



DECISION

In the administrative procedure pursuant to

section 29(1) of the Energy Industry Act (EnWG) in conjunction with section 56(1) first sentence para 2, second sentence 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

with respect to

the approval of a project proposal for an incremental gas transport capacity project concerning the border between the GASPOOL market area and the TTF market area in the Netherlands

vis-à-vis Gasunie Deutschland Transportservices GmbH, Pasteurallee 1, 30655 Hannover, legally represented by its management board,

- applicant 1 -

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

- applicant 2 -

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

represented by

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

decided on 17 April 2019:

- 1.) The project proposal (Annex 1 to this decision) for a project for incremental gas transport capacity relating to the border between the German market area GASPOOL and the Netherlands market area TTF and to the creation of the new "Knock" interconnection point, is approved.
- 2.) In the economic test pursuant to Article 22(1) and (2) of Regulation (EU) 2017/459, the amounts of incremental exit capacity from the "Knock" interconnection point will only be included in the calculation of the present value of binding commitments of network users in years in which, in the respective gas year, exit capacity from both the "Bunde" interconnection point (GASCADE Gastransport GmbH; EIC: 21Z000000000074Q) and the "Oude Statenzijl H" interconnection point (Gasunie Deutschland Transport Services GmbH; EIC: 21Z000000000076M) has been
 - a) offered and
 - b) sold with an auction premium or sold completely.

Annex 2 to this decision provides a schematic diagram of this point.

- 3.) The applicants are required to draw attention to operative provision 2 in their publication pursuant to Article 28(3) of Regulation (EU) 2017/459 and in the publications and auctions on the capacity booking platform used.
- 4.) The costs are reserved.

Rationale

I.

The process concerns the approval of a project proposal for incremental gas transport capacity within the meaning of Article 3(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. The project proposal relates to the border between Germany and the Netherlands and envisages the creation of a new interconnection point.

The German market area GASPOOL is connected to the Netherlands entry-exit systems of Gasunie Transport Services B.V. (GTS) with access to the virtual trading point Title Transfer Facility (TTF) via two interconnection points. These are "Bunde" (EIC: 21Z000000000074Q), which is operated by applicant 2, and "Oude Statenzijl H" (EIC: 21Z000000000076M), which is operated by applicant 1.

The following capacity is currently technically available in the flow direction from GASPOOL to TTF: the applicants can offer a total of 14,519,680 kWh/h/a of firm and freely allocable exit capacity (FZK) at the above-mentioned interconnection points. GTS can market 17,872,764 kWh/h/a of entry capacity (see table 1).

Transmission system operator	Capacity type (capacity product; flow direction)	TAC (kWh/h/a)
GUD (applicant 1)	Exit capacity (FZK; GASPOOL → TTF)	2,100,000
Gascade (applicant 2)	Exit capacity (FZK; GASPOOL → TTF)	12,419,680
GTS	Entry capacity (FZK; GASPOOL → TTF)	17,872,764

Table 1: Current technically available capacity

(1) Non-binding market demand indications

From 6 April 2017 to 1 June 2017, the Vereinigung der Fernleitungsnetzbetreiber e.V. (association of transmission system operators), on behalf of the German transmission system operators (TSOs), gave all network users the opportunity to submit non-binding capacity demand indications for the German market area borders. The aim of this was to analyse whether the capacity needs indicated by network users for a market area border could be covered by the existing transmission system infrastructure or whether additional gas transport capacity would need to be created for this purpose. GTS, the TSO in the Netherlands, took a similar approach.

Within the context of this non-binding market survey, the applicants received demand indications for the relevant market area border of:

Exit capacity	Entry capacity	Gas year	Amount (kWh/h)	Capacity product	Allocation option
GASPOOL	TTF	2025/2026 - 2025/2026	2,638,255	GASPOOL exit capacity: firm capacity with restricted allocability (BZK)	Greifswald/Lubmin II
				TTF entry capacity: firm, freely allocable capacity (FZK)	(none)
		2026/2027 - 2029/2030	5,276,509	GASPOOL exit capacity: firm capacity with restricted allocability (BZK)	Greifswald/Lubmin II
				TTF entry capacity: firm, freely allocable capacity (FZK)	(none)
		2030/2031 - 2039/2040	11,872,146	GASPOOL exit capacity: firm capacity with restricted allocability (BZK)	Greifswald/Lubmin II
				TTF entry capacity: firm, freely allocable capacity (FZK)	(none)

Table 2: Market demand indications received

The non-binding demand indication included the information that the exit capacity of up to 11,872,146 kWh/h indicated was in addition to the technically available capacity of the two existing interconnection points. The demand indication thus referred, on the one hand, to the not yet contracted existing capacity and, on the other, to the incremental capacity in the amount given above.

(2) Market demand assessment

The applicants announced the initiation of a project in the market demand assessment report published on 27 July 2017.

https://www.fnb-gas-capacity.de/fileadmin/files/Marktnachfrageberichte_auf_Basis_unverbindlicher_Marktnachfragen/2017_07_27_MDAR_GASPOOL-NL_DE.pdf

Link as at 23 January 2019

The assessment was limited to the transport direction requested and the capacity product specified in the demand indication. Since only dynamically allocable capacity (DZK) was requested in the Gaspool market area, the TSOs took the total marketable technical capacity and all booked capacity into account in the assessment.

(3) Design phase and consultation

Following the market assessment, the applicants and GTS conducted technical studies to test technical feasibility and to design an expansion plan to meet market demand. They made the results available in a draft project proposal for consultation with a deadline of 19 October 2017.

Two expansion measures were recommended in the draft, which would lead to an increase of 7,300,000 kWh/h and 11,900,000 kWh/h respectively of technically available capacity at the relevant market area border. The incremental capacity would be provided via a new interconnection point, "Knock", to be operated by applicant 1 and to be located near the entry point Emden EPT (market area border to Norway). An alternative via the transmission system of applicant 2 would require greater investments, according to the draft, while a transportation route via the market area NetConnect Germany could not be calculated in the absence of a firm capacity model for the Germany-wide market area.

The new interconnection point "Knock" is described as a new connection at Emden in GTS' application.

The proposed variant was said to be extremely cost-effective. According to the project draft, these measures would result in the following offer levels, which cover all the interconnection points of the market area border. The table does not distinguish between capacity products:

Offer level I				
From	To	Free existing capacity taking account of a reservation quota of 20%; kWh/h	Incremental capacity – offer level I, taking account of a reservation quota of 20%, kWh/h	Aggregated offer level I for all relevant interconnection points and suitable capacity products; kWh/h
1 Oct 2025	30 Sep 2033	2,534,691	5,840,000	8,374,691
1 Oct 2033	30 Sep 2034	10,479,115	5,840,000	16,319,115
1 Oct 2034	30 Sep 2040	11,772,544	5,840,000	17,612,544

Table 3: Offer level I according to consulted project proposal of 19 October 2017

Offer level II				
From	To	Free existing capacity taking account of a reservation quota of 20%; kWh/h	Incremental capacity – offer level II, taking account of a reservation quota of 20%, kWh/h	Aggregated offer level II for all relevant interconnection points and suitable capacity products; kWh/h
1 Oct 2025	30 Sep 2033	2,534,691	9,520,000	12,054,691
1 Oct 2033	30 Sep 2034	10,479,115	9,520,000	19,999,115
1 Oct 2034	30 Sep 2040	11,772,544	9,520,000	21,292,544

Table 4: Offer level II according to consulted project proposal of 19 October 2017

The technical study included expansion measures which are no longer dependent on the implementation of the project proposal since the confirmation of the scenario framework and the draft of the network development plan 2018/2028. The costs given in the study are therefore out-of-date.

In its response to the consultation, Gazprom Export LLC (GPE) criticised the project draft.

Among other things, it objected to the fact that its demand indication for the market area border from GASPOOL to TTF had not been brought together in one project with its demand indications relating to entry points from the Russian Federation. GPE maintained that this separation would prevent one economic test being carried out, which it judged to be appropriate.

(4) Further contact with regulatory authorities

In December, the Netherlands Authority for Consumers and Markets (ACM) expressed concern about the draft project. It maintained that, since there were plans for the creation of a new interconnection point, the project, the offer levels (tables 3 and 4) and the economic test must only refer to this interconnection point. It argued that the other interconnection points of the market area border, including those at which suitable capacity is offered, should be disregarded in the project proposal. The Ruling Chamber responded that an efficient network expansion in line with requirements could not be guaranteed under those circumstances. While it would be possible to adjust the offer level, provisions for the German side taking the above-mentioned aspects into account had been reserved.

(5) Final project application

In a letter dated 15 February 2019, received by the Ruling Chamber on the same day, the applicants presented their project proposal to the Ruling Chamber with requests for approval.

The submitted project proposal is different in some respects to the draft that was the subject of consultation in December 2017. The estimated costs have been reduced to about €1.25m for offer level 1 and €5.2m for offer level 2. The consultation document dated 19 October 2017 on the technical study submitted had contained expansion measures that were partly intended to cover the requirements for the network development plan (NDP) 2018-2028 in the 2018 scenario framework. Because the technical study overlapped with the draft of the NDP 2018-28, which was presented by the TSOs on 1 April 2018, it had not been possible for the applicants to separate the expansion measures directly relevant to the incremental capacity process.

A corresponding application from GTS was received by the ACM on 15 February 2019. The project proposal contains in particular the following information:

1. A list of the planned offer of bundled yearly capacity products for the possible new interconnection point "Knock":

Products to be offered	Offer level 1	Offer level 2
	new capacity (DZK Gasunie with FZK GTS)	new capacity (DZK Gasunie with FZK GTS)
GY 2025/26	5,840,000	9,520,000
GY 2026/27	5,840,000	9,520,000
GY 2027/28	5,840,000	9,520,000
GY 2028/29	5,840,000	9,520,000
GY 2029/30	5,840,000	9,520,000
GY 2030/31	5,840,000	9,520,000
GY 2031/32	5,840,000	9,520,000
GY 2032/33	5,840,000	9,520,000
GY 2033/34	5,840,000	9,520,000
GY 2034/35	5,840,000	9,520,000
GY 2035/36	5,840,000	9,520,000
GY 2036/37	5,840,000	9,520,000
GY 2037/38	5,840,000	9,520,000
GY 2038/39	5,840,000	9,520,000
GY 2039/40	5,840,000	9,520,000

Table 5: Coordinated offer level IP "Knock"

For the interconnection points "Bunde" and "Oude Statenzijl H", marketing of the capacity is planned independently of the project.

2. Additional terms and conditions relating to the project;
3. A timetable for implementation;
4. The following information and parameters for the economic test
 - a. Article 25(1)(a) of Regulation (EU) 2017/459: the estimated reference price for an FZK product of €3.97/kWh/h/a (DZK discount of 5%, ie an effective proposed reference price of €3.7715/kWh/h/a).
 - b. Article 22(1)(a) of Regulation (EU) 2017/459: the **present value of commitments of network users** for contracting capacity, for which no minimum premium is to be applied. On the basis of the calculation tool included as annex 3a and 3b to the project proposal, this gives a present value associated with the incremental capacity included in the respective offer level:
 - i. marketing of offer level 1: €159,176,078.20
 - ii. marketing offer of level 2: €222,885,413.50
 - c. Article 22(1)(b) of Regulation (EU) 2017/459: the **present value of the estimated increase in the allowed or target revenue** of the transmission system operator associated with the incremental capacity included in the respective offer level:
 - i. marketing of existing capacity €0

- ii. marketing offer of level 1: €2,173,439.37
- iii. marketing offer of level 2: €14,977,323.29
- d. Article 22(1)(c) of Regulation (EU) 2017/459: the f-factor in the amount of 0.67 (offer level 1) and 0.63 (offer level 2).

To ensure an efficient network expansion, the applicants proposed in their project application taking the extent to which capacity was booked at the "Bunde" and "Oude Statenzijl H" interconnection points into account in the economic test. However, they also proposed including incremental capacity in the present value calculation for years in which no existing capacity is offered.

For further details, in particular on the derivation of the present value and the f-factor, reference is made to the project proposal (annex to this decision).

(6) The Bundesnetzagentur and the Netherlands regulatory authority communicated and coordinated matters throughout the entire process. The Bundesnetzagentur informed the regulatory authorities of Lower Saxony and Hesse and the Bundeskartellamt of the process on 29 March 2019 and gave them the opportunity to submit comments.

The Ruling Chamber gave each of the applicants the opportunity to submit comments in a letter dated 29 March 2019. The applicants responded in letters with identical content dated 4 April 2019. They first welcomed the approval of the project application but objected to the stipulation of operative part 2a) that potential bookings of incremental capacity as of GY 2035/36 should not be included in the economic test. They argued that this was inappropriate, because those bookings would contribute to the economic viability of the project just like bookings in the previous gas years (2025/26 to 2033/34).

For further details, please refer to the contents of the file.

II.

The applicants' project proposal for an incremental gas transport capacity project, including the parameters for the economic test, has been approved (operative part 1). The formal and material requirements for approval have been met.

However, it was only possible to issue the approval subject to the stipulations in operative parts 2 and 3.

1. Legal basis

The approval of the project proposal, including the parameters for the economic test (operative part 1), is based on section 29(1) EnWG in conjunction with section 56(1) first sentence para 2, second sentence 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. Pursuant to section 56 EnWG, the Bundesnetzagentur is active in the enforcement of the above-mentioned European Regulations. Pursuant to Article 28(1) and (2) of Regulation (EU) 2017/459, the national regulatory authority decides in coordination with the regulatory authorities of the neighbouring Member State whether to approve the project proposal submitted, including the information on the economic test.

The stipulations in operative parts 2 and 3 are based on section 36 of the Administrative Procedures Act (VwVfG).

2. Formal requirements for approval

The formal requirements for approval have been met.

2.1. Competence

Pursuant to section 56(1) first sentence para 2 EnWG, the Bundesnetzagentur is the responsible regulatory authority. The Ruling Chamber's competence is set out in section 59(1) first sentence EnWG.

2.2. Form of the application

The application was submitted in due form. All the necessary information pursuant to Article 28(1) second sentence of Regulation (EU) 2017/459 is included in the project proposal.

2.3. Closing date for applications

The application was submitted within the time limit. While according to Article 28(2) and (3) of Regulation (EU) 2017/459, the approval process should be started eight months before the relevant auction for yearly capacity, this does not lead to a limitation period, so it was still possible to decide on the application submitted on 15 February 2018.

2.4. Hearing

Pursuant to section 56(1) third sentence in conjunction with section 67(1) EnWG, the applicants were given an opportunity to comment .

2.5. Involvement of other authorities

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

Pursuant to Article 28(2) of Regulation (EU) 2017/459, the Bundesnetzagentur discussed the matter both before and during the procedure with the Netherlands regulatory authority, and coordinated the present approval decision with it.

Pursuant to section 56(1) third sentence in conjunction with sections 55(1) and 58(1) second sentence EnWG, the Bundeskartellamt and the regulatory authorities of the federal states of Hesse and Lower Saxony – where the applicants have their headquarters – were informed of the start and completion of the procedure. These authorities were given an opportunity to respond.

3. Substantive requirements for approval

The project proposal was approved in accordance with Article 28(2) of Regulation (EU) 2017/459 (operative part 1), subject to the stipulations made in operative parts 2 and 3. The substantive requirements for approval have been met. The decision was made following appraisal of the aspects of the project proposal set out in Article 28(1) of Regulation (EU) 2017/459:

- Article 28(1)(a) of Regulation (EU) 2017/459: all offer levels, reflecting the range of expected demand for incremental capacity at the relevant interconnection points as a result of the processes provided for in Article 27(3) of Regulation (EU) 2017/459 and in Article 26 of Regulation (EU) 2017/459 (see **3.1**);
- Article 28(1)(b) of Regulation (EU) 2017/459: the general rules and conditions related to the project (see **3.2**);
- Article 28(1)(c) of Regulation (EU) 2017/459: the timelines for the project, including any changes since the consultation, and measures to prevent delays and minimise the impact (see **3.3**);
- Article 28(1)(d) Regulation (EU) 2017/459: the parameters of the economic test defined in Article 22(1) Regulation (EU) 2017/459 (see **3.4**);
- Article 28(1)(e) of Regulation (EU) 2017/459: information as to whether it is necessary to extend the marketing period pursuant to Article 30 of Regulation (EU) 2017/459 (see **3.5**);
- Article 28(1)(f) of Regulation (EU) 2017/459: where necessary, a proposed alternative allocation mechanism including its justification (see **3.6**);

- Article 28(1)(g) of Regulation (EU) 2017/459: where a fixed price approach is followed for the incremental capacity project, the elements as described in Article 24(b) of Regulation (EU) 2017/460 (see 3.7).

Moreover, in its decision the Ruling Chamber also took account of the objectives and purpose of the incremental capacity process and the relevant consideration requirements (see 3.8).

3.1. Offer level (Article 28(1)(a) of Regulation (EU) 2017/459)

The project proposal was approved with regard to the offer levels 1 and 2. The offer levels submitted pursuant to Article 28(1)(a) of Regulation (EU) 2017/459 have been determined in accordance with regulatory requirements (see 3.1.1.) and reflect the range of expected demand for incremental capacity (see 3.1.2.).

"Offer level" means the sum of the available existing capacity and the incremental capacity for an interconnection point (Article 3 para 5 of Regulation (EU) 2017/459). The amount of incremental capacity results from the specific expansion plan linked to the respective offer level. In line with the wishes of the Netherlands regulatory authority, the project proposal and offer levels only refer to the new "Knock" interconnection point; the offer levels are therefore fully used up by incremental capacity. Existing capacity from the two existing interconnection points "Bunde" and "Oude Statenzijl H" is to be offered and allocated separately from the project. Operative part 2 (see section 4) ensures that the existing capacity is taken into account in the economic test.

The project proposal contains two offer levels, which have different levels of expansion plans. Pursuant to the allocation method laid down in Article 8(2) second and fourth sentences, Article 17(20) in conjunction with Article 22(3), Article 29(1) and (2) of Regulation (EU) 2017/459, auctions for both offer levels should be held at the same time. Any offer level – and therefore also the respective expansion plan – must be subject to an economic test in accordance with Article 22(3) of Regulation (EU) 2017/459. This puts the present values of the binding commitments of network users in relation to a predefined proportion of the costs of the expansion plan in the auction proceedings. Capacity can only be allocated in accordance with the auction results for an offer level if the economic test has a positive outcome on both sides of the interconnection point (see Article 22(3) first sentence of Regulation (EU) 2017/459). Otherwise, the auctions of that offer level are not relevant and neither capacity allocation nor network expansion take place. In case more than one offer level results in a positive outcome of the economic test, the offer level with the largest amount of capacity (in this case, offer level 2) is used for allocation and network expansion (see Article 22(3) second sentence of Regulation (EU) 2017/459). In case no offer level results in a positive outcome, the specific incremental capacity process must be terminated (see Article 22(3) third sentence of Regulation (EU) 2017/459).

In accordance with Article 8(2) in conjunction with Article 28(1)(a) of Regulation (EU) 2017/459, offer levels 1 and 2 are subject to approval; the allocation mechanism just described is based directly on the Regulation.

3.1.1. Offer level: determining the bundled capacity products to be offered

The coordinated offer levels 1 and 2 submitted meet legal requirements. The applicants, in coordination with GTS, have determined the bundled capacity products to be offered according to Article 29(1) of Regulation (EU) 2017/459.

Offer levels 1 and 2 are based on the provisions of Article 11(6) of Regulation (EU) 2017/459, pursuant to which:

$$[\text{Capacity to be offered}] = A - B - C + D + E - F$$

Where:

- A is the transmission system operator's technical capacity for each of the standard capacity products;
- B for annual yearly auctions offering capacity for the next 5 years, is the amount of technical capacity (A) set aside in accordance with Article 8(7); for annual yearly auctions for capacity beyond the first 5 years, is the amount of technical capacity (A) set aside in accordance with Article 8(7);
- C is the previously sold technical capacity, adjusted by the capacity which is re-offered in accordance with applicable congestion management procedures;
- D is additional capacity, for such year, if any;
- E is the incremental capacity for such year included in a respective offer level, if any;
- F is the amount of incremental capacity (E), if any, set aside in accordance with Article 8(8) and (9).

The creation of a new interconnection point and the marketing outside of a virtual interconnection point lead to the following formula in this case:

$$[\text{Capacity to be offered}] = E - F$$

On the German side, the expansion plan of offer level 1 would lead to 7,300,000 kWh/h of new, dynamically allocable exit capacity in all gas years ("E" within the meaning of Article 11(6) of Regulation (EU) 2017/459), while the plan of offer level 2 would lead to 11,900,000 kWh/h. On the Netherlands side, there are plans for corresponding, coordinated amounts of firm, freely allocable entry capacity, which would allow bundled marketing.

With the decision to adjust capacity regulations in the gas sector (decision of 14 August 2015, ref no BK7-15-001), a share of 20% of incremental capacity to be set aside for the German sides of all interconnection points has been defined by the Bundesnetzagentur Ruling Chamber 7 in accordance with Article 8(9) of Regulation (EU) 2017/459. This share is above the 10% minimum amount set out in Article 8(8) of Regulation (EU) 2017/459. In analogous application of Article 8(7)(a) of Regulation (EU) 2017/459, one half of this capacity must be offered no earlier than in the annual yearly capacity auction held in accordance with the auction calendar during

the fifth gas year preceding the start of the relevant gas year. In accordance with Article 8(7)(b) of Regulation (EU) 2017/459, the other half must be offered no earlier than the annual quarterly capacity auction. The planned start of operational use for the gas year 2025/2026 means that no capacity is affected by Article 8(7)(a) of Regulation (EU) 2017/459 in the annual auction on 1 July 2019, so the share effectively remains at 20%.

The Netherlands regulatory authority set a reservation quota of 10% for incremental capacity (see ruling of 19 July 2018, ref no ACM/17/031359). The bundling requirement means that the 20% share determined for the German side has a limiting effect on the offer of bundled yearly capacity products ("F" within the meaning of Article 11(6) of Regulation (EU) 2017/459).

	Offer level 1			Offer level 2		
	E (as in Art 11(6))	F (as in Art 11(6))	bundled capacity product (DZK Gasunie with FZK GTS)	E (as in Art 11(6))	F (as in Art 11(6))	bundled capacity product (DZK Gasunie with FZK GTS)
GY 2025/26	7,300,000	1,460,000	5,840,000	11,900,000	2,380,000	9,520,000
GY 2026/27	7,300,000	1,460,000	5,840,000	11,900,000	2,380,000	9,520,000
GY 2027/28	7,300,000	1,460,000	5,840,000	11,900,000	2,380,000	9,520,000
GY 2028/29	7,300,000	1,460,000	5,840,000	11,900,000	2,380,000	9,520,000
GY 2029/30	7,300,000	1,460,000	5,840,000	11,900,000	2,380,000	9,520,000
GY 2030/31	7,300,000	1,460,000	5,840,000	11,900,000	2,380,000	9,520,000
GY 2031/32	7,300,000	1,460,000	5,840,000	11,900,000	2,380,000	9,520,000
GY 2032/33	7,300,000	1,460,000	5,840,000	11,900,000	2,380,000	9,520,000
GY 2033/34	7,300,000	1,460,000	5,840,000	11,900,000	2,380,000	9,520,000
GY 2034/35	7,300,000	1,460,000	5,840,000	11,900,000	2,380,000	9,520,000
GY 2035/36	7,300,000	1,460,000	5,840,000	11,900,000	2,380,000	9,520,000
GY 2036/37	7,300,000	1,460,000	5,840,000	11,900,000	2,380,000	9,520,000
GY 2037/38	7,300,000	1,460,000	5,840,000	11,900,000	2,380,000	9,520,000
GY 2038/39	7,300,000	1,460,000	5,840,000	11,900,000	2,380,000	9,520,000
GY 2039/40	7,300,000	1,460,000	5,840,000	11,900,000	2,380,000	9,520,000

Table 6: Determination of the offer level

The coordinated offer levels are established in due consideration of the permitted marketing period. Pursuant to Article 11(3) first sentence of Regulation (EU) 2017/459, when offering incremental capacity, the offer levels may be offered in yearly capacity auctions for a maximum of 15 years after the start of operational use. The timeline of the project proposal envisages gas year 2025/2026 for commissioning. As a consequence, the bundled capacity products may be offered for the period up to and including the 2039/2040 gas year.

3.1.2. Offer levels – reflecting market demand

Offer levels 1 and 2 reflect the range of expected demand for incremental capacity.

In accordance with Article 28(1)(a) of Regulation (EU) 2017/459, the offer levels coordinated in a project proposal must accommodate the expected demand determined in the process provided for in Article 26 and Article 27(3) of Regulation (EU) 2017/459. This will ensure that the project enables a defined network expansion based on specific requests from network users.

The amounts of capacity listed in **table 6** fulfil these requirements because the non-binding demand indication, shown in **table 2**, can be fully covered. The Ruling Chamber takes the view that it is not relevant whether the entire capacity can be contracted at the time of the auction for yearly capacity on 1 July 2019. Rather, it is sufficient if the transport capacity requested by network users is made technically available for the respective gas years. Shares of capacity that are to be set aside as per the above principles, therefore, do not prevent the demand being reflected.

3.2. General rules and conditions (Article 28(1)(b) of Regulation (EU) 2017/459)

Approval could also be granted given the planned use of the project-related supplementary rules and conditions. These are compatible with the regulatory requirements.

According to Article 28(1)(b) of Regulation (EU) 2017/459, the applicants must include with the project proposal the general rules and conditions "*[...] that a network user must accept to participate and access capacity in the binding capacity allocation phase of the incremental capacity process, including any collaterals to be provided by network users and how possible delays in the provision of capacity or the event of a disruption to the project are dealt with contractually [...]*".

In line with the aim and purpose of the provision cited above, the Ruling Chamber limited its assessment to the "Supplementary Rules and Conditions of Gasunie Deutschland Transportservices GmbH for incremental capacity from 1 October 2022 ("EGB"). The approval does not extend to those rules and conditions that must be accepted as a matter of course for the standard offer of existing capacity; this refers in particular to Annex 1 of the *Cooperation agreement between the operators of gas supply networks in Germany*.

As far as the content of the EGB is concerned, no objections are raised with respect to the requirements of Regulation (EU) 2017/459. Compared with the version consulted in the planning phase, clauses have been removed from section 2 EGB that made the effectiveness of the transport contracts subject to further conditions. As assessment was therefore unnecessary.

See the published version at: https://www.fnb-gas-capacity.de/en/consultation/ Link as at 28 January 2019
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Section 4 EGB contains provisions for the legal consequences of delay or disruption to the project. These envisage a certain decoupling of the corresponding entry and exit contracts that are brought together in one bundled capacity product in accordance with Article 3 para 12, Article 19 para 1 of Regulation (EU) 2017/459. They state that the rights and obligations from the transport contract with applicant 1 should be able to remain, even if rights and obligations from the corresponding transport contract are no longer in place. Moreover, network users commit to making more bookings in the future if appropriate.

These provisions cannot be objected to in light of recital 11 of Regulation (EU) 2017/459. According to this, steps should be taken to avoid captive customers being exposed to the economic risks of the project. The clauses in question promote this aim because the financial obligations the network users enter into are only nullified or replaced by subsequent bookings under strict terms and conditions. In particular, applicant 1 rules out the nullification of financial obligations due to circumstances originating in the adjacent entry-exit system, over which it has no influence. Without these clauses, there would be a risk of a project being initiated by virtue of binding commitments, but this then being followed by a failure to meet the payment obligations and captive customers having to bear the costs.

The clauses are also not contrary to the aim and purpose of Article 19 Regulation (EU) 2017/459, pursuant to which capacity should be allocated as a bundle and not subsequently separated. This purpose can have an effect on the contractual design and interpretation under the "effet utile" principle and require the contracts to be synchronised. However, the EGB are concerned with particular cases of problems and delays in which the corresponding capacity of the bundled capacity product is not available. There is therefore no danger that the capacity at the two sides of an interconnection point will be marketed or traded separately.

3.3. Timeline (Article 28(1)(c) of Regulation (EU) 2017/459)

The timeline submitted has been approved. According to this timeline the new capacity should be operational as from the 2025 gas year.

In accordance with Article 28(1)(c) Regulation (EU) 2017/459, timelines of the incremental capacity project, including any changes since the consultation described in Article 27(3) of Regulation (EU) 2017/459, and measures to prevent delays and minimise the impact of delays are subject to approval.

The timeline submitted in the consultation document only covers the period up until the 2019 annual auction.

The applicants were requested to extend the timeline up to the technical implementation and start of operation of the planned project. The applicants complied with this request in the project proposal submission. The planning and construction time of the necessary investments to provide capacity at the Knock interconnection point are estimated to be at least two years, from August 2023 to the planned commissioning in October 2025. This time scale is considered realistic based on experience of implementing measures of this type and size as part of the ongoing planning and approval procedures for the gas network development plan.

GTS has planned commissioning for September 2025.

As a result, the newly bundled capacity at the Knock interconnection point in the new Oude Statenzijk H marketing zone could go into operation as from the planned 2025/26 gas year if the

planning, approval and construction time of the necessary measures determined stays on schedule.

3.4. Information and parameters for the economic test (Article 25(1) and Article 28(1)(d) of Regulation (EU) 2017/459)

The approval includes the parameters for the economic test included with the project application.

Pursuant to Article 25(1) and 28(1)(d) of Regulation (EU) 2017/459, this information must be approved by the regulatory authority. The values are used in the economic test, which is carried out within two business days of the closing of the bidding round by the Bundesnetzagentur in accordance with Article 11(10) of Regulation (EU) 2017/459 (see decision of 19 July 2017, ref no BK9-17/609). There is a separate economic test for each offer level (Article 22(3) first sentence of Regulation (EU) 2017/459). The aim of the test is to ensure the economic viability of the project and therefore requires that all network users demanding incremental capacity assume the corresponding costs and risks associated with their demand (see recital 11 of the Regulation (EU) 2017/459).

A project will only be implemented in accordance with Article 22(3) first sentence of Regulation (EU) 2017/459 if the economic test of an offer level leads to a positive outcome on both sides of the interconnection point. Pursuant to Article 22(2)(a) of Regulation (EU) 2017/459, this is the case if the present value of binding commitments of network users for contracting capacity (to put it simply, the additional revenues) is at least equal to the share of the present value of the estimated increase in the allowed or target revenue of the transmission system operators defined by the f-factor.

$$\sum_{j=1}^T \left[\frac{1}{(1+i)^j} \times \{ (RP_j + AP_j + MP_j) \times NK_j + (AP_j + MP_j) \times \text{verf.}BK_j^{NK>0} \} \right] \geq \sum_{j=1}^H \frac{1}{(1+i)^j} \Delta EOG_j \times f$$

Where:

i	interest rate for determining the present value
j	index for the respective gas year
RP _j	reference price for the year j
AP _j	auction premium in the year of the auction for the year j
MP _j	mandatory minimum premium according to Article 33(3) of Regulation (EU) 2017/460 for the year j
NK _j	new capacity in the year j (to calculate the economic test <u>before</u> the auction, enter the new capacities that are expected to be booked depending on the offer level in the auction. <u>After the auction</u> , enter the capacities actually marketed.)
verf. BK _j ^{NK>0}	available existing capacity that has been booked together with the new capacity in the auction of the new capacities for the year j; on condition that the new capacity > 0, ie has been booked
ΔEOG _j	change in revenue cap in the year j
f	The f-factor to be set in accordance with Article 23 of Regulation (EU) 2017/459
T	maximum number of years for which the new capacity may be offered
H	maximum duration of use (depreciation period) of the investment and of the associated revenue cap increase

The Bundesnetzagentur provides a tool on its website for the calculation:

https://www.bundesnetzagentur.de/DE/Sachgebiete/ElektrizitaetundGas/Unternehmen_Institutionen/NetzentwicklungundSmartGrid/Gas/IncrementalCapacity/IncrementalCap_node.html

Notes:

https://www.bundesnetzagentur.de/SharedDocs/Downloads/DE/Sachgebiete/Energie/Unternehmen_Institutionen/NetzentwicklungUndSmartGrid/Gas/IncrementalCap/Erlaeuterungen_Kalkulationstool
Links as at 18 February 2019

The economic test above only takes account of the capacity at the new "Knock" interconnection point. It does not take account of existing capacity at the "Bunde" and "Oude Statenzijl H" interconnection points, which are already in operation.

Article 22 of Regulation (EU) 2017/459 only permits the booking of existing capacity to be taken into account if existing capacity and incremental capacity are offered at the same interconnection point (eg via a virtual interconnection point). Therefore, for the special case in this project, for which a new interconnection point is to be set up specifically for incremental capacity, operative part 2 was also necessary to be able to take the booking of existing capacity into account (see section 4). The modifications specified in (2) are necessary to ensure an efficient network expansion in line with requirements in the event that the outcome of the economic test is positive.

(1) The reference price estimated for the time horizon of the initial offer of incremental capacity in accordance with Article 25(1)(a) of Regulation (EU) 2017/459 in the amount of € 3.7715/(kWh/h)/a is approved.

The Ruling Chamber only checks the plausibility of the estimated reference price. The reference price requested corresponds to the published charge for Germany for the year 2022 of €3.97/(kWh/h/a) in the draft decision of the REGENT determination (ref no BK9-18-610-NCG and BK9-18-611-GP), with a 5% discount because the incremental capacity will be offered as conditional firm capacity without firm access to the virtual trading point. The Ruling Chamber believes this provides the best possible estimate.

(2) The present value of binding commitments of network users for contracting capacity must be approved in accordance with Article 22(1)(a) of Regulation (EU) 2017/459. In the project proposal, the applicants state that they have reduced the present value in comparison to the consultation document following intense discussion between the affected TSOs about the input parameters of the economic test. The application makes references to annexes 3a and 3b.

These annexes take account of the amount of contracted incremental capacity in kWh/h/a. However, since existing capacity is not to be marketed after 2033/2034, it is no longer to be taken into account in the calculation of the present value of the binding commitments of network users for contracting capacity in accordance with operative part 2.

(3) The present value of the estimated increase in the allowed or target revenue of the transmission system operator associated with the incremental capacity included in the respective offer level calculated in accordance with Article 22(1)(b) of Regulation (EU) 2017/459 in the amount of:

- marketing of existing capacity €0
- marketing offer of level 1: €2,173,439.37
- marketing offer of level 2: €14,977,323.29

is approved.

(4) Pursuant to Article 22(1)(c) of Regulation (EU) 2017/459, the f-factor in the amount of 0.67 (offer level 1) and 0.63 (offer level 2) is approved.

The Ruling Chamber checks whether the f-factor requested by the applicants is plausible. Should this not be the case, the Ruling Chamber will set the f-factor in accordance with Article 23(1) of Regulation (EU) 2017/459 and different to that in the application.

The applicants have correctly and plausibly calculated the f-factor. They have appropriately weighed up the circumstances to be taken into consideration pursuant to Article 23(1)(a) to (d) of Regulation (EU) 2017/459.

3.5. Marketing period extension (Article 28(1)(e) of Regulation (EU) 2017/459)

No application was made to extend the marketing period pursuant to Article 28(1)(e) of Regulation (EU) 2017/459.

3.6. Alternative allocation mechanism (Article 28(1)(f) of Regulation (EU) 2017/459)

No application was made for an alternative allocation mechanism pursuant to Article 28(1)(f) of Regulation (EU) 2017/459.

3.7. Fixed price (Article 28(1)(g) of Regulation (EU) 2017/459)

No application was made for a fixed price approach pursuant to Article 28(1)(g) of Regulation (EU) 2017/459.

3.8. Consideration requirements

The Ruling Chamber made due and proper use of its assessment and decision-making leeway during the approval decision. As per Article 28(2) subpara 2 of Regulation (EU) 2017/459, in its decision the Ruling Chamber took into consideration the Netherlands regulatory authority (ACM)'s viewpoint, any possible impact of the project on competition and the effective functioning of the internal gas market. According to recital 11 of Regulation (EU) 2017/459, all economic investment risks of captive customers also had to be weighed up.

(1) The Ruling Chamber believes that it is possible to approve the project proposal despite the objections of GPE in its response dated 19 December 2017. GPE objected to the treatment as separate projects of the demand indications at issue here (**table 2**) and those relating to entry points from the Russian Federation. It called in particular for a combined economic test for all the expansion plans.

The economic test is directly linked to the offer levels of the respective interconnection point or entry/exit point (see Article 22(1) of Regulation (EU) 2017/459) and the capacity allocation mechanism (Article 17(20) second sentence of Regulation (EU) 2017/259). Under the principle of the entry-exit system, capacity from the "Knock" interconnection point and the interconnection points or entry/exit points of other market area borders are subject to separate economic tests. Moreover, there is no dependence between the capacity allocation at two different interconnection points or entry/exit points of different market area borders, but only between the respective offer levels affecting the same network point (see Article 8(2) of Regulation (EU) 2017/459).

According to recital 12 (second sentence) and Article 30(2) of Regulation (EU) 2017/459, a combined economic test is only possible, if it all, "where it is reasonable to conclude" that the standard process is not suitable. The Ruling Chamber does not see such grounds. It would be possible to make use of the capacity of the "Knock" interconnection point without expanding the entry points from the Russian Federation.

(2) The Ruling Chamber was only partially able to take the same position as the ACM in its decision. The ACM was of the opinion that not only should the project proposal be restricted to the new "Knock" interconnection point, but also that it was not permissible to modify or make more difficult the economic test. This would have meant not taking account of the amount of demand indicated at other interconnection points of the market area border when deciding on the implementation of the project. This would not ensure an efficient network expansion, which is a fundamental regulatory aim. The Ruling Chamber therefore judged it necessary to issue operative part 2 (for further detail, see section 4).

(3) There are no competitive aspects that stand in the way of the project proposal being approved. It can be ruled out that existing capacity at other interconnection points would be sustainably devalued, not least because of the provisions of operative part 2. Demand exceeding the existing capacity is necessary for the project to be implemented.

(4) The Ruling Chamber ultimately judges the residual risk of inefficient network expansion and of impact on existing infrastructure to be acceptable. While the project proposal is only based on calculations for the GASPOOL market area, meaning that a transportation route taking into account the NetConnect Germany market area has not so far been calculated, despite the future Germany-wide market area, the planned expansion is the most economical of all the versions that can be calculated at the time of the decision and must therefore form the basis of the decision.

4. Stipulation of operative provision 2

The stipulations of operative part 2 are based on section 36 VwVfG and ensure that the project is only implemented within the framework of an efficient and needs-based network expansion.

4.1. Efficient, needs-based network expansion

Ensuring an efficient, needs-based network expansion is one of the fundamental regulatory aims. It is expressed, in particular, in recital 3 of Regulation (EU) 2017/459, as well as in Article 16(1) of Regulation (EC) No 715/2009 and section 1(1) EnWG. Moreover, the effect on the utilisation of other non-depreciated gas infrastructure has to be taken into account under Article 27(3)(i) of Regulation (EU) 2017/459. In addition, protected customers have to be kept from financial disadvantage caused by the devaluation of previously used existing capacity, which is the basis for the entire incremental capacity process pursuant to recital 11 of Regulation (EU) 2017/459.

4.2. Modification of the economic test

A project is only implemented in accordance with Article 22(3) of Regulation (EU) 2017/459 if there is a positive outcome of the economic test on both sides of the interconnection point. A positive outcome of the economic test implies that costs will be recovered but not that the

expansion plan will be efficient and in line with requirements. On the contrary, this conclusion can only be drawn without qualification if the market area border only has one physical or virtual interconnection point and each side only has one firm capacity product for bundled marketing.

In the case of more than one interconnection point or capacity product, network users can request the incremental capacity selectively and thus circumvent the requirement to use existing capacity as a priority. There could therefore be a positive outcome of the economic test despite the fact that the expansion plan is unnecessary, and thus not efficient, because of the possibility of using existing capacity.

This is the risk at the border of the GASPOOL and TTF market areas, where the interconnection points "Bunde" and "Oude Statenzijl H" are in operation and the project envisages the creation of a new interconnection point ("Knock"). A virtual interconnection point will not be set up for the relevant annual auction on 1 July 2019. To mitigate the risk of an inefficient network expansion not in line with requirements, in the economic test incremental capacity may only be included in the calculation of present values of binding commitments of network users for years in which the exit capacity of the existing interconnection points "Bunde" and "Oude Statenzijl H" is offered at all (operative part 2a) or sold with an auction premium or sold completely (operative part 2b).

Annex 2 provides an overview of this decision.

It is not possible to take into account in particular binding commitments of network users for incremental capacity in years for which no existing capacity can be offered in the upcoming annual auction due to the maximum duration being exceeded. Without this stipulation, the Ruling Chamber believes there would be a risk that network customers would only be able to bring about the implementation of the expansion plan by covering their requirements for these years by already booking incremental capacity, even though it would not be possible to examine whether needs could first be met by existing capacity at that time. This would be diametrically opposed to the aim of an efficient network expansion.

The provisions of operative part 2 are a permissible way of bringing the economic test for the project on the German side together with the project for a virtual interconnection point and adequately ensuring that the network expansion plan will be efficient and in line with requirements, aspects which the Ruling Chamber judges to take priority. Contrary to the comments made by the applicants dated 4 April 2019, therefore, the additional barrier in the economic test caused by operative part 2 prevents network expansion in a permissible way in circumstances in which the binding requests do not indicate *additional* capacity requirement.

5. Stipulation of operative provision 3

The stipulation of operative part 3 is based on section 36 VwVfG and ensures that network users are aware of the stipulations of operative part 2 and can base their booking behaviour on them. They therefore promote a transparent and appropriate access to the network.

6. Side agreements (operative part 4)

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 must be filed with the Bundesnetzagentur für Elektrizität, Gas, Telekommunikation, Post und Eisenbahnen, Tulpenfeld 4, 53113 Bonn. It is sufficient if the complaint 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 of filing the appeal. The period begins with the lodging of the appeal and 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 has no suspensory effect (section 76(1) EnWG).

Bonn, 17 April 2019

Chair

Vice Chair

Vice Chair

Helmut Fuß

Anne Zeidler

Dr. Ulrike Schimmel



BK9-19/001

17 April 2019

Annex 2: Present values of binding commitments of network users to be taken into account in the economic test pursuant to Article 22 of Regulation (EU) 2017/459

Gas year		19/20	20/21	21/22	22/23	23/24	24/25	25/26	26/27	27/28	28/29	29/30	30/31	31/32	32/33	33/34	34/35	35/36	36/37	37/38	38/39	39/40					
Taking into account of commitments at the IP Knock in economic test within meaning of Article 22 of Reg (EU) 2017/459		Period before planned start of operational use of IP Knock, so no relevant commitments of network users						Taking into account of commitments of a particular GY, provided that the exit capacity of the IPs Bunde and OUDE were sold with an auction premium or sold completely in that year								No taking into account; not within permissible marketing period of IPs Bunde and OUDE											
Full contracting requirement	Available exit capacity (kWh/h)	X						Bunde: 697.891 Oude: 1.680.000	Bunde: 697.891 Oude: 1.680.000	Bunde: 697.891 Oude: 1.680.000	Bunde: 697.891 Oude: 1.680.000	Bunde: 697.891 Oude: 1.680.000	Bunde: 697.891 Oude: 1.680.000	Bunde: 697.891 Oude: 1.680.000	Bunde: 697.891 Oude: 1.680.000	Bunde: 6.279.300 Oude: 1.680.000	Bunde: 8.642.315 Oude: 1.680.000	X									
	Condition reg. IP Bunde							+/-	+/-	+/-	+/-	+/-	+/-	+/-	+/-	+/-	+/-							+/-	+/-	+/-	+/-
	Condition reg. IP Oude							+/-	+/-	+/-	+/-	+/-	+/-	+/-	+/-	+/-	+/-							+/-	+/-	+/-	+/-
	Condition total result							+/-	+/-	+/-	+/-	+/-	+/-	+/-	+/-	+/-	+/-							+/-	+/-	+/-	+/-

(IP) Bunde: GASCADE Gastransport GmbH; EIC: 21Z000000000074Q

(IP) Oude: Full name "Oude Statenzijl H"; Gasunie Deutschland Transport Services GmbH; EIC: 21Z000000000076M

Data on available exit capacity of these IPs taken from table 4 of the project proposal, "Overview of existing capacity at the market border Exit GASPOOL - Entry TTF"