



Ruling Chamber 9

Reference: BK9-22/042

Decision

In the administrative proceedings pursuant to

section 29(1) of the Energy Industry Act (EnWG) in conjunction with section 56(1) sentence 1 para 2 and sentence 2 EnWG in conjunction with Article 6(11) and Article 7(3) of Regulation (EC) No 715/2009 in conjunction with Article 26(11) of Regulation (EU) 2017/459

with the approval of a fee for activities resulting from the submission of non-binding respect to demand indications for incremental capacity

vis-à-vis bayernets GmbH, Poccistraße 7, 80336 Munich, legally represented by its management board,

- applicant 1 -

and vis-à-vis

Ferngas Netzgesellschaft mbH, Reichswaldstraße 52, 90571 Schwaig b. Nürnberg, legally represented by its management board,

- applicant 2 -

and vis-à-vis

Fluxys Deutschland GmbH, Elisabethstraße 5, 40217 Düsseldorf, legally represented by its management board,

- applicant 3 -

and vis-à-vis

Fluxys TENP GmbH, Elisabethstraße 5, 40217 Düsseldorf, legally represented by its management board,

- applicant 4 -

and vis-à-vis

GASCADE Gastransport GmbH, Kölnische Str. 108-112, 34119 Kassel, legally represented by its management board,

- applicant 5 -

and vis-à-vis

Gastransport Nord GmbH, Cloppenburger Str. 363, 26133 Oldenburg, legally represented by its management board,

- applicant 6 -

and vis-à-vis

Gasunie Deutschland Transport Services GmbH, Pasteurallee 1, 30655 Hannover, legally represented by its management board,

- applicant 7 -

and vis-à-vis

GRTgaz Deutschland GmbH, Rosenthaler Straße 40/41, 10178 Berlin, legally represented by its management board,

- applicant 8 -

and vis-à-vis

Lubmin-Brandov Gastransport GmbH, Huttropstraße 60, 45138 Essen, legally represented by its management board,

- applicant 9 -

and vis-à-vis

NEL Gastransport GmbH, Kölnische Straße 108-112, 34119 Kassel, legally represented by its management board,

- applicant 10 -

and vis-à-vis

Nowega GmbH, Anton-Bruchhausen-Str. 4, 48147 Münster, legally represented by its management board,

- applicant 11 -

and vis-à-vis

ONTRAS Gastransport GmbH, Maximilianallee 4, 04129 Leipzig, legally represented by its management board,

- applicant 12 -

and vis-à-vis

OPAL Gastransport GmbH & Co. KG, Emmerichstraße 11, 34119 Kassel, legally represented by its management board,

- applicant 13 -

and vis-à-vis

Open Grid Europe GmbH, Kallenbergstraße 5, 45141 Essen, legally represented by its management board,

- applicant 14 -

and vis-à-vis

terranets bw GmbH, Am Wallgraben 135, 70565 Stuttgart, legally represented by its management board,

- applicant 15 -

and vis-à-vis

Thyssengas GmbH, Emil-Moog-Platz 13, 44137 Dortmund, legally represented by its management board,

- applicant 16 -

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

represented by

Vice Chair acting as Chair Dr Ulrike Schimmel

Vice Chair Roland Naas

and Vice Chair Stefan Tappe

decided on 27 March 2023:

- 1.) The applicants' application of 8 September 2022 in the version of 17 November 2022 (annex to this decision) for approval of a fee related to the submission of non-binding demand indications to the transmission system operators pursuant to Article 26(11) of Regulation (EU) 2017/459 is approved.
- 2.) The right to order payment of costs is reserved.

Rationale

I.

1 The proceedings concern the approval of a fee for activities resulting from the submission of non-binding demand indications for incremental capacity within the meaning of Article 3(11) in conjunction with Article 26(11) of Commission Regulation (EU) 2017/459 of 16 March 2017 establishing a network code on capacity allocation mechanisms in gas transmission systems and repealing Regulation (EU) No 984/2013 (Regulation (EU) 2017/459). In accordance with the second half-sentence of Article 26(11) sentence 2 of Regulation (EU) 2017/459, the fee is subject to approval by the national regulatory authority.

1. Course of proceedings

2 The applicants applied for approval from the Bundesnetzagentur for this fee on 8 September 2022.

3 The background to these proceedings is the applicants' years of experience that non-binding market demand indications resulting in project applications to the Bundesnetzagentur in accordance with section 29(1) in conjunction with section 56(1) sentence 1 para 2, sentence 2 EnWG in conjunction with Article 6(11) and Article 7(3) of Regulation (EC) No 715/2009 in conjunction with Article 25(1) and Article 28(1) and (2) of Regulation (EU) 2017/459 lead to significant staffing costs and expenses. In the past, binding bookings of the requested incremental capacity were not made in the annual auctions pursuant to Article 11(4) Regulation (EU) 2017/459 despite the Bundesnetzagentur having approved these project applications.

4 A fee may be charged for activities resulting from the submission of non-binding demand indications (Article 26(11) Regulation (EU) 2017/459). Such fees must reflect the administrative costs (second half-sentence of Article 26(11) sentence 2 of Regulation (EU) 2017/459).

5 This application contains in particular the following information:

Fee amount

6 The applicants have applied for approval of a fee of €30,000 for non-binding market demand indications. The applicants state that this would reflect their internal and external minimum expenses incurred in relation to the submission of non-binding requests. The applicants state that they incur internal expenses for conducting technical studies including cost estimates for additionally needed network infrastructure, schedules, supplementary rules and conditions and offer levels, among other things, as well as for coordination with the Bundesnetzagentur, between the transmission system operators (TSOs) concerned, with the adjacent foreign TSOs and with their respective national regulatory authorities. They also incur external expenses from the approval to be issued by the Bundesnetzagentur. Pursuant to point 30.13 of the annex to section 2 of the Energy Industry Act Cost Ordinance (EnWGKostV), the Bundesnetzagentur sets fees of at least €30,000 for decisions in connection with the incremental capacity process.

Implementation and imposition of the fee

- 7 The fee pursuant to Article 26(11) of Regulation (EU) 2017/459 is to be charged in each case by the TSO responsible, which is determined jointly by the applicants for each market area border. There is no provision for further settlement with the other participating applicants. The fee is to be collected per market area border, per type of request (incremental capacity or an upgrade of an existing capacity product) and per direction (entry or exit capacity) in the case of corresponding submissions of non-binding demand indications pursuant to Article 26(6) of Regulation (EU) 2017/459. If several companies have requested incremental capacity at the same market area border, for the same type of request and the same direction, the fee will be divided between the respective companies. Each company requesting at the market area border will initially receive an invoice from the TSO responsible with a payment term of 14 calendar days for the full fee of €30,000. The payments received within the deadline will then be used to calculate the individual fees for each company and fees paid in excess will be reimbursed directly. If the findings of the market demand assessment pursuant to Article 26 of Regulation (EU) 2017/459 show that the capacity can be provided without pursuing the incremental capacity process, the fee will also be reimbursed (reimbursement mechanisms). After the technical studies have been conducted, a reimbursement pursuant to Article 26(11) sentence 3 of Regulation (EU) 2017/459 is only possible if the economic test is successful. The details are further explained in the application in the version of 17 November 2022 (annex to this decision), especially in the case examples given on page 4 et seq.

2. Completeness check, requests for additional information

- 8 The ruling chamber first checked the application of 8 September 2022 for completeness. Following various conversations with the applicants and requests for additional information from the ruling chamber in the period from 27 September 2022 to 15 December 2022, the applicants provided further detail on their application. Among other things, they supplied an English translation of the application on 18 October 2022 and updated the application with case examples on 17 November 2022. On 15 December 2022, the ruling chamber asked the applicants to provide a more detailed breakdown of the expenses for the activities resulting from the submission of non-binding demand indications for incremental capacity. It explained that this was essential to assess whether the fees reflected the administrative costs for submitting demand indications. The applicants subsequently submitted a table detailing their internal work expenditure on 21 December 2022. It shows the minimum and average expenses in the form of the person-days spent by the respective applicants on the various process steps that have to be carried out until the approval application is produced for the competent regulatory authority.

3. Market consultation

- 9 The Bundesnetzagentur carried out a consultation of the applicants' application of 17 November 2022 with the market starting on 30 November 2022. At the same time, they also consulted on an alternative proposal for a fee amount linked to the amount of incremental capacity requested (capacity).
- 10 The following responses were received from the market:
- 11 The association FNB Gas (Vereinigung der Fernleitungsnetzbetreiber Gas e.V.) expressed its concerns about the introduction of a capacity-related fee in a statement dated 4 January 2023. It took the view that this was not appropriate since the resulting work was not dependent on the amount of incremental capacity requested. Rather, the number of scenarios to be examined and the resulting technical analyses were the deciding factors for the amount of work involved, it wrote.
- 12 The BDEW (Bundesverband der Energie- und Wasserwirtschaft e.V.) agreed in a statement of 11 January 2023 that the fee amount of €30,000 was plausible in light of the lowest fee threshold of the EnWGKostV. It also welcomed the envisaged reimbursement mechanism that only imposed a flat fee per market area border, type of request and direction and was subsequently divided among the relevant non-binding requests. It did not consider the capacity-related fee of €2,000 per gigawatt hour for which a non-binding request had been made to be appropriate, since the number of market area borders that had to be taken into account was the decisive factor for the amount of work involved. It would also have a detrimental effect on particularly large requests, although from the perspective of promoting competition, it would be less likely to put off small shippers, according to the BDEW.

4. Coordination and participation

- 13 The ruling chamber informed the regulatory authorities of the federal states of Bavaria, Baden-Württemberg, Berlin, Hesse, Lower Saxony, North Rhine-Westphalia and Saxony, where the applicants have their headquarters, of the proceedings in a letter of 19 October 2022.
- 14 The ruling chamber gave the applicants the opportunity to submit comments by letter of 28 February 2023. In addition, the ruling chamber gave the regulatory authorities of the federal states of Bavaria, Baden-Württemberg, Berlin, Hesse, Lower Saxony, North Rhine-Westphalia and Saxony and the Bundeskartellamt likewise the opportunity to state their views on 28 February 2023.
- 15 The applicants wrote on 13 March 2023 that they saw no need to submit written comments.
- 16 Neither the regulatory authorities of the federal states of Bavaria, Baden-Württemberg, Berlin, Hesse, Lower Saxony, North Rhine-Westphalia and Saxony nor the Bundeskartellamt took the opportunity to state their views.
- 17 For further details, reference is made to the content of the file.

II.

18 The application of the applicants for a fee for activities resulting from the submission of non-binding demand indications for incremental capacity has been approved. To this extent, the formal and material requirements for approval have been met.

1. Legal basis

19 The approval of the fee is based on section 29(1), section 56(1) sentence 1 para 2 and sentence 2 EnWG in conjunction with Article 6(11) and Article 7(3) of Regulation (EC) No 715/2009 in conjunction with Article 21(11) of Regulation (EU) 2017/459. Pursuant to section 56 EnWG, the Bundesnetzagentur is active in the enforcement of the above-mentioned European Regulations. In accordance with the second half-sentence of Article 26(11) sentence 2 of Regulation (EU) 2017/459, the fee is subject to approval by the national regulatory authority.

2. Formal requirements for approval

20 The formal requirements for approval have been met.

2.1. Competence

21 The Bundesnetzagentur is the competent regulatory authority to decide on the approval pursuant to Article 26(11) of Regulation (EU) 2017/459 and section 56(1) sentence 1 para 2 EnWG. The competence of the ruling chamber ensues from section 59(1) sentence 1 EnWG.

2.2. Application

22 The application was submitted in due form. The fee application contained all the information required under Article 26(11) of Regulation (EU) 2017/459 or this information has been provided upon subsequent request by the ruling chamber (see rationale 2, *Completeness check, requests for additional information*).

2.3. Deadline for applications

23 No deadline for applications is set out in Article 26(11) of Regulation (EU) 2017/459.

2.4. Hearing

24 Before the decision was issued, pursuant to section 56(1) sentence 3 in conjunction with section 67(1) EnWG, the applicants were given an opportunity to comment from 28 February 2023 to 13 March 2023.

2.5. Involvement of other authorities

25 The Bundesnetzagentur involved other authorities to the extent prescribed by law.

26 Pursuant to section 56(1) sentence 3 in conjunction with sections 55(1) and 58(1) sentence 2 EnWG, the Bundeskartellamt and the regulatory authorities of the federal states of Bavaria, Baden-Württemberg, Berlin, Hesse, Lower Saxony, North Rhine-Westphalia and Saxony, in which the applicants have their headquarters, were informed of the start of the proceedings and given the opportunity to comment.

3. Substantive requirements for approval

27 The fee application has been approved in accordance with Article 26(11) of Regulation (EU) 2017/459. The substantive requirements for approval have been met.

28 The decision was made following appraisal of the aspect mentioned in Article 26(11) of Regulation (EU) 2017/459, that the fee imposed must reflect the administrative costs of the TSO for submitting demand indications.

3.1. Fee – reflecting administrative costs

29 The fee of €30,000 proposed by the applicants reflects the administrative costs of the applicants. Using the work expenditure submitted by the applicants, the ruling chamber was able to see for itself the internal cost structure of each applicant and the staffing costs related to the submission of the non-binding market demand indications. The table listing each company and stage of the procedure was sufficiently transparent for this purpose.

30 In particular, the table supplied by the applicants showed a breakdown of processes related to producing the market demand assessment, drawing up the technical study, the consultation on the draft project and the preparation and submission of the approval application. Moreover, in the necessary person-days shown by the applicants per company, a distinction was made between the minimum and average expenses (see *1. 2 Completeness check, requests for additional information*). The applicants also referred to the comprehensive cost data already submitted to the ruling chamber as part of the cost examination for the fourth regulatory period.

31 Experience from the previous incremental capacity cycles from 2017 to 2019, 2019 to 2021 and the current one from 2021 to 2023 has shown that project applications generally go through all the listed stages before being submitted to and approved by the ruling chamber. The minimum and average expenses of all applicants are more than the fee applied for of €30,000, given that the regulatory authority imposes a minimum fee of €15,000 on the TSOs pursuant to section 91(1) sentence 1 para 7 and subsection 2 EnWG in conjunction with section 2 EnWGKostV in conjunction with point 30.13 of the annex to section 2 EnWGKostV. Moreover, based on experience from previous incremental capacity cycles, the ruling chamber took account of the fact that a project application is usually made by several German TSOs together. In this respect, the individual cost data for each TSO had to be classed as higher since the expenses in joint project applications are usually incurred by multiple TSOs at the same time (together).

- 32 In addition to the standard scenario that a project application goes through all the stages until it is submitted for approval to the ruling chamber, the ruling chamber also considered a scenario in which the TSOs draw up a project proposal and consult the market on it, but do not ultimately submit an application for approval to the ruling chamber. The past cycles have shown that this can happen, although it is very rare. In such a case, if no application is made, the regulatory authority does not impose any fees on the TSOs. The administrative expenses incurred by the applicants are therefore lower than for projects that are submitted to the regulatory authority. The final stage of the process – drawing up and submitting an application for approval – does not form part of the work carried out. Bearing in mind that this scenario is extremely rare and that project applications are usually made by several TSOs together, the ruling chamber still considers that the fee applied for of €30,000 adequately reflects the TSOs' administrative expenses per project in such cases.
- 33 In the event that the result of the market demand assessment shows that the capacity for which non-binding requests had been made could be provided without carrying out an incremental capacity process, the applicants themselves have already proposed reimbursing the full fee.
- 34 The ruling chamber can therefore recognise that the fee applied for of €30,000 is less than, and thus reflective of, the applicants' administrative costs.

3.2. Fee – objectives and purpose of the process considered

- 35 In its decision the ruling chamber also took account of the objectives and purpose of the incremental capacity process and the relevant requirements to be considered.
- 36 The fact that the fee only reflects part of the administrative costs and on average is less than these costs is unproblematic, since the requirement in Article 26(11) of Regulation (EU) 2017/459 that the fee reflect the costs means that the upper limit of the fee imposed is the costs actually incurred. A further argument in favour of this is that it is at the applicants' discretion to impose a fee at all or, as in previous cycles, to refrain from doing so.
- 37 In order to foster efficient competition and non-discriminatory rules for conditions and access to natural gas transmission systems (recitals 2 and 4 of Regulation (EU) 2017/459), the fee is also to be charged if the non-binding demand indication is not submitted to the applicants by the requesting party directly but by a third party (such as an adjacent, foreign TSO). This prevents the possibility of circumventing the payment of the proposed fee, since the administrative expenses incurred as a result of the non-binding demand indication are invoiced to each requesting party, whether or not the party makes the request to a domestic or adjacent foreign TSO. The reference point for the imposition of the fee for non-binding market demand indications is the administrative expense caused by the non-binding market demand indication, not the request itself.
- 38 The fee will not prevent interested parties from placing non-binding demand indications in the future, as it is not out of proportion to the costs that the parties would incur for actually booking

capacity in the annual auction. The reimbursement mechanism implemented in accordance with Article 26(11) sentence 3 of Regulation (EU) 2017/459 will not withdraw a disproportionate amount of liquidity from the market. Regardless of which network users make binding bookings of incremental capacity, if there is confirmed interest from the non-binding market demand indication and a positive economic test for at least one offer level including the incremental capacity at the respective interconnection point, the fee will be reimbursed to the network users that had to pay it when they submitted their non-binding market demand indication.

39 Moreover, in its decision-making process the ruling chamber considered whether smaller shippers might be put at a disadvantage to larger ones by the €30,000 fee. The ruling chamber does not see that smaller shippers will be disadvantaged, given the absolute size of the fee, especially in relation to the gas network tariffs, and taking account of the fact that the fee imposed will be reimbursed in the event of a positive economic test. No such concerns were expressed during the market consultation either.

4. Related decisions (operative part 2)

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

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, 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 for 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 contested and its modification or revocation sought and must indicate the facts and evidence on which the appeal is based. The appeal and the grounds for appeal must be signed by a lawyer.

The appeal does not have suspensory effect (section 76(1) EnWG).

Bonn, 27 March 2023

Vice Chair acting as Chair

Vice Chair

Vice Chair

Dr Ulrike Schimmel

Roland Naas

Stefan Tappe



Application for approval and implementation of a fee for submitting non-binding demand indications to the transmission system operators according to Art. 26 (11) NC CAM)

Berlin, November 17 2022



I. Legal background

Chapter 5 of Regulation (EU) 2017/459 (NC CAM) describes the Incremental Capacity Process. Pursuant to Art.26 (11) NC CAM a transmission system operator (TSO) „may charge fees for activities resulting from the submission of non-binding demand indications “. Furthermore, it says that the fees „shall be subject to approval by the relevant national regulatory authority [...] “.

Accordingly, the German TSOs bayernets GmbH, Ferngas Netzgesellschaft mbH, Fluxys Deutschland GmbH, Fluxys TENP GmbH, GASCADE Gastransport GmbH, Gastransport Nord GmbH, Gasunie Deutschland Transport Services GmbH, GRTgaz Deutschland GmbH, Lubmin-Brandov Gastransport GmbH, NEL Gastransport GmbH, NOWEGA GmbH, ONTRAS Gastransport GmbH, OPAL Gastransport GmbH, Open Grid Europe GmbH, terranets bw GmbH, Thyssengas GmbH (hereinafter called the applicants), apply for the introduction of fees according to the principles described below.

II. Fee amount

The amount of such a fee „shall reflect the administrative costs for submitting demand indications “(Art. 26 (11) NC CAM). The applicants consider such fees to be as transparent and non-discriminatory as possible, because the TSOs incur internal and external expenses as a result of the submission of non-binding demand indications. The resulting minimum expense is used as the amount of a fee for the application for an incremental capacity project. In addition to the above-mentioned fees to be paid the TSOs incur expenses linked to the steps of the incremental capacity cycle. On the one hand these activities include expenses for the TSOs for, among other things, conducting technical studies including cost estimates, schedules, supplementary terms and conditions and offer levels. On the other hand, it includes the coordination with the national regulatory authority (BNetzA), between the German TSOs concerned and the adjacent European TSOs with their respective national regulatory authorities.

At the same time, it should also be avoided that a disproportionately high fee prevents interested shippers from participation on the incremental capacity process. Therefore, it must be ensured, that the market is under no circumstances withdrawn from a disproportionate amount of liquidity.

To reach these goals and to avoid a case-by-case analysis the applicants suggest considering the minimum expenses as administration costs that are incurred when submitting the project proposal for an incremental capacity project to the relevant national regulatory authority for examination (Art. 28 (1) NC CAM).

According to section 30.13 of the Annex to § 2 EnWGKostV, BNetzA can set a fee of at least 30,0000 € for decisions in connection with the incremental capacity process which is to be paid by the TSOs involved in the respective incremental project.



Therefore, the applicants propose that the requested fee pursuant to Art. 26(11) NC CAM to be set at 30,0000 €. The fee is to be collected per market area border, per type of request (incremental capacity or an upgrade of existing capacity products) and direction (entry or exit capacity) in the case of corresponding submissions of non-binding demand indications according to Art. 26(6) NC CAM. This approach is appropriate here since the scenarios to be considered increase exponentially within the framework of an incremental capacity process depending on the market area border, type of request and direction to be considered and these criteria were thus identified by the applicants as cost drivers. However, the amount of requested capacities does not represent a cost driver to be considered, because the execution of the work steps during the incremental capacity process are independent of it. For this reason, the applicants consider a capacity-related fee component as inappropriate.

If several companies have submitted a non-binding request according to Article 26 (6) NC CAM at the same market area border, the same type of request and the same direction, the fee of 30,000 € will be divided between the respective companies.

The paid fee will be reimbursed to the party requesting incremental capacity, if at least one offer level at the respective border which includes incremental capacity passes the economic test. If the findings within the market demand assessment report show that the requested capacity can be utilized in a different way, without the necessary following steps of the incremental capacity procedure, the charged fee will be reimbursed in total.

III. Implementation of the fee

The fee pursuant to Art. 26 (11) NC CAM shall be charged by the responsible TSO in each case, whereby the TSO shall be jointly determined by the TSOs for each market area border. The initial responsibility of the TSOs per border can be found in Annex 1. The current responsibility will always be available under the conditions of participation at www.fnb-gas-capacity.de. There is no provision for further settlement with the other participating TSOs.

The following process steps for charging the above fee are proposed by the applicants:

1. All companies requesting at the market area border will receive an invoice - after the completeness and admissibility of the request has been established - for the full fee of 30,000 €. The invoice with a payment term of 14 calendar days will be issued by the responsible TSO.
2. After the payment deadline expires, the TSOs involved shall evaluate which non-binding requests will be considered for further steps pursuant to Chapter V NC CAM because of the payments received within the deadline.
3. Depending on the number of incoming payments (per market area border, type of request and direction), the individual fees are calculated for each company.



4. Fees paid in excess will be reimbursed after the market demand assessment report. The reimbursement will be made per company.
5. After the start of the planning phase pursuant to Art. 27 NC CAM, a reimbursement pursuant to Art. 26 (11) Sentence 3 NC CAM is only possible if the economic test is successful (for at least one offer level).
6. The reimbursement according to Art. 26 (11) Sentence 3 NC CAM takes place per company and is independent of the actual booking by the petitioner.



IV. Case examples

1. Several shipper-requests between two market areas per border

- Two separate shippers state one or more non-binding requests in accordance with Art. 26 (6) NC CAM for incremental capacity between two adjacent market areas (figure 1). The fee in accordance with Art. 26 (11) NC CAM in the amount of 30.000€ is billed to each shipper individually and needs to be paid within 14 calendar days.
Following scenarios can occur after the payment due date has passed and at least one request will be considered within the market demand assessment report (MDAR) in accordance with Art. 26 NC CAM.:
- Case example 1: Only one shipper pays the total amount of the invoice. In which case only the request for incremental capacity of the shipper which paid the amount is considered within the MDAR in accordance with Art. 26 NC CAM. The shipper is reimbursed after the positive outcome of the economic test.
- Case example 2: Both shippers pay the full amount of the invoice, and each shipper is then reimbursed for 15.000 € after the MDAR. Hereford the total collected fees do not exceed 30.000€.

| Initial situation | Case example 1 | Case example 2 |
|--|--|--|
| Demand indications MA1 → MA2: <ul style="list-style-type: none"> Shipper 1: 100 MW Shipper 1: 200 MW Shipper 2: 300 MW <u>Invoice:</u> <ul style="list-style-type: none"> Shipper 1: 30.000 € Shipper 2: 30.000 € | <u>Payments:</u> <ul style="list-style-type: none"> Either shipper 1 or shipper 2 pay <u>Reimbursement:</u> <ul style="list-style-type: none"> None | <u>Payments:</u> <ul style="list-style-type: none"> Shipper 1 pays → all demand indications are valid Shipper 2 pays → all demand indications are valid <u>Reimbursement :</u> <ul style="list-style-type: none"> Shipper 1: 15.000 € Shipper 2: 15.000 € |

Figure 1: Example 1

2. Several shipper-requests per market area border in opposite directions between the market areas

- Three individual shippers state one or more non-binding requests for incremental capacity in accordance with Art. 26 (6) between two adjacent market areas which differ in the direction between those two market areas (Figure 2). The fee in accordance with Art. 26 (11) NC CAM in the amount of 30.000€ is billed to each shipper individually and needs to be paid within 14



calendar days. Following scenarios can occur after the payment due date has passed and at least one request will be considered within the market demand assessment report (MDAR) in accordance with Art. 26 NC CAM.:

- In case example 1 no reimbursement takes place. However, two different outcomes are possible:
 - a) Shipper 1 pays the total amount of the invoice. Therefore, only the request for a capacity upgrade between the two market areas will be considered within the MDAR.
 - b) The full amount of the invoice is only paid by either shipper 2 or shipper 3. Only the request for incremental capacity of the shipper who paid the full amount of the invoice will be considered within the MDAR.
- In case example 2 a reimbursement of 15.000€ to shipper 2 and shipper 3 takes place after the MDAR. Two different outcomes can occur:
 - a) All invoices are paid and all requests for incremental capacity are considered within the MDAR. Shipper 1 needs to pay 30.000€ (no reimbursement), because the fee needs to be paid for each direction. However, shipper 2 and shipper 3 only need to pay 15.000€ each and therefore will be reimbursed 15.000€ each.
 - b) Only shipper 2 and shipper 3 pay the full amount of the invoice. Therefore, only the requests for incremental capacity of shipper 2 and shipper 3 will be considered within the MDAR and the fee in the amount of 30.000€ is equally split between the two shippers (Reimbursement of 15.000€ to shipper 2 as well as shipper 3).

| Initial situation | Case example 1 a and b | Case example 2 a and b |
|---|--|---|
| Demand indication MA1 → MA2: • Shipper 1: 200 MW Demand indications MA2 → MA1 • Shipper 2: 300 MW • Shipper 3: 100 MW <u>Invoice:</u> • Shipper 1: 30.000 € • Shipper 2: 30.000 € • Shipper 3: 30.000 € | <u>Payments:</u> a. Shipper 1 pays → only demand indication MA1 → MA2 is valid b. Shipper 2 or 3 pays → only demand indication MA2 → MA1 is valid <u>Reimbursement:</u> • None | <u>Payments:</u> a. All shippers pay → all demand indications are valid b. Shipper 1 and 2 pay → only demand indication MA2 → MA1 is valid <u>Reimbursement:</u> • Shipper 2: 15.000 € • Shipper 3: 15.000 € |

Figure 2: Example 2



3. Several requests from shippers between two market area borders for a capacity upgrade and incremental capacity

Three different shippers make at least one non-binding request pursuant to Art. 26(6) NC CAM between two neighbouring market area borders, with different types of requests (see Figure 3). While the shipper 1 requests incremental capacity, the other shipper request for an upgrade of capacity products from DZK to FZK.

The invoice for the fee according to Art. 26 (11) NC CAM in the amount of 30,000 € with a payment term of 14 calendar days is sent to all shippers involved. After the payment period has expired, there are the following constellations of incoming payments, which lead to at least one request being considered in the market demand assessment according to Art. 26 NC CAM:

- In case example 1, no reimbursements are made, whereby a distinction must be made between:
 - a) The invoice will only be paid by shipper 1. Thus, only the request for incremental capacity from market area border 1 to market area border 2 is further considered.
 - b) The invoice will only be paid by shipper 2 or shipper 3. Thus, only the request of shipper 2 or 3 for a capacity upgrade from DZK to FZK is further considered.
- In case example 2, a reimbursement of 15,000 € is made to shipper 2 and shipper 3 after the MDAR. A distinction can be made between:
 - a) All invoices issued will be paid and all requests from the shippers will be considered. Since the fee due is calculated per request type shipper 1 bears the entire fee of 30,000 € (for requesting incremental capacity) and receives no reimbursement, while shipper 2 and shipper 3 pay a fee of 15,000 € each (reimbursement of 15,000 € each to shipper 2 and shipper 3) for the upgrade of existing capacity product.
 - b) The invoices are only paid by shipper 2 and shipper 3. Consequently, only the requests of shipper 2 and shipper 3 for an upgrade of existing capacity products will continue to be considered and the fee will be shared equally (reimbursement of 15,000 € each to shipper 2 and shipper 3).



| Initial situation | Case example 1 a and b | Case example 2 a and b |
|---|---|---|
| Demand indications MA1 → MA2: <ul style="list-style-type: none"> • Shipper 1: Incremental Capacity of 200 MW • Shipper 2: Upgrade of 100 MW DZK to FZK • Shipper 3: Upgrade of 300 MW DZK to FZK <u>Invoice:</u> <ul style="list-style-type: none"> • Shipper 1: 30.000 € • Shipper 2: 30.000 € • Shipper 3: 30.000 € | <u>Payments:</u> <ol style="list-style-type: none"> Shipper 1 pays → only demand indication for incremental capacity is valid Shipper 2 or 3 pay → only demand indication for the Upgrade is valid <u>Reimbursement:</u> <ul style="list-style-type: none"> • None | <u>Payments:</u> <ol style="list-style-type: none"> Shipper 1+2+3 pay → all demand indications are valid Shipper 2 and 3 pay → only demand indication for the Upgrade is valid <u>Reimbursement:</u> <ul style="list-style-type: none"> • Shipper 2: 15.000 € • Shipper 3: 15.000 € |

Figure 3: Example 3



Annex 1: List of TSO who are responsible for the invoice of the fee

This table shows the initial responsible TSO. The current responsibility will always be available under the conditions of participation at www.fnb-gas-capacity.de.

| Market Area border | TSO |
|-----------------------------|-------------|
| Norway | Thyssengas |
| Denmark | GUD |
| Netherlands | GUD |
| BeLux | OGE |
| France | GRTD |
| Switzerland | Fluxys TENP |
| Austria – MG Ost | OGE |
| Austria – MG Tirol | bayernets |
| Austria – Vorarlberg | terranets |
| Czech Republic | GASCADE |
| Poland – TGPS | GASCADE |
| Poland - E-Gas Transmission | ONTRAS |
| Russian Federation | GASCADE |