Courtesy Translation – Not legally binding

Grand Ruling Chamber for Energy

Reference: GBK-25-01-1#1

DECISION

In the administrative proceedings pursuant to section 29 in conjunction with sections 21 and 21a of the Energy Industry Act (EnWG)

relating to the **proceedings for the determination of a regulatory framework and the methodology for incentive regulation for electricity distribution system operators ("RAMEN Strom")**

the Grand Ruling Chamber for Energy of the Bundesnetzagentur für Elektrizität, Gas, Telekommunikation, Post und Eisenbahnen, Tulpenfeld 4, 53113 Bonn, represented by

its Chair	Klaus Müller,
its Vice Chair	Barbie Kornelia Haller,
its Vice Chair	Dr Daniela Brönstrup,
its Vice Chair	Achim Zerres,
its Vice Chair	Karsten Bourwieg and
its Vice Chair	Dr Christian Schütte,

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in summoning

[redacted], represented by [redacted],

party summoned 1) –

legal representatives of the party summoned 1): [redacted]

[redacted], represented by [redacted],

party summoned 2) –

legal representatives of the party summoned 2): [redacted]

decided on [redacted]:

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1. Addressees

[1]This determination applies to operators of energy supply networks if and as far as they operate electricity distribution systems ("network operators" within the meaning of this determination). [2]This does not apply to operators of closed distribution systems within the meaning of section 110 EnWG.

2. Incentive regulation; start and length of the regulatory period

2.1 [1]Network operators' tariffs for network access will be set under a system of incentive regulation creating incentives for efficient service provision. [2]Under the incentive regulation framework, a cap will be placed for each calendar year on the revenue a network operator is allowed to generate from network tariffs (revenue cap). [3]Each revenue cap and the efficiency requirements included in the cap will apply to one individual network operator.

2.2 Incentive regulation will begin in accordance with this and other determinations issued under section 21a(2) and (3) sentence 1 EnWG at the start of the fifth regulatory period (1 January 2029) with the base year 2026.

2.3 [1]Each regulatory period will last three years. [2]The reference year for setting the base level and the efficiency requirements for a regulatory period (base year) will be the calendar year beginning three years before the start of the regulatory period.

2.4 [1]A network operator for whom a revenue cap cannot yet be set will be subject to the rules for cost-based tariff setting in sections 23a and 21 EnWG for a transitional period until the end of the ongoing regulatory period. [2]The transitional period will end at the start of the regulatory period for which the base year corresponds to a full business year for the network operator.

3. Special rules for the fifth regulatory period

3.1 In derogation of operative part 2.3 the fifth regulatory period will last five years.

3.2 [1]In the fifth regulatory period, the revenue cap will be adjusted each year with regard to the operating costs (OPEX) based on the change in output parameters from national efficiency benchmarking as described in operative part 10 compared with the base year, valued at efficient costs in accordance with a method for calculating efficiency scores as referred to in operative part 10 ($OPEX_{Anp,t}$), taking into account the rules in sentences 2 to 5. [2]The efficient costs per unit of an output parameter that are calculated for the base year must be updated in accordance with operative parts 6.1 and 6.2. [3]When adjusting a revenue cap, account must be taken of the

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network operator's individual share of the operating costs in the base level minus the costs not subject to efficiency benchmarking and the volatile costs in the base year. [4]The adjustment for an individual network operator can be made dependent on one or more materiality thresholds relating to the change in the output parameters being met. [5]Further details will be set out in a determination under section 21a(2) and (3) sentence 1 EnWG.

3.3 In the period until 31 December 2030 the Bundesnetzagentur will evaluate before the transition to three-year regulatory periods whether the simplification and acceleration tools in the individual elements of the regulatory method are adequate against the background of practical experience for the transition to three-year regulatory periods.

4. Regulatory formula and revenue cap adjustments

4.1 [1]The competent regulatory authority must set a revenue cap for each calendar year of the whole regulatory period subject to the adjustments described in operative part 4.2. [2]The authority will start the procedure for setting revenue caps on its own initiative.

4.2 [1]Adjustments to set revenue caps within the course of a regulatory period can be made in accordance with this determination by the competent regulatory authority or the network operator with effect on 1 January of a calendar year of the regulatory period. [2]Adjustments by the network operator will not require the revenue cap to be re-set by the competent regulatory authority and will be subject to a subsequent review by the competent regulatory authority in the regulatory account under operative part 14. [3]Network operators must inform the competent regulatory authority of the adjustment to the revenue cap with respect to all adjustable elements by 1 January of each calendar year, unless an earlier date is set for individual elements of the regulatory formula. [4]This does not affect the rules on notifications for capex markups in operative part 11.8, the rules on applications for hardship in operative part 13 sentence 5 and for the regulatory account in operative part 14.6, the rules on notifications and applications for network transfers in operative parts 15.9 and 15.10 or the rules on applications for costs from research and development in operative part 17.3.

4.3 A revenue cap will be set and adjusted using the following regulatory formula:

$$EOG_t = KA_{nEu,t} + OPEX_0 \times (1 - X_{ind,t}) \times \prod_{i=1}^{t} \left(\frac{VPI_i}{VPI_{i-1}} - X_{gen} \right)$$

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$$+\left(CAPEX_0 - \mathrm{KK_{Ab,t}}\right) \times \left(1 - \mathrm{X_{ind,t}}\right) + \; KK_{Auf,t} + B_t + Q_t + VK_t - \; VK_0$$

$$+S_t + \; F\&E_t \; - VK_0 \times (1 - X_{ind,t}) \times \left(\prod_{i=1}^{t} \left(\frac{VPI_i}{VPI_{i-1}} - X_{gen}\right) - 1\right)$$

4.4 In derogation of operative part 4.3 a revenue cap for an electricity distribution system operator will be set and adjusted in the fifth regulatory period using the following regulatory formula:

$$EOG_t = KA_{nEu,t} + OPEX_0 \; \times \left(1 - X_{ind,t}\right) \times \prod_{i=1}^{t} \left(\frac{VPI_i}{VPI_{i-1}} - X_{gen}\right)$$

$$+\left(CAPEX_0 - KK_{Ab,t}\right) \times \left(1 - \mathrm{X_{ind,t}}\right) + KK_{Auf,t}$$

$$+OPEX_{Anp,t} + B_t + Q_t + VK_t - VK_0$$

$$+S_t + \; F\&E_t \; - VK_0 \times \left(1 - X_{ind,t}\right) \times \left(\prod_{i=1}^{t} \left(\frac{VPI_i}{VPI_{i-1}} - X_{gen}\right) - 1\right)$$

4.5 The following applies:

EOG_t: The revenue cap to be applied in year t of a regulatory period in accordance with this and other determinations issued under section 21a(2) and (3) sentence 1 EnWG.

$KA_{nEu,t}$: The costs not subject to efficiency benchmarking as defined in operative part 7 to be applied for year t of a regulatory period.

$OPEX_0$: The operating costs (OPEX) in the base level under operative part 5 minus the costs not subject to efficiency benchmarking as in operative part 7 in the base level ($KA_{nEu,0}$).

$X_{ind,t}$: The individual efficiency requirement for year t of a regulatory period according to the following formula:

$$X_{ind,t} = V_t \times (1 - EW)$$

The following applies:

V_t: The distribution factor for reducing inefficiencies as in operative part 10.2 to be applied in year t of a regulatory period.

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EW: The efficiency score calculated as set out in operative part 10.1 and, if applicable, adjusted as set out in operative part 10.4.

VPI_i: The consumer price index as in operative part 6.1 sentences 2 and 3. The notation with "i" is necessary because of the product operator.

X_{gen}: The general sectoral productivity factor as in operative part 6.2.

$CAPEX_0$: The capital costs (CAPEX) in the base level under operative part 5 minus the costs not subject to efficiency benchmarking as in operative part 7 in the base level ($KA_{nEu,0}$).

$KK_{Ab,t}$: The capex deduction under operative part 9 to be applied for year t of a regulatory period.

$KK_{Auf,t}$: The capex markup under operative part 11 to be applied for year t of a regulatory period.

$OPEX_{Anp,t}$: The adjusted operating costs as in operative part 3.2 to be applied for year t of the fifth regulatory period.

B_t: The efficiency bonus as in operative part 10.3, if applicable, to be applied for year t of a regulatory period.

Q_t: Markups or deductions due to the quality element under operative part 12, if applicable, to be applied for year t of a regulatory period.

VK_t: The volatile costs as in operative part 8 to be applied to year t of a regulatory period.

VK_0: The volatile costs as in operative part 8 in the base level under operative part 5.

S_t: The sum of the markups on and deductions from the revenue cap for year t of a regulatory period on the basis of the rules on the regulatory account under operative part 14.

$F\&E_t$: The markup for costs from research and development under operative part 17 to be applied to year t of a regulatory period.

5. Base level

5.1 [1]The base level for a regulatory period will be set by the competent regulatory authority. [2]The base level is restricted to the operationally necessary costs of an

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efficient and structurally comparable network operator and takes account of a reasonable, competitive and risk adjusted return on capital employed. [3]Costs and cost components that would not be incurred to the same extent in a competitive environment must not be taken into account. [4]The costs must not include unrelated components supporting unrelated political objectives.[1]

5.2 [1]The base level comprises definable operating costs (OPEX) and capital costs (CAPEX), including an imputed return on capital. [2]The imputed return on capital is derived from the interest basis multiplied by the weighted average cost of capital (WACC).

5.3 [1]Further details of the calculation of the base level, the interest basis and the WACC will be set out in determinations under section 21a(3) sentence 3 para 2 and section 21(3) sentence 4 para 1 EnWG. [2]Incentive mechanisms for obtaining cost-reducing financial contributions and grants may also be included.

5.4 [1]Costs are not taken into account when calculating the base level if the reason for or the level of the costs is based on special circumstances in the base year. [2]If the reason for or the level of revenue or income is based on special circumstances in the base year and would result in a deduction from the network costs when calculating the base level that would not correspond to the revenue or income of an efficient and structurally comparable network operator, an appropriate figure above the figure in the network-related income statement for the base year as required by section 6b(3) EnWG must be taken into account.

6. Consumer price index and general sectoral productivity factor

6.1 [1]The operating costs will be adjusted each year in line with general inflation using the consumer price index (VPI), taking into account specific input price developments and productivity growth in the network sector. [2]VPI_i is the consumer price index published by the Federal Statistical Office for the calendar year beginning two years before year i of a regulatory period. [3]The corresponding adjustment to the revenue cap will be made by the network operator.

6.2 [1]Account will be taken of specific input price developments and productivity growth in the network sector through a general sectoral productivity factor (Xgen) for a whole regulatory period (one for electricity distribution system operators and one for gas distribution and transmission system operators), taking into account data from network operators throughout the country. [2]The Bundesnetzagentur calculates the

[1] See wording of Article 18(1) first subparagraph second sentence of Regulation (EU) 2019/943 (Electricity Regulation): "Those charges shall not include unrelated costs supporting unrelated policy objectives."

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general sectoral productivity factor before the start of the regulatory period. [3]The Bundesnetzagentur can make the calculation without the use of data from network operators that have chosen to take part in the simplified procedure described in operative part 16. [4]Further details will be set out in a determination under section 21a(3) sentence 3 para 7 EnWG.

7. Costs not subject to efficiency benchmarking

7.1 The costs not subject to efficiency benchmarking due to an economic assessment (KA_{nEu}) will be identified by comparison with controllable costs based on whether the costs are exogenous, homogeneous or volatile.

7.2 [1]Costs are generally only exogenous if a network operator cannot or could not make their own contribution to the incurrence of the costs or to the level of the costs that are or have been incurred. [2]Whether costs are exogenous can also be assessed on the basis of whether they are volatile.

7.3 [1]Costs are generally homogeneous if a large number of network operators have the same or at least similar costs. [2]If costs are homogeneous, this is an indication that the costs can be included in the efficiency benchmarking under operative part 10.

7.4 [1]Whether costs are volatile can be assessed on the basis of the individual character or a factor of the costs (volume or price component). [2]If costs cannot be classed as KA_{nEu}, the costs can be classed as volatile costs as defined in operative part 8.

7.5 Costs or revenue from

1. the necessary use of upstream network levels,
2. operational and collective agreements on pension benefits if a network operator incurs the costs and revenue directly for their own staff employed in the network sector, as well as
3. the actual costs in line with section 30 of the Metering Act (MsbG) incurred by operators of networks with directly connected final customers from tariffs for fitting meter points with smart metering systems and network connection points with control devices under section 3(1) sentences 3 to 6 in conjunction with section 7 or section 36 MsbG

are classed as KA_{nEu}.

7.6 [1]Further costs can be classed as KA_{nEu} in a determination under section 21a(3) sentence 3 para 3 EnWG, taking into account the principles in operative parts 7.2

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to 7.4, including the possibility to adjust the costs within the course of a regulatory period. [2]Costs with a low intrinsic value can be disregarded.

7.7 [1]The competent regulatory authority must carry over the costs not subject to efficiency benchmarking from the base level under operative part 5 in the base year ($KA_{nEu,0}$). [2]The adjustment to the revenue cap with respect to $KA_{nEu,t}$ will be made by the network operator. [3]The costs referred to in operative part 7.5 para 2 must be based on the costs and revenue incurred in the calendar year two years previously (actual figures for year t-2). [4]The costs referred to in operative part 7.5 paras 1 and 3 must be based on calendar year t (forecast costs with a comparison with actual costs in the regulatory account under operative part 14).

8. Volatile costs

8.1 [1]Costs with a level in a calendar year that can differ considerably from the level of the same type of costs in the previous calendar year can be classed as volatile costs. [2]Whether costs are volatile is assessed as stated in operative part 7.4 sentence 1, according to which whether costs are volatile can be assessed on the basis of the individual character or a factor of the costs (volume or price component).

8.2 [1]Costs and revenue from measures taken by electricity distribution system operators under section 13(1) sentence 1 para 2 EnWG in conjunction with section 14(1) sentence 1 EnWG are classed as volatile costs. [2]Supplementary rules guaranteeing that costs are only taken into account in a revenue cap to the extent that they are efficient can be set out in a determination under section 21a(2) and (3) sentence 1 EnWG.

8.3 [1]Further costs, in particular costs for procuring loss energy, can be classed as volatile costs in a determination under section 21a(2) and (3) sentence 1 EnWG, taking into account the principles in operative part 8.1, including the possibility to adjust the costs within the course of a regulatory period as well as rules on incentives guaranteeing that costs are only taken into account in a revenue cap to the extent that they are efficient. [2]Costs with a low intrinsic value can be disregarded.

8.4 [1]The competent regulatory authority must carry over the volatile costs from the base level under operative part 5 in the base year (VK_0); these costs can be subject to alignment in accordance with operative part 7 sentences 8 and 9 of the Determination on a methodology for calculating the base level of tariffs for the electricity network (StromNEF). [2]The adjustment to the revenue cap with respect to VK_t will be made by the network operator. [3]The costs referred to in operative part 8.2

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must be based on calendar year t (forecast costs with a comparison with actual costs in the regulatory account under operative part 14).

9. Capex deduction

9.1 [1]The competent regulatory authority will calculate once for each year of the regulatory period the capex deduction on the basis of the base level set as described in operative part 5 and the capital costs included in the base level. [2]The capex deduction is the capital costs included in the base level minus the remaining capital costs in the same year of a regulatory period ($KK_{Ab,t}$); the capex deduction must not be smaller than zero. [3]Capital costs from investments after the base year are not taken into account when calculating the capex deduction.

9.2 The remaining capital costs are calculated

a) taking into account the decrease over time in the imputed residual values of the operationally necessary tangible fixed assets and the operationally necessary intangible assets in the base level as referred to in operative part 10 sentence 4 paras a) and c) in conjunction with operative parts 8 and 9 StromNEF and

b) the decreasing remainder of network connection cost contributions, construction cost contributions and investment grants as referred to in operative part 10 sentence 3 in conjunction with operative part 13 sentence 1 paras b), c) and d), sentence 3 and sentence 4 StromNEF,

c) using the remaining imputed depreciation of the operationally necessary fixed assets, including the operationally necessary intangible assets, as described in operative parts 8 and 9 StromNEF,

d) the remaining imputed return on capital as described in operative part 10 StromNEF using the WACC from the base level in accordance with operative part 10 sentences 1 and 2 StromNEF,

e) the remaining imputed trade tax as described in operative part 12 StromNEF and

f) the remaining cost-reducing income from construction cost contributions, network connection cost contributions and investment grants as referred to in operative part 13 sentence 1 paras b), c) and d), sentence 3 and sentence 4 StromNEF.

9.3 When calculating the remaining imputed return on capital, the operationally necessary assets remain unchanged with respect to the balance-sheet values of the operationally necessary inventories, materials and supplies as referred to in operative

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part 10 sentence 4 para d) StromNEF and the imputed values of the current operationally necessary assets as referred to in operative part 10 sentence 4 para e) StromNEF.

9.4 [1]Payments on account and fixed assets under construction are not taken into account when calculating the remaining return on capital. [2]The opening and closing balance for payments on account and fixed assets under construction is always zero when calculating the remaining capital costs.

10. Efficiency benchmarking

10.1 [1]The Bundesnetzagentur will carry out national efficiency benchmarking to calculate the individual efficiency scores (EW) for electricity distribution system operators before the start of the regulatory period. [2]Detailed rules will be set out in a determination under section 21a(3) sentence 3 para 4 EnWG.

10.2 The requirement for reducing the calculated inefficiencies through the applicable annual distribution factor (V_t) will be set out in a determination under section 21a(3) sentence 3 para 4 EnWG.

10.3 An efficiency bonus (B_t), if applicable, will be set and details set out in a determination under section 21a(3) sentence 3 para 4 EnWG.

10.4 [1]Special circumstances of a network operator's supply task should be taken into account through an adjustment of the efficiency score. [2]Detailed rules on the criteria for eligibility will be set out in a determination under section 21a(3) sentence 3 para 4 EnWG. [3]The examination will be made upon application by the network operator. [4]Detailed rules on the formal design, content and structure of the application will also be set out in a determination under section 21a(3) sentence 3 para 4 EnWG.

11. Capex markup

11.1 [1]The capex markup on the revenue cap must be calculated each year as described in operative parts 11.2 to 11.7 for capital costs incurred as a result of investments made after the base year in the stock of operationally necessary fixed assets. [2]Capital costs for the purpose of the capex markup referred to in sentence 1 comprise imputed depreciation, imputed return on capital and imputed trade tax minus the cost-reducing income from construction cost contributions, investment grants and network connection cost contributions.

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11.2 [1]When calculating the capex markup, account must be taken of the operationally necessary fixed assets and the remainder of construction cost contributions, investment grants and network connection cost contributions that

1. were capitalised or received on or after 1 January of the year following the base year for the revenue cap to be adjusted or

2. are expected to be capitalised or received on or before 31 December of the year for which the capex markup is being calculated.

[2]Account must be taken of the actual stock of operationally necessary fixed assets and the actual balance of construction cost contributions, investment grants and network connection cost contributions up to and including the last full calendar year; account must otherwise be taken of the expected stock of operationally necessary fixed assets and the expected balance of construction cost contributions, investment grants and network connection cost contributions up to and including the calendar year for which the revenue cap is being adjusted. [3]The expected stock of operationally necessary fixed assets must be substantiated with details of the company's investment planning or comparable documents when requested by the competent regulatory authority.

11.3 The capex markup is the sum of the imputed depreciation calculated as set out in operative part 9 StromNEF on the basis of the acquisition and production costs of the operationally necessary fixed assets as described in operative part 11.2, the imputed return on capital as set out in operative parts 11.4 and 11.5 and the imputed trade tax as described in operative part 11.6 minus cost-reducing income on the basis of the construction cost contributions, investment grants and network connection cost contributions calculated as set out in operative part 11.2 in accordance with operative part 13 StromNEF.

11.4 [1]The imputed return on capital is the product of the interest basis calculated as set out in operative part 11.5 and a WACC. [2]Detailed rules on the methodology and calculation of the WACC to be used for the capex markup will be set out in a determination under section 21(3) sentence 4 para 1a) EnWG.

11.5 [1]The interest basis is calculated on the basis of the acquisition and production costs referred to in operative part 11.2 and the resulting imputed residual values valued in accordance with operative part 9 StromNEF minus the remainder of construction cost contributions, investment grants and network connection cost contributions as described in operative part 11.2, taking into account the principles of the interest basis in operative part 10 StromNEF. [2]Operationally necessary inventories, materials

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and supplies and balance-sheet values of current operationally necessary assets are not taken into account. [3]In derogation of the inclusion of completed operationally necessary fixed assets as described in operative part 11.2, account must be taken of payments on account and fixed assets under construction, if operationally necessary, with their annual commercial-law accounting values; when calculating the opening stock, transfers to the stock of completed tangible fixed assets must be taken into account and deducted from the opening stock accordingly.

11.6 [1]The imputed trade tax is the product of the return on equity and the rate of trade tax included in the imputed return on capital as described in operative parts 11.4 and 11.5. [2]The rate of trade tax is the product of the index rate and the rate of assessment for trade tax in the base year.

11.7 In addition, the applicable interest bonus as defined in operative part 11 StromNEF must be taken into account as an additive component when calculating the annual capex markup.

11.8 Network operators applying a capex markup as referred to in operative part 11.1 in a revenue cap for a calendar year must notify the competent regulatory authority of the capex markup by 30 June of the prior calendar year.

12. Quality regulation

12.1 [1]Quality regulation serves to secure long-term efficient and reliable operation of energy supply networks. [2]It also serves to promote an environmentally friendly, low-priced and greenhouse gas-neutral supply of electricity and gas for the general public that is increasingly based on renewable energy.

12.2 [1]Indicators for network reliability, network performance and network service quality can be defined to describe and assess the quality of supply. [2]Network operators' energy transition competence is part of network performance.

12.3 [1]The indicators must be defined using data from network operators throughout Germany. [2]Following the collection of suitable data, values for each individual network operator are derived from the indicators and published. [3]The publication can include the data collected.

12.4 [1]Indicator requirements can be developed from the indicators and values defined and derived as set out in operative parts 12.2 and 12.3. [2]These must be published. [3]If indicator requirements are developed as set out in sentence 1 and if a network operator deviates from these requirements, amounts must in particular be added to

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or deducted from the revenue cap if sufficiently reliable data is available (quality element).

12.5 When identifying and detailing network reliability and network performance, objective structural differences between individual network operators must be taken into account if they are relevant to defining indicators and developing indicator requirements.

12.6 Detailed rules on the design of quality regulation, including the operators to whom quality regulation applies, will be set out in a determination under section 21a(3) sentence 3 paras 5 and 10 EnWG.

12.7 If a quality element is set as described in operative part 12.4, the network operator must adjust the revenue cap accordingly.

13. Hardship

[1]An adjustment to a revenue cap can be made if, as a result of the occurrence of an event as described in sentences 3 and 4, the network operator would be subject to undue hardship if the revenue cap were to remain unchanged. [2]An overall assessment of the network operator's costs and assets must be made to decide whether the event has led to undue hardship for the network operator. [3]An event within the meaning of this operative part can only be a circumstance that could not be taken into account in the base level because of the time delay in relation to the relevant base year and that neither is accommodated through more specific adjustments and corrections nor falls within the network operator's scope of risks. [4]A circumstance falls within a network operator's scope of risks in particular if the network operator could have foreseen and consequently prevented the circumstance occurring or could have considerably reduced the circumstance's effects on the costs and assets. [5]An adjustment to the revenue cap as provided for in sentence 1 will only be made upon application by the network operator.

14. Regulatory account

14.1 [1]The difference between the allowed revenue within the meaning of operative part 4 and the revenue that a network operator can generate, taking into account actual developments in volumes, will be calculated each year by the network operator and entered in a regulatory account. [2]The same applies to the difference between the costs as referred to in operative part 7.5 paras 1 and 3 and in operative part 8.2 that are actually incurred for a calendar year and the costs included in the basis for a revenue cap; the same also applies if a determination as referred to in operative part 7.6 or 8.3 provides for a comparison between forecast and actual costs.

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14.2 [1]Each network operator will, by 31 December of the year following the calendar year for which a capex markup was calculated as set out in operative part 11.1, calculate the difference between the capex markup under operative part 11 calculated as set out in operative part 11.1 and the capex markup taking into account the capital costs actually incurred. [2]The difference must be entered in the regulatory account for the year for which the capex markup was calculated as set out in operative part 11.1.

14.3 A determination can be issued under section 21a(3) sentence 3 para 6 EnWG to lay down with respect to other items that the difference between the costs incurred for a calendar year and the costs included in the basis for a revenue cap should also be entered in the regulatory account.

14.4 [1]Interest is payable on the differences entered in accordance with operative parts 14.1 to 14.3 with respect to the average amount committed in the calendar year. [2]The average amount committed is the average of the balance at the beginning and at the end of the year. [3]The interest referred to in sentence 1 is based on the imputed cost of debt in the WACC to be used for the capex markup as referred to in operative part 11.4 for the year for which the balance was calculated as set out in operative parts 14.1 to 14.4.

14.5 [1]The regulatory account balance calculated as set out in operative parts 14.1 to 14.3 and on which interest is payable as described in operative part 14.4 is distributed over three calendar years through markups on and deductions from a revenue cap. [2]The revenue cap is adjusted with effect on 1 January of the third year following the year for which the balance was calculated as set out in operative parts 14.1 to 14.4 and with effect on 1 January of the two subsequent years. [3]Interest is payable on the annuities as described in operative part 14.4.

14.6 [1]The competent regulatory authority will approve the balance calculated by the network operator as set out in operative parts 14.1 to 14.4 and the distribution of the balance in accordance with operative part 14.5 sentence 1 upon application. [2]The application for adjustment of the revenue cap referred to in sentence 1 for the last full calendar year must be made once a year by 31 December of the following calendar year. [3]The application referred to in sentence 1 must include the calculated balance as well as the data on which the adjustment is based, in particular the revenue allowed as set out in operative part 4 and that actually generated in the last calendar year.

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15. Transfer, merging and splitting of networks

15.1 [1]If one or more electricity distribution networks for which one or more revenue caps have been set as described in operative part 4 are transferred completely from one network operator to another, the revenue cap or caps will all be transferred to the network operator to whom the network is being transferred. [2]Sentence 1 applies accordingly when two or more electricity distribution networks are merged.

15.2 [1]If part of an electricity distribution network is transferred to another operator, the proportion of the revenue cap for the part of the network being transferred will be deducted from the revenue cap originally set for the network operator from whom the part of the network is being transferred. [2]The proportion of the revenue cap for the part of the network being transferred is added to the revenue cap originally set for the network operator to whom the part of the network is being transferred. [3]The proportion of the revenue cap will be carried forward until the next base level is set as described in operative part 5. [4]It is not necessary to re-set the revenue caps for the network operators from and to whom the part of the network is being transferred within the course of a regulatory period. [5]The network operator to whom the part of the network is being transferred is entitled to charge reasonable network tariffs for a temporary period until the proportion of the revenue cap for the part of the network being transferred is set.

15.3 The proportion of the revenue cap for the part of the network being transferred as described in operative part 15.2 should be determined by the network operators concerned in an appropriate agreement.

15.4 [1]If no agreement as referred to in operative part 15.3 is reached, the proportion of the revenue cap for the part of the network being transferred is calculated as set out in sentence 2 and operative parts 15.5 to 15.7. [2]The proportion of the revenue cap is calculated from the capital costs of the part of the network being transferred as described in operative part 15.5 plus a fixed amount for the other costs of the part of the network being transferred as described in operative part 15.6. [3]The network operators concerned are free to reach an agreement as referred to in operative part 15.3 within the course of a regulatory period to apply for the remaining length of the regulatory period; this agreement will replace the calculation referred to in sentence 1.

15.5 [1]To calculate the capital costs as referred to in operative part 15.4 the capital costs of the part of the network being transferred are calculated for each remaining year of the regulatory period as set out in operative part 4.2 sentence 2 StromNEF in conjunction with operative part 9. [2]The basis for calculating the capital costs of the

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part of the network being transferred as referred to in sentence 1 are the distribution assets for which the network operators have agreed to transfer ownership. [3]If, in the case of section 46(2) sentence 2 EnWG, no agreement is reached on the distribution assets for which ownership is being transferred, the capital costs of the part of the network being transferred are calculated on the basis of the data and information on distribution assets provided to the municipality as required in section 46a EnWG for the concession award procedure in accordance with section 46(3) EnWG. [4]Any adjustments to the revenue cap made under operative parts 4.3 to 4.5 and operative part 13 are not taken into account.

15.6 The fixed amount for the other costs of the part of the network being transferred as referred to in operative part 15.4 is calculated by multiplying the ratio between the capital costs of the part of the network being transferred as described in operative part 15.5 for the relevant calendar year and the capital costs as described in operative part 9 in the revenue cap originally set as described in operative part 4 for the network operator from whom part of a network is being transferred for the relevant calendar year, minus the capital costs as described in operative part 9 included in the revenue cap, the upstream network costs as referred to in operative part 7.5 para 1 and the actual costs incurred by operators of networks with directly connected final customers under the MsbG as specified in operative part 7.5 para 3.

15.7 [1]The proportion of the revenue cap as referred to in operative parts 15.4 to 15.6 is calculated using the following formula:

$$EOG_{\ddot{U}N,t} = \frac{KK_{\ddot{U}N,t}}{KK_t} * (EOG_{ab,t} - vorgNK_t - MsbGK_t)$$

[2]The following applies:

$EOG_{\ddot{U}N,t}$: Proportion of the revenue cap for the part of the network being transferred as referred to in operative part 15.4 for year t of the regulatory period.

$KK_{\ddot{U}N,t}$: Capital costs as described in operative part 15.5 in conjunction with operative part 9 on the basis of the remaining stock of operationally necessary fixed assets in the base level under operative part 5 for the part of the network being transferred in year t of the regulatory period.

KK_t: Capital costs as described in operative part 9 on the basis of the remaining stock of operationally necessary fixed assets in the base level under operative part 5 for the network operator from whom the

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part of the network is being transferred in year t of the regulatory period.

$EOG_{ab,t}$: The revenue cap originally set as described in operative part 4 for the network operator from whom the part of the network is being transferred for year t of the regulatory period.

$vorgNK_t$: The upstream costs as referred to in operative part 7.5 para 1 in the revenue cap originally set as described in operative part 4 for the network operator from whom the part of the network is being transferred for year t of the regulatory period.

$MsbGK_t$: The actual costs incurred by operators of networks with directly connected final customers under the MsbG as specified in operative operative part 7.5 para 3 in the revenue cap originally set as described in operative part 4 for the network operator from whom the part of the network is being transferred for year t of the regulatory period.

15.8 Network operators must notify the competent regulatory authority of a transfer, merging or splitting of networks, in particular when revenue caps are transferred as referred to in operative part 15.1; in addition, network operators must notify a transfer of network operation without delay if there has been a change in the responsible network operator.

15.9 [1]An agreement as referred to in operative part 15.3 must be submitted to the competent regulatory authority in a joint application by the network operators concerned. [2]The competent regulatory authority will set the proportion of the revenue cap to be transferred in line with the agreement referred to in operative part 15.3.

15.10 [1]The competent regulatory authority will set the proportion of the revenue cap for the part of the network being transferred as described in operative parts 15.4 to 15.7 if an agreement as referred to in operative part 15.3 has not been submitted in a joint application within six months of the start of network operation. [2]If the network operator to or from whom the part of the network is being transferred claims special reasons, the competent regulatory authority can provisionally set the proportion of the revenue cap for the part of the network being transferred upon application by one of the network operators concerned or on its own initiative before the end of the period and the decision referred to in sentence 1. [3]The competent regulatory authority will re-set the proportion of the revenue cap set as described in sentence 1 within the course of a regulatory period for the remaining length of the regulatory

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period if the network operators concerned submit an agreement as referred to in operative part 15.4 sentence 3 in a joint application.

16. Simplified procedure and rules for very small network operators

16.1 [1]Small network operators can choose to take part in the simplified procedure described in operative parts 16.2 to 16.6 instead of efficiency benchmarking for calculating efficiency scores as described in operative part 10. [2]In the case of participation in the simplified procedure, there is no adjustment to a revenue cap on account of research and development as provided for by operative part 17 and no adjustment to the operating costs as provided for in operative part 3.2.

16.2 [1]An economic threshold is used to determine whether a network operator can be classed as small within the meaning of operative part 16.1. [2]This threshold is set and published by the Bundesnetzagentur in the first full calendar week of the calendar year beginning two years before the start of a regulatory period. [3]The Bundesnetzagentur notifies the federal state regulatory authorities of the threshold set in accordance with sentence 2 by 30 November of the year preceding the time specified in sentence 2.

16.3 [1]The threshold referred to in operative part 16.2 is an amount in euros derived when account is taken of all distribution system operators in the standard procedure until 90% of all base levels without upstream network costs and without avoided network tariffs (adjusted base level) are included (market coverage). [2]If a network operator's adjusted base level for the regulatory period during which the threshold is set is under this threshold, the operator, as a small network operator within the meaning of operative part 16.1, is free to choose to take part in the simplified procedure for the following regulatory period. [3]The Bundesnetzagentur bases the market coverage on the base levels published nationwide in accordance with section 23b EnWG at the time the market coverage is determined.

16.4 [1]The Bundesnetzagentur calculates the efficiency score for participants in the simplified procedure as the weighted arithmetic mean of all efficiency scores in the national efficiency benchmarking as described in operative part 10 calculated for the previous regulatory period and adjusted as described in operative part 10.4 (fixed efficiency score). [2]The fixed efficiency score is not subject to subsequent adjustments. [3]The weighting takes particular account of the efficiency scores of the smaller network operators in the standard procedure.

16.5 [1]The regulatory authority publishes the fixed efficiency score calculated as set out in operative part 16.4 in the first full calendar week of the calendar year beginning two

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years before the start of a regulatory period. [2]The Bundesnetzagentur notifies the federal state regulatory authorities of the fixed efficiency score calculated as set out in operative part 16.4 by 30 November of the year preceding the time specified in sentence 1.

16.6 [1]Network operators wishing to take part in the simplified procedure must apply to the regulatory authority for participation by 31 March of the calendar year beginning two years before the start of the regulatory period. [2]The regulatory authority approves participation in the simplified procedure within four weeks of receipt of the full application if the requirements are met. [3]Network operators are bound to the procedure chosen for the whole length of a regulatory period. [4]The federal state regulatory authorities provide the Bundesnetzagentur with a list of the network operators participating in the simplified procedure by 31 May of the year beginning two years before the start of the regulatory period.

16.7 [1]Very small network operators with an adjusted base level of up to €500,000 can be exempted from the application of incentive regulation within the meaning of operative part 2.1 and the rules in operative part 2.4 if the competent regulatory authority introduces these rules for very small network operators for their area of responsibility. [2]The obligations under section 6b EnWG remain unaffected.

16.8. [1]The adjusted base level as the criterion for the rules for very small network operators in operative part 16.7 sentence 1 is based for the fifth regulatory period on the base level for the fourth regulatory period published in accordance with section 23b EnWG and adjusted as described in operative part 16.3 sentence 1. [2]Within the fifth regulatory period account must be taken of the balances of the incentive regulation account according to section 5 of the Incentive Regulation Ordinance (ARegV) when determining the adjusted base level for calculating the tariffs. [3]As from the sixth regulatory period, network operators to whom the rules for very small network operators applied in the previous regulatory period or for whom no base level has been set must, together with their application for access to the rules for very small network operators, submit a calculated base level as described in operative part 5 from their activity report pursuant to section 6b EnWG as proof that they are still below the threshold specified in operative part 16.7. [4]A deduction of the upstream network costs must also be made in this case.

16.9. [1]Operative part 16.6 sentences 1 and 2 apply accordingly to the rules for very small network operators. [2]Network operators are bound to the procedure chosen for the whole length of a regulatory period. [3]The federal state regulatory authorities provide the Bundesnetzagentur with a list of the network operators applying the rules for

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very small network operators by 31 May of the year beginning two years before the start of the regulatory period.

16.10 [1]Each network user and final customer of a very small network can request a review of the tariffs by the competent regulatory authority. [2]It is assumed that the network tariffs have been set in line with the legal requirements if the operator of the very small network does not charge a tariff higher than that charged by the operator of the upstream energy supply network for the use of the general energy supply network adjacent to the very small network at the same network or transformation level; if there is more than one adjacent general energy supply network at the same network or transformation level, the lowest tariff is applicable.

17. Research and development

17.1 [1]The regulatory authority must include a markup for costs from research and development in the revenue cap for the relevant calendar year ($F\&E_t$). [2]The markup to be included is 50% of the eligible costs as defined in operative part 17.2 of the proportion of the total costs for the research and development project not publicly funded, as calculated on the basis of relevant proof of costs from the network operator.

17.2 [1]Eligible costs solely comprise costs resulting from a research and development project within the framework of state energy research funding that has been approved and is overseen by a competent authority. [2]Account must be taken of the additional costs incurred in the calendar year two years previously compared with the costs for research and development projects in the base year of the calendar year for which a markup is being approved. [3]Costs for research and development projects that have already been taken into account as part of the capex markup under operative part 11 or otherwise by an adjustment to the revenue cap under operative part 4 are not classed as eligible costs.

17.3 [1]A markup will only be included as provided for by operative part 17.1 upon application by the network operator. [2]The application referred to in sentence 1 must be submitted to the regulatory authority by 30 June of the year before the year for which the expenditure for the relevant research and development project is to be taken into account in the revenue cap. [3]The information in the application must enable a competent third party to check whether the requirements for approval are met and to make a decision without needing any further information. [4]Further details of the formal design, content and structure of the application can be set out by the regulatory authority in a determination under section 21a(2) and (3) sentence 1 EnWG.

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17.4 [1]The duration of the approval must be limited. [2]The approval must include a right to withdraw the approval in the event that the costs included in the revenue cap as described in operative part 17.1 were not used in line with the conditions of the approval notice, the amount of the costs differed from the funding resources actually used according to the notice on the examination of the proof of use or in the notice on the price examination, or the costs are proven not to relate to the research and development project. [3]The approval can include other secondary conditions.

17.5 Following completion of the research and development project, the network operator must submit to the regulatory authority the notice on the examination of the proof of use and, if a price examination is carried out, the notice issued by the authority responsible for the technical and administrative examination of the project.

18. Revocation of determinations

Determination BK8-23-007-A (on the regulatory treatment of costs incurred by operators of networks with directly connected final customers under the MsbG) will be revoked with effect from midnight on 31 December 2028.

19. Procedural provisions

The procedural provisions in operative parts 4.1 sentence 2, 4.2 sentences 2 and 4, 6.1 sentence 3, 7.7 sentence 2, 8.4 sentence 2, 10.4 sentences 3 and 4, 11.2 sentence 3, 11.8, 13 sentence 5, 14.6, 15.6, 15.9 and 15.10 and 16.6 sentences 1 and 2, 16.9 sentence 1 and 17.3 do not affect the administrative proceedings of the federal state regulatory authorities and apply solely to network operators within the meaning of operative part 1 that fall under the responsibility of the Bundesnetzagentur in accordance with section 54(1) and (2) EnWG.

20. Payment of costs

No fees are payable for the decision.

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