to the same entry-exit system or comparable systems for each gas quality (L-gas and H-gas). To do this, the weighted average of the *Pro* factors calculated per standard capacity product for all interconnection points in the respective entry-exit system is calculated. The standardisation of the *Pro* factor per standard capacity product at all entry and all exit points of the same entry-exit system or comparable systems is based on the fact that within each gas quality the affected entry and exit points are interchangeable for the network customer. Moreover, Article 21 of Regulation (EU) 2017/460 provides for a standardisation of the tariffs there.

59 The calculation of the *Pro* factor for the individual interconnection points, broken down by standard capacity product, is carried out on the basis of forecasted information related to the components of the formula below pursuant to Article 16(3) and can be found in Annex I.

$$Pro = \frac{N \times D_{int}}{D} \times \frac{CAP_{av.int}}{CAP}$$

Where:

*N* is the expectation of the number of interruptions over *D*.

$D_{int}$ is the average duration of the expected interruptions expressed in hours.

*D* is the total duration of the respective type of standard capacity product for interruptible capacity expressed in hours.

$CAP_{av.int}$ is the expected average amount of interrupted capacity for each interruption where such amount is related to the respective type of standard capacity product for interruptible capacity. The fact is taken into account in determining this value that within-day capacity will be interrupted before day-ahead capacity, day-ahead capacity before monthly capacity, monthly capacity before quarterly capacity, and quarterly capacity before yearly capacity. For

in accordance with Article 35(1) of Regulation (EU) 2017/459, the order in which interruptions are performed is determined on the basis of the contractual time stamp of the relevant transport contracts for interruptible capacity. It follows from Article 9 in conjunction with Articles 11 to 15 of Regulation (EU) 2017/459 that yearly capacity will be auctioned before quarterly capacity, quarterly capacity before monthly capacity, monthly capacity before day-ahead capacity, and day-ahead capacity before within-day capacity; given that the order of interruptions is based on the time stamp, it can therefore be assumed that capacity will be interrupted in the above order. *CAP* is the total amount of interruptible capacity for the respective type of standard capacity product for interruptible capacity.

The discount calculated using the above formula is rounded up to the full percent.

60 Expected values from N, Dint and CAPav.int contribute to the calculation of the Pro factor. The Ruling Chamber takes the view that sufficiently reliable forecast figures can only be derived from examining a period in the past. The past values can be used as the basis to indicate the probability of a future interruption. However, it is not appropriate to use a reference period that goes back too far. That could lead to distortions, for example if changes to the actual conditions at a connection point that occurred long ago (eg due to network expansion) affect the probability of interruption in the present. In addition, for reasons of practicability a reference period that is too long should not be used, because network operators cannot easily identify interruptions from the distant past. On the other hand, a reference period that is too short is not appropriate either, because of the possibility of distortions and special circumstances that occur in the short term and are not representative of the general probability of interruption. The Ruling Chamber takes the view that a reference period of three years is appropriate. The variables N, Dint and CAPav.int must therefore be calculated on the basis of interruptions in interruptible capacity over a period of three years. This reference period is expected to minimise the risk of, on the one hand, taking account of conditions that no longer correspond to the actual circumstances and, on the other, distortions caused by an insufficient and unrepresentative data basis. A reference period of three years therefore provides an appropriate balance. The last three completed gas years will be used. In derogation of this, this first consultation and decision pursuant to Article 28 of Regulation (EU) 2017/460 uses the data from the last completed gas year because there are currently no reliable and comparable values for a longer period owing to the changes resulting from the revision of the Network Code on Capacity Allocation Mechanisms in Regulation (EU) 2017/459. The Ruling Chamber will gradually extend the reference period as part of the annual consultations until it is three gas years long.

61 Since the values for N, Dint and CAPav. int are based on data referring to the past, the Ruling Chamber has included a contingency mark-up of ten percentage points in the calculation of the *Pro* factor. This ensures that the provisions of Article 16(3) of Regulation (EU) 2017/460 are applied with regard to the use of forecast values. The contingency mark-up is necessary

because a period in the past is used to calculate the probability and it cannot be guaranteed that the probability of interruption in the present can be calculated with absolute accuracy by looking at the previous year. The framework conditions could have changed, affecting the actual probability of interruption. In any case, it cannot be ruled out that the calculation would not fully correspond to the real conditions. Moreover, the values calculated for N, Dint and CAPav. int are only forecast values, indicated by past experience. The contingency mark-up thus covers any differences between the calculation based on historic data and the current situation. The wording of Article 29(b)(ii) point 3 of Regulation (EU) 2017/460 ("historical or forecasted data, or both, used for the estimation of the probability of interruption referred to in point (2)") also indicates that it is permissible to combine past and forecast values to calculate the probability of interruption appropriately.

b. Adjustment factor *A*

62 As well as *Pro*, *A* is the other factor in the calculation of the ex-ante discount. *A* is the adjustment factor which is set or approved by the regulatory authority in accordance with Article 41(6)(a) of Directive 2009/73/EC pursuant to Article 28, applied to reflect the estimated economic value of the type of standard capacity product for interruptible capacity. The Ruling Chamber sets the value of *A* for all standard capacity products at 1. This complies with Article 16(2) of Regulation (EU) 2017/460, pursuant to which *A* must be calculated for each, some or all interconnection points and must be no less than 1. While Article 16(2) of Regulation (EU) 2017/460 provides for the possibility of estimating the economic value of each standard capacity product to calculate *A*, the Ruling Chamber takes the view that it is neither necessary nor appropriate to estimate above the value of 1. An estimate relating to standard capacity products would not take into account the fact that the adjustment factor would have to have very different economic values depending on the type of network user and the purpose of the booking. In this case, differentiating purely by standard capacity product would not be an appropriate way of forming an average. There is no indication that applying the *Pro* factor in conjunction with the contingency mark-up of ten percentage points would lead to the calculation of inappropriate discounts, which would require adjustment using the adjustment factor *A*.

63 The explanation of the effects of capacity changes on multipliers given in paragraph 16 applies accordingly to the change of an interruptible standard capacity product. In this case, too, the calculation of a discount (including its level) depends on the facts at the time the contract was concluded. The discount is not subsequently lost if an interruptible standard capacity product is converted into a firm one. It remains unchanged for the period that has already expired. However, for the firm capacity product that is then booked, the network user must pay the tariff for a firm standard capacity product without the discount that results from the probability of interruption, where applicable plus a multiplier.

64 Regarding costs, a separate notice will be issued as provided for by section 91 EnWG.

65 Since the determination is issued in relation to all German transmission system operators within the meaning of section 3 para 5 EnWG, the Ruling Chamber is giving public notification of the determination in place of service pursuant to section 73(1) first sentence EnWG in accordance with section 73(1a) first sentence EnWG. Public notification is brought about under section 73(1a) second sentence EnWG by publication of the operative part of the determination, the notification of appellate remedies and a brief statement that the decision in full has been published on the regulatory authority's website in the Bundesnetzagentur's Official Gazette. Service of the determination is deemed to have taken place under section 73(1a) third sentence EnWG on the day on which two weeks have elapsed since the date of public notification in the regulatory authority's Official Gazette.

**Notification of appellate remedies**

Appeals against this Decision may be brought within one month of its service. Appeals should be filed with the Bundesnetzagentur für Elektrizität, Gas, Telekommunikation, Post und Eisenbahnen (address: Tulpenfeld 4, 53113 Bonn). It is sufficient if the appeal is received by the Higher Regional Court of Düsseldorf within the time limit specified (address: Cecilienallee 3, 40474 Düsseldorf).

The appeal must be accompanied by a written statement setting out the grounds of appeal. The written statement must be provided within one month. The one-month period begins with the filing of 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 appealed 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 does not have suspensory effect (section 76(1) EnWG).

Bonn, 29 March 2019

| Chair | Vice Chair | Vice Chair |
|---|---|---|
| Helmut Fuß | Dr. Ulrike Schimmel | Anne Zeidler |

| Net Connect Germany | | | | | | | |
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| | | | $DI_{ex\text{-}ante}$ | | | | |
| Flussrichtung am Netzkopplungspunkt<br>Flow direction at connection point | Name des angrenzenden Marktgebietes<br>Name of adjacent market area | Gasqualität<br>Gas quality | untertägige Kapazität<br>within-day capacity | Tageskapazität<br>daily capacity | Monatskapazität<br>monthly capacity | Quartalskapazität<br>quarterly capacity | Jahreskapazität<br>yearly capacity |
| Entry | Czech Balancing Zone | H-Gas | 11% | 11% | 11% | 10% | 10% |
| Exit | Czech Balancing Zone | H-Gas | 10% | 10% | 10% | 10% | 10% |
| Entry | Austrian Balancing Zone | H-Gas | 10% | 10% | 10% | 10% | 10% |
| Exit | Austrian Balancing Zone | H-Gas | 12% | 11% | 11% | 11% | 11% |
| Entry | Voralberg | H-Gas | 10% | 10% | 10% | 10% | 10% |
| Exit | Voralberg | H-Gas | 10% | 10% | 10% | 10% | 10% |
| Entry | VIP Kiefersfelden-Pfronten | H-Gas | 10% | 10% | 10% | 10% | 10% |
| Exit | VIP Kiefersfelden-Pfronten | H-Gas | 10% | 10% | 10% | 10% | 10% |
| Entry | Belgian and Luxembourg Balancing Zone | H-Gas | 10% | 10% | 10% | 10% | 10% |
| Exit | Belgian and Luxembourg Balancing Zone | H-Gas | 10% | 10% | 10% | 10% | 10% |
| Entry | Dutch Balancing Zone | H-Gas | 10% | 10% | 10% | 10% | 10% |
| Exit | Dutch Balancing Zone | H-Gas | 10% | 10% | 10% | 10% | 10% |
| Entry | Dutch Balancing Zone | L-Gas | 11% | 11% | 11% | 11% | 11% |
| Exit | Dutch Balancing Zone | L-Gas | 10% | 10% | 10% | 10% | 10% |
| Entry | Danish Balancing Zone | H-Gas | 11% | 11% | 10% | 10% | 10% |
| Exit | Danish Balancing Zone | H-Gas | 10% | 10% | 10% | 10% | 10% |
| Entry | GASPOOL Balancing Zone | H-Gas | 11% | 11% | 11% | 10% | 10% |
| Exit | GASPOOL Balancing Zone | H-Gas | 10% | 10% | 10% | 10% | 10% |
| Entry | GASPOOL Balancing Zone | L-Gas | 10% | 10% | 10% | 10% | 10% |
| Exit | GASPOOL Balancing Zone | L-Gas | 10% | 10% | 10% | 10% | 10% |
| Entry | Norwegen | H-Gas | 11% | 11% | 10% | 10% | 10% |
| Exit | Norwegen | H-Gas | 10% | 10% | 10% | 10% | 10% |
| Entry | RC Thayngen-Fallentor | H-Gas | 10% | 10% | 10% | 10% | 10% |
| Exit | RC Thayngen-Fallentor | H-Gas | 10% | 10% | 10% | 10% | 10% |
| Entry | RC Basel | H-Gas | 10% | 10% | 10% | 10% | 10% |
| Exit | RC Basel | H-Gas | 10% | 10% | 10% | 10% | 10% |
| Entry | Wallbach | H-Gas | 10% | 10% | 10% | 10% | 10% |
| Exit | Wallbach | H-Gas | 11% | 11% | 11% | 10% | 10% |
| Entry | PEG North | H-Gas | 10% | 10% | 10% | 10% | 10% |
| Exit | PEG North | H-Gas | 11% | 11% | 10% | 10% | 10% |

| Gaspool | | | | | | | |
|---|---|---|---|---|---|---|---|
| | | | $Di_{ex\text{-}ante}$ | | | | |
| Flussrichtung am Netzkopplungspunkt<br>Flow direction at connection point | Name des angrenzenden Marktgebietes<br>Name of adjacent market area | Gasqualität<br>Gas quality | untertägige Kapazität<br>within-day capacity | Tageskapazität<br>daily capacity | Monatskapazität<br>monthly capacity | Quartalskapazität<br>quarterly capacity | Jahreskapazität<br>yearly capacity |
| Entry | Polish E-gas Balancing Zone | H-Gas | 10% | 10% | 10% | 10% | 10% |
| Exit | Polish E-gas Balancing Zone | H-Gas | 10% | 10% | 10% | 10% | 10% |
| Entry | YAMAL (TGPS) Pipeline | H-Gas | 10% | 10% | 10% | 10% | 10% |
| Exit | YAMAL (TGPS) Pipeline | H-Gas | 10% | 10% | 10% | 10% | 10% |
| Entry | Czech Balancing Zone | H-Gas | 10% | 10% | 10% | 10% | 10% |
| Exit | Czech Balancing Zone | H-Gas | 11% | 11% | 11% | 11% | 10% |
| Entry | Belgian and Luxembourg Balancing Zone | H-Gas | 10% | 10% | 10% | 10% | 10% |
| Exit | Belgian and Luxembourg Balancing Zone | H-Gas | 11% | 11% | 11% | 10% | 10% |
| Entry | Dutch Balancing Zone | H-Gas | 10% | 10% | 10% | 10% | 10% |
| Exit | Dutch Balancing Zone | H-Gas | 10% | 10% | 10% | 10% | 10% |
| Entry | Dutch Balancing Zone | L-Gas | 11% | 11% | 10% | 10% | 10% |
| Exit | Dutch Balancing Zone | L-Gas | 10% | 10% | 10% | 10% | 10% |
| Entry | Danish Balancing Zone | H-Gas | 10% | 10% | 10% | 10% | 10% |
| Exit | Danish Balancing Zone | H-Gas | 10% | 10% | 10% | 10% | 10% |
| Entry | NCG Balancing Zone | H-Gas | 10% | 10% | 10% | 10% | 10% |
| Exit | NCG Balancing Zone | H-Gas | 11% | 11% | 11% | 11% | 11% |
| Entry | NCG Balancing Zone | L-Gas | 10% | 10% | 10% | 10% | 10% |
| Exit | NCG Balancing Zone | L-Gas | 10% | 10% | 10% | 10% | 10% |
| Entry | Russland | H-Gas | 10% | 10% | 10% | 10% | 10% |
| Exit | Russland | H-Gas | 10% | 10% | 10% | 10% | 10% |
| Entry | Norwegen | H-Gas | 10% | 10% | 10% | 10% | 10% |
| Exit | Norwegen | H-Gas | 10% | 10% | 10% | 10% | 10% |