



Your Legal Advisor in Germany

news Amendment of the ordinance provision on network access

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BERLIN, JULI 2010

The amendment of the ordinance provision on network access passed the German cabinet on May 19. Now the house of Federal States (Bundesrat) must agree. Before the summer break the amended ordinance provision shall pass the house of the Federal States and shall be in force on October 1 2010. This newsletter describes where important changes to the first version took place. Furthermore we illustrate significant changes in form of a synopsis (see II).

I. MAJOR CHANGES COMPARED TO THE FEBRUARY VERSION.

During February the ministry of economics (BMW) presented a first draft. Fundamental changes regarding the first draft are:

1. MARKET AREAS. The long-term goal of only two German market areas is still maintained. But the goal is no longer stipulated in a way that finally one high cal and one low cal market area must be achieved. The network operators shall conduct a cost-benefit analysis to evaluate different options like the merger of the remaining high cal market areas, the inclusion of the remaining low cal market area in one of the high cal market areas or the two high cal market areas. This analysis shall be on the table by October 2012 and shall be evaluated by the BNetzA. By August 2013 network operators must take the most suitable and efficient measures to achieve the goal of two market areas.

2. CONNECTION OF POWER PLANTS AND STORAGE FACILITIES. The catalogue of requests

was drastically reduced from seven to three items and the remaining points were stipulated much more generally. Now only a short description of the concept for the plant and the status of the approval procedure as well as the date for the first gas off-take are demanded. The reservation fee was reduced from 1.90 Euro/KWh/h/a for power plants to 0.50 Euro/KWh/h/a and from 1.70 Euro/KWh/h/a to 0.40 Euro/KWh/h/a for new storage facilities. A new paragraph was included where an entitlement for the investment in new capacity by the network operator is stipulated if a connection is not feasible with the existing capacity. Such an investment is always reasonable for the network operator if capacity is bindingly booked 18 months before the plant starts operation.

3. INJECTION OF BIOMETHANE. The operator of the plant has to bear only 25 % of the cost of connecting the plant to transmission or distribution networks in future instead of 50 % today. Furthermore, the cost for the operator is capped at 250 000 Euro (with a connecting pipeline of a maximum length of one kilometre). The network operator has to guarantee an availability of the connection at a minimum of 96 % - a completely new stipulation. The procedure to carry out the task to connect the plant was also improved for the operators. If the connection is not finished within the timeframe agreed in a project plan and if the network operator is responsible for the delay he must bear the con-

nection cost completely. The requests concerning gas quality were also changed in favour of the plant operators. Network users that inject biomethane – according to these changes – must not pay any entry tariff and the fee for avoided network tariffs (in fact a mere subsidy) of currently 0.7 ct/kWh is guaranteed for 10 years.

II. IMPORTANT FURTHER CHANGES.

A number of further changes are presented in a synopsis. It is not perceived as providing a complete list of all changes.

§ new version	Old stipulation	New stipulation	Comment
6 (2)	Proof of liability and deposits	The explicit stipulation was erased. But network operators can ask for a deposit under justified conditions. But they have to publish the prerequisites.	The stipulation in the first draft was criticised by shippers and network operators.
9	Procedure to calculate technical capacity	The method to calculate capacity was described more extensively. In addition to the factors to be considered already mentioned, the consideration of flows between market areas and reverse flows were added.	In particular the trader's organisation EFET commented positively on this extension.
10	A new paragraph where the procedures for the provision of additional capacity are described in detail. In the first draft this was stipulated very general in § 9.	Before network operators can provide additional capacity and a buy back mechanism, the BNetzA must approve the calculated capacity (§ 9). § 10 allows the network operators to offer additional firm capacity (they do not have to) and to introduce a buy back mechanism to secure proper operations. 50 % of the profits from such an extra service remain at the network operators, the rest will be taken into account in the incentive-base tariff regulation.	The question whether the offering of additional capacity is useful and whether network operators should get an incentive to provide this kind of service was very controversially discussed among the different associations. The ministry tried now at least to stipulate more precisely the rules of this game. In particular GEODE criticises the incentives offered and demands a complete revision of the ordinance provision on network tariffs. EFET on the other hand says network operators should be obliged to offer such a service.
11 (2)	Entry or exit points between market areas and at border points should be pooled into zones.	The obligation to establish zones was relaxed. It must only be done if gas flows make it feasible. At border points zones must not be established.	Incumbent gas companies and network operators argued against the pooling of entry and exit points to zones and a further bundling of capacities. The chance is principal in their interest. The topic will also play an important role in the BNetzA procedure of capacity management (see separate story).
13 (1)	So far it was planned that shippers apply for capacity during a certain time span (booking window).	The idea of a booking window to collect demand was erased.	Just an organisational simplification of the booking process, proposed by the network operators.

13 (3)	The operators of storage facilities should have the exclusive rights to book all entry and exit capacity to the networks.	The word “exclusively” was erased.	Also a stipulation that was discussed very controversially. Smaller traders as storage users welcomed the stipulation in the first draft because it made access to firm transportation capacity easier. Storage operators criticised the stipulation fiercely. They provided different arguments at least some of them looked valid.
14	Duration of transportation contracts	The stipulations for duration were not changed. But until October 1, 2013 BNetzA shall provide a report where it shall in particular analyse whether a decrease of the share for long-term bookings is necessary to improve competition.	Also a point of discussion with different intentions, GEODE for example proposed very clearly to accept the proposal of the Bundeskartellamt. BDEW on the other hand demanded a share of 80 % for long-term bookings. The ministry considered changes but finally did not come to a conclusion. As always if one does not know how to act one proposes a report.
17	Calculation of the need for additional capacity every two years	The term was reduced to one year. Network operators shall consider some additional criteria to determine the demand and shall co-operate with adjacent foreign network operators.	Smaller amendments but RWE welcomed explicitly in a statement the annual calculation of the capacity demand. Investment in new capacity is a hot topic in Germany anyway (see energegate Gasmarkt 05/10).
23 (2)	Clearing of balancing groups	A tolerance of 5 % for all final metered customers for the balancing was newly introduced. It is a new kind of basic balancing service.	A surprising new rule that is justified with an equal treatment of industrial (metered) users with non-metered users. The balancing regime takes away all forecast risk for non-metered costumers. The new stipulation shall provide industrial users with a share of linepack. The large industrial customers criticise since long the balancing regime fiercely as unfair – as repeatedly reported, see also below § 30 the next paragraph –. But their association VIK signaled it was itself surprised about this rule.
30		A new paragraph. The whole chapter on system balancing energy was newly organised without major changes. The new § 30 foresees an evaluation of the whole balancing regime by BNetzA until April 1, 2011. The associations shall take part in the evaluation process.	No more than a very tiny success for VIK that fought for major changes of the whole balancing system GABi Gas. But April 2011 is not that far away.
	Existing contracts should have been adapted to the new capacity products and duration rules within six months.	This point was erased.	This means existing contracts remain in place, a clear victory for the incumbent gas industry that fought hard to achieve this change.

III. CONCLUSION.

Before the summer break the amended ordinance provision shall pass the house of the Federal States and shall be in force on October 1, 2010. BMWi

thinks that this is a realistic time table and expects no significant concerns from the States.

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- Key clients consist of public and ecclesiastical institutions
- Currently acting for a Federal State regulation authority in a complaints proceeding relating to incentive regulations

Professional Experience

- As of 2002: Partner, GÖRG Partnerschaft von Rechtsanwälten
- As of 1999: Partner, Gaedertz Rechtsanwälte (Berlin Office, Potsdam)
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- 2006/2007 Head of the Public Commercial Law practice group

Foreign Languages

- english, russian

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