

Participation conditions for market demand in the procedure for incremental capacity pursuant to Chapter V of Regulation (EU) 2017/459 (Network Code Capacity Allocation) of April 6, 2017

Valid for all inquiries received from June 10th, 2023 onwards

1. Introduction

With a market survey, the transmission system operators bayernets GmbH, Ferngas Netz GmbH, 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 & Co. KG, Open Grid Europe GmbH, terranets bw GmbH and Thyssengas GmbH (hereinafter referred to as "TSOs") to determine the demand for incremental capacities for H-gas to be created at the borders of the German market area.

The goal is to be able to estimate the future demand for incremental capacities to be created at the borders to neighboring entry-exit systems as early and as realistically as possible. The procedure takes place in accordance with the European Network Code Capacity Allocation (NC CAM) and is intended to support the development of the gas transmission infrastructure concerned.

In addition to the market demand for incremental capacity to be created according to NC CAM, the TSOs, in cooperation with the Federal Network Agency, have decided to offer a possibility to request an upgrade of already existing capacity products within the regular demand cycle without obligation.

After the non-binding enquiry with the market participants (hereinafter "enquirers"), the TSOs determine whether the notified demand is in principle sufficient for further planning of new expansion projects. If this is the case, technical studies for a possible network expansion are prepared for each market area border. The marketing of these new capacities is carried out by means of binding capacity allocation procedures. Within the framework of auctions, the actual capacity requirements of the market participants are finally checked and converted into binding bookings, which in turn form the basis for necessary investments in the respective transmission system.

2. Time schedule

The market demand assessment starts in each odd-numbered year with the start of the annual auction on the European capacity platforms PRISMA European Capacity Platform (hereinafter "PRISMA") and Regional Booking Platform (hereinafter "RBP") and ends eight weeks ("8-week period") after the start of the corresponding annual auction on PRISMA / RBP.

The requesting party shall receive feedback from the responsible TSOs within 16 weeks after the start of the annual auction, taking into account the requirements of Article 26 (10) (a) – (c) NC CAM.

Requests from market participants regarding incremental capacity to be created and/or a capacity product upgrade received after the expiry of the 8-week period shall only be taken into account by the TSOs in the report of the next market demand analysis. In this case, the TSO shall reply to the enquirer within eight weeks of receipt of the demand.

The decisive point in time for compliance with the 8-week period is the date of the postmark of the completed and signed original of the enquiry form.

3. Definition of terms

The following definitions apply to these Conditions of Participation and to the forms provided for completion:

- “GY” (Gas Year): The period from 1 October, 06:00, of a calendar year to 1 October, 06:00, of the following calendar year.
- “Firm, freely allocable capacities”: allows shippers to use booked entry and exit capacities on an unrestricted, firm basis without defining a fixed transmission path. The entry capacity entitles the shipper to provide gas at the booked entry point for exit at any booked exit point in the same market area or for transfer to the virtual trading point (VTP) of the same market area. The exit capacity entitles the shipper to offtake at the booked exit point the gas provided at any booked entry point of the same market area or at the virtual trading point (VTP) of the same market area.
- „Firm, dynamically allocable capacities”: allows shippers to use booked entry and exit capacity on a firm basis provided that, in the case of entry capacity, gas is injected at the booked entry point for withdrawal at a pre-specified exit point in the same market area and that, in the case of exit capacity, the gas injected at a pre-specified entry point in the same market area is withdrawn at the booked exit point. In addition, it allows shippers to use booked entry and exit capacities on an interruptible basis without specifying a transport path. The entry capacity entitles the shippers to inject gas at the booked entry point for withdrawal at each booked exit point in the same market area or for transfer at the virtual trading point in the same market area. The exit capacity entitles the shippers to withdraw at the booked exit point the gas injected at each booked entry point in the same market area or transferred at the virtual trading point of the same market area.

4. Standard request form

To participate, the request forms provided in German or English on the website FNB Gas Capacity of Vereinigung der Fernleitungsnetzbetreiber Gas e. V. ("FNB Gas") shall be used.

- Request for incremental capacities to be created at cross-border interconnection points
 - The non-binding requests for incremental capacity to be created shall contain at least the information specified in Article 26 (8) (a) – (c) NC CAM. If the non-binding market requests have also been submitted or are planned to be submitted to a transmission system operator in a neighboring country pursuant to Article 26 (8) (d), these shall be indicated under "Details of corresponding requests submitted to other entry/exit systems or TSOs affected pursuant to Article 26 (8) (d) of NC CAM
 - The TSOs are free to evaluate the request for "firm restrictedly allocable" as a demand for "firm freely allocable capacity". "Firm restrictedly allocable capacity" thus represents a minimum requirement with regards to the requested capacity type.

- Request for capacity product upgrade
 - A request for capacity product upgrading can only be made if the enquirer has already contracted a firm capacity product which is to be upgraded by a higher-value firm product. The revaluation period does not have to cover the full term of the original capacity contract.
 - The non-binding requests for capacity product upgrades must contain information on the headings specified in the corresponding request form on the FNB Gas Capacity website. At least the following points must be stated:
 - Capacity product to be upgraded (Offering TSO, Interconnection Point designation, Product designation, Direction of flow from German point of view, Amount already booked by participant in kWh/h)
 - Target capacity product
 - Specification of the additional restriction in case a restricted capacity product is demanded
 - Request period
 - Part of the capacity booked by the shipper to be upgraded (this capacity must already be booked)

If a request for incremental capacity as well as a request for a capacity product to be upgraded exists at a market area border for overlapping time periods, the TSOs will check whether the requests make contradictory demands. If this is the case, the TSOs reserve the right not to process the relevant requests for capacity product upgrades in the current cycle. The TSOs will inform the requestor in such a case.

The conditions of participation must be accepted on the respective request form. The fully completed request form must then be printed out, signed and sent in the original by post to:

Vereinigung der Fernleitungsnetzbetreiber Gas e. V.
Georgenstr. 23
10117 Berlin
Germany

5. Fees

The TSOs charge a fee for the activities resulting from the transmission of the non-binding market demand. The charging of a fee is permitted to the TSOs according to Art. 26 (11) NC CAM and was approved in procedure no. BK9-022/042 of the Federal Network Agency.

The fee amounts to € 30,000 per market area border, request type (incremental capacity or capacity to be upgraded) and flow direction for non-binding market requests received in accordance with Art. 26 (6) NC CAM. This will be invoiced to the requestor by the responsible TSO (see Table 1). If the invoiced fee is not paid on time, the respective non-binding market demand of the enquirer will not be considered further.

The fee is also charged if the original request for incremental capacity to be created was made abroad and as a result the German TSOs have to carry out a procedure for incremental capacity.

If several companies request incremental capacity at the same market area border, for the same request type and the same transport direction, the fee is divided among these requestors. In this respect, all enquirers for the market area border receive their own invoice for the full fee of € 30,000 with a payment term of 14 calendar days from the responsible TSO. The amount is then divided by the number of payments received on time, the resulting individual fee per company is determined and any overpaid fee is refunded.

The fee charged shall also be refunded if the market demand analysis pursuant to Art. 26 NC CAM shows that the capacity can be made available without continuing the procedure for incremental capacity. Likewise, the fee is refunded if the economic viability test is positive for at least one offer level that includes new capacity to be created at the respective interconnection point.

The following TSOs charge the fee at the respective market area border:

| Table 1: Market area border and respective TSOs | |
|---|---|
| Market area border | TSO |
| Norway | Gasunie Deutschland Transport Services GmbH, Pasteurallee 1, 30655 Hannover |
| Danmark | Gasunie Deutschland Transport Services GmbH, Pasteurallee 1, 30655 Hannover |
| Netherlands | Open Grid Europe GmbH, Kallenbergstraße 5, 45141 Essen |
| Belgium | Open Grid Europe GmbH, Kallenbergstraße 5, 45141 Essen |
| Luxembourg | GRTgaz Deutschland, Rosenthaler Str. 40-41 10178 Berlin |
| France | Fluxys TENP GmbH, Elisabethstraße 5, 40217 Düsseldorf |
| Switzerland | Open Grid Europe GmbH, Kallenbergstraße 5, 45141 Essen |
| Austria - MG Ost | bayernets GmbH, Poccistraße 7, 80336 München |
| Austria - MG Tirol | terrannets bw GmbH, Am Wallgraben 135, 70565 Stuttgart |
| Austria - Vorarlberg | GASCADE Gastransport GmbH, Kölnische Straße 108 – 112, 34119 Kassel |
| Czech Republic | GASCADE Gastransport GmbH, Kölnische Straße 108 – 112, 34119 Kassel |
| Poland - TGPS | ONTRAS Gastransport GmbH, Maximilianalle 4, 04129 Leipzig |
| Poland - E-Gas Transmission | GASCADE Gastransport GmbH, Kölnische Straße 108 – 112, 34119 Kassel |

6. Liability

Any contractual and legal liability of the TSO is limited to intent and gross negligence. This also applies if the TSO is acting on behalf of its legal representatives or vicarious agents. The limitation does not apply to the breach of essential contractual obligations (cardinal obligations). Material contractual obligations are those whose fulfilment characterizes the contract and on which the contractual partner may rely. In this case, however, claims for compensation shall be limited to compensation for the foreseeable damage typical of the contract. For any activities of the Vereinigung der Fernleitungsnetzbetreiber Gas e. V. in connection with its involvement in determining the market requirements of future capacities, liability shall be limited to intent and gross negligence.

The liability for personal injury remains unaffected.

7. Exclusion of participation

If the demand does not comply with the conditions of participation, it will be excluded within the framework of the market demand analysis and will not be taken into account by the TSOs in the further course of the procedure. The TSOs shall inform the enquirer in good time of any exclusion, at least in text form.

This does not affect the treatment of a time-limited demand in accordance with Section 2 Paragraph 4.

8. Confidentiality

The enquirers agree that the information they submit on the enquiry forms may be used in connection with the preparation of the market demand analysis. This consent includes in particular that the TSOs may pass on the information to third parties (for example other TSOs, authorities etc.) and publish it in aggregated and anonymized form (per market area boundary) within the framework of the market demand analysis, the technical study(s), the public consultation(s), the coordination(s) with the Federal Network Agency or within the framework of other necessary procedural steps.

In all other respects, the TSOs shall treat all information received in the context of market demand as confidential and shall not publish or otherwise disclose it to third parties or pass it on to third parties unless a requesting party has given its prior written consent.

The confidentiality obligation does not apply insofar as the TSOs are obliged to disclose, pass on or publish the information to national or international authorities or other state agencies based on statutory provisions or if there are requests from the Federal Network Agency. Likewise, the information may be disclosed to other persons who are themselves obliged to maintain confidentiality, such as auditors, tax advisors or lawyers, within the scope of their respective mandate.

The provision of Article 6a EnWG remains unaffected.

9. Data privacy

The FNB Gas shall pass on the declaration and the printout of the inquiry forms received to the responsible member TSO.

The final recipient of the data and information provided by the enquirer are the TSOs. The data entered online in a form will not be stored or otherwise electronically processed in an automated manner. The data of the inquirer will be stored by the TSOs for as long as necessary for the purpose of the market demand process and the allocation of new capacities. The enquirer consents to the evaluation and processing of the information and to its publication in the market demand analysis report pursuant to Art. 26 (13) NC CAM by the TSOs. Section 6 remains unaffected by this.

Insofar as personal data is collected, it will only be used for the purpose of the steps outlined in the project description. No sales or other marketing will take place. The inquirer agrees to the collection, processing and use of personal data to enable any queries (Art. 6 para. 1 sentence 1 lit. a and f DSGVO). There is a right to information, correction, deletion, restriction of processing, objection, data portability, revocation of your consent and complaint to a supervisory authority. There is no legal or contractual obligation to provide personal data.

10. Applicable Law

This market demand shall be governed exclusively by the laws of the Federal Republic of Germany. The application of international private law is excluded.

11. German and English version of the conditions of participation

These Terms and Conditions of Participation are issued in both German and English versions. In the event of any inconsistency between the German and English versions, the German version shall prevail. The English version cannot be used to interpret the German version.