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Network Charges for Industry, Storage and Electrolysers: The BNetzA's Draft AgNes Determination

The Federal Network Agency (Bundesnetzagentur) has published the draft of its AgNes determination, which sets out the new system of electricity network charges, including rules on relief for large consumers, storage facilities and electrolysers.

The determination is scheduled to be announced on 1 January 2027. From 1 January 2029, network charges are to be calculated and billed under the new system.

Individual and atypical network charges: phase-out with a transitional period

The individual network charges under Section 19(2) StromNEV are extended until 31 December 2031, but only for existing cases.

For **atypical network use** under Section 19(2) sentence 1 StromNEV, three conditions must be met together. The final consumer must have a valid individual network charge agreement in place on 31 December 2028. It must have met the conditions for a charge reduction at least once in the years 2026 to 2028. And offtake at the offtake point concerned must exceed 10 gigawatt hours per year on average over the years 2024 to 2027. Pumped storage plants are excluded (clause 17.1 sentence 3).

The reduction is frozen. For the years 2029 to 2031, clause 17.1 sentence 2 applies the average percentage reduction of the years 2024 to 2027 to the new consumption charge.

For the **baseload rule** under Section 19(2) sentences 2 to 4 StromNEV, clause 17.2 requires only two conditions: a valid agreement on 31 December 2028 and fulfilment of the reduction conditions at least once in the years 2026 to 2028. The rule contains no additional consumption threshold, because that threshold is already part of the statutory provision that continues to apply. The explanatory statement puts the number of affected businesses at around 600 (para. 496).

In both cases, the existing conditions must nevertheless continue to be actually met in the years 2029 to 2031.

There is no successor rule yet. A new special network charge to incentivise flexibility is to be regulated in a separate determination in 2027. The direction is already apparent, however. It is to concern load adjustments in critical congestion situations and at times of high system stress, which are reflected in particularly low or high electricity prices. That system is a topic in its own right, and I will report on it here.

The new basic system for consumers

For offtake points in the low-voltage network with an annual offtake of more than 100,000 kilowatt hours, and for all offtake points above low voltage, the annual demand charge is replaced by a combination of two elements.

Under clause 8.4, the final consumer pays a capacity price in euros per kilowatt on a capacity it orders itself. The ordered capacity must be at least 10 percent of the individual annual peak load of the previous year and at most 100 percent of the contractually agreed network connection capacity.

Under clause 8.5, this is supplemented by a two-tier energy price. Volumes within the ordered capacity are priced at AP1, volumes exceeding it at AP2. AP2 will be between 200 and 350 percent of AP1.

The annual capacity order therefore adds a new commercial decision for industrial companies. Those who order too little pay the higher energy price on the excess volumes. Those who order too much pay for capacity that remains unused.

Generators

For the first time, generation plants also pay a network charge, with some exceptions for smaller plants.

The cost basis is deliberately lower than for consumers: a basic component of 0.50 euros per megawatt hour of energy fed in, plus half of the transmission system operators' balancing energy costs and half of their grid-loss energy costs, spread across the feed-in capacity of all plants covered. No energy price is charged.

Existing plants enjoy far-reaching grandfathering. Plants commissioned before the determination is announced, and plants with a final investment decision taken before the announcement and commissioned by 4 August 2029, pay the feed-in charge only after 20 years from commissioning.

Electrolysers

Electrolysers producing green or low-carbon hydrogen pay a special network charge. It consists solely of a capacity price in euros per kilowatt on the contractual network connection capacity. No energy prices are charged.

Green hydrogen is defined by Delegated Regulation (EU) 2023/1184, low-carbon hydrogen by Delegated Regulation (EU) 2025/2359. The certification must be submitted to the network operator at commissioning, and changes must be notified without delay. Under clause 11.2, electrolysers without these certifications fall under the general consumer charge.

Certification is therefore no longer relevant only for funding purposes; it directly determines the level of the network charge.

Storage

Purely grid-connected electricity storage facilities pay an annual capacity charge on the contractually agreed network connection capacity, likewise at the level of the feed-in charge and without an energy price.

Co-located storage follows the installation to which it is coupled. If the storage facility is coupled with a consumption installation, the consumer charge consisting of the capacity price and the two-tier energy price (see above) applies to both together. If it is coupled with a generation plant, the feed-in charge without an energy price applies. No separate storage charge is then levied; billing runs through the shared network connection. One counter-exception is important in practice: volumes that the storage facility draws from the grid and feeds back in are exempt from the energy prices, but only insofar as they can be separately metered. Those who do not ensure this metering separation pay the energy price on all volumes at the shared network connection point. Here, the metering concept determines the charge burden.

Network charge exemptions for electrolysers and storage

For storage facilities and electrolysers that are not yet in operation, the exemption under Section 118(6) EnWG is preserved only under narrow conditions and on a tight timeline.

For **storage**, this requires a final investment decision before 1 January 2027. The explanatory statement makes clear that plants without an investment decision by that date will be subject to the new charging system from 1 January 2029, even if they meet the statutory commissioning deadline of 4 August 2029 (para. 518).

For **electrolysers**, too, the network charge exemption applies only to plants commissioned after 4 August 2011 and to plants for which a final investment decision was taken before 1 January 2027 and which are commissioned by 4 August 2029 at the latest.

What constitutes a final investment decision is defined in clause 2 no. 1. In para. 499, the ruling chamber ties it to three cumulative conditions:

- Binding orders for components must have been placed.
- The orders must cover at least half of the investment volume, meaning the acquisition or production costs of the plant components.
- It must not be possible to withdraw from these contracts without significant financial loss, with contractual penalties in particular coming into consideration. Significance is measured against the investment volume, and the ruling chamber assumes it in any event where the potential loss amounts to at least 25 percent of the investment volume.

Planning, non-binding negotiations and reservations of components expressly do not suffice.

Anyone wishing to rely on such an investment decision must provide evidence of it to the competent network operator **by 31 March 2027**.

Participating in the proceedings and safeguarding rights

The draft is not yet final. The consultation runs until 18 September 2026, and the determination is to be adopted within calendar year 2026. As to what needs to be done now, a distinction must be drawn between submitting comments by 18 September (generally advisable for everyone) and applying for joinder by the end of the year (for projects specifically affected).

For hydrogen and storage projects that are specifically affected, where everything now depends on the final investment decision by the end of 2026, submitting comments by 18 September 2026 is advisable as a first step. More decisive and more important, however, is an application for joinder (Beiladung) to the Grand Ruling Chamber of the Bundesnetzagentur, which is conducting the proceedings. Under Section 75(2) EnWG, a subsequent appeal against the determination is open only to the parties to the proceedings. One becomes a party through joinder. Without joinder, the courts admit an appeal only in exceptional cases, for instance where a party was unaware of the proceedings (Federal Court of Justice, order of 11 November 2008, EnVR 1/08); that will be difficult to invoke in the AgNes proceedings, which have been public for months. The application is not subject to a deadline, but it must be filed before the determination is adopted, that is, this year. It should demonstrate that the applicant's interests are substantially affected: the project, the status of the investment decision, the economic consequences of the new charging system.

For all others affected, such as industrial companies, submitting comments is also worthwhile, whether through associations or individually. Here, influence can still be exerted in general terms or by presenting one's own situation, supported by figures and site configurations. Comments are to be sent by email to gbk@bnetza.de, using the prescribed subject line and the form provided. Since the Bundesnetzagentur intends to publish the comments, a redacted version must additionally be submitted where trade and business secrets are involved.

I am continuing to follow the proceedings and welcome an exchange of views.

Rechtsanwalt David Engel

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