Commission Decision (EU) 2019/56 of 28 May 2018 on aid scheme SA.34045 (2013/c) (ex 2012/NN) implemented by Germany for baseload consumers under Paragraph 19 StromNEV (notified under document C(2018) 3166) (Only the German version is authentic) (Text with EEA relevance)

COMMISSION DECISION (EU) 2019/56

of 28 May 2018

on aid scheme SA.34045 (2013/c) (ex 2012/NN) implemented by Germany for baseload consumers under Paragraph 19 StromNEV

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THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular the first subparagraph of Article 108(2) thereof,

Having regard to the Agreement on the European Economic Area, and in particular Article 62(1)(a) thereof,

Having given notice to the parties concerned to submit their comments[(1)] and having regard to their comments,

Whereas:

1. PROCEDURE

(1) By complaints submitted by the *Bund der Energieverbraucher e.V.* on 28 November 2011, by the *GWS Stadtwerke Hameln GmbH* on 8 December and by citizens since December 2011, the Commission was informed that Germany had implemented since 2011 a full exemption from network charges for certain large electricity consumers. By letter dated 29 June 2012, Germany provided the Commission with further information on that aid scheme.

(2) By letter dated 6 March 2013 (‘the Opening Decision’), the Commission informed Germany that it had decided to initiate the procedure laid down in Article 108(2) of the Treaty on the Functioning of the European Union (hereafter: TFEU or Treaty) in respect of the aid scheme. Germany submitted its comments on the Opening Decision on 8 April 2013.

(3) The Opening Decision was published in the *Official Journal of the European Union*[(2)]. The Commission invited interested parties to submit their comments on the aid scheme.

Changes to legislation: *There are currently no known outstanding effects for the Commission Decision (EU) 2019/56. (See end of Document for details)*

(4) The Commission received comments from interested parties. It forwarded them to Germany, which was given the opportunity to react; its comments were received by letter dated 5 November 2013.

(5) During a meeting of 17 October 2013 and by letters notified on 7 April 2015, 20 July 2016, 6 July 2017, 18 September 2017, 3 October 2017 and 23 October 2017, the Commission requested Germany to provide information.

(6) Germany submitted replies to those requests on 6 December 2013, 28 May 2015, 15 September 2015, 14 October 2016, 3 August 2017, 20 September 2017, 24 October 2017 and 26 October 2017. The latest information was submitted on 11 December 2017.

2. DETAILED DESCRIPTION OF THE AID

2.1. *NETWORK CHARGES IN GERMANY*

(7) The system of network charges in Germany is governed by the German Energy Act (*Energiewirtschaftsgesetz, 'EnWG'*). For the purposes of this Decision, only the EnWG as modified by Article 1 of the Law of 26 July 2011 on the review of provisions governing the energy market[3] ('the Law of 26 July 2011') and before the amendments introduced by Article 1 of the Law of 26 July 2016 on the further development of the electricity market[4] ('EnWG 2011') is relevant.

(8) Paragraph 21 of the EnWG 2011 requires that the charges that the network operators[5] charge to their end users are *proportionate ('angemessen')*, non-discriminatory, transparent and are calculated on the basis of the costs of an efficient network management. Paragraph 24 of the EnWG 2011 empowers the federal government to lay down detailed rules on the methodology for the calculation of network charges by ordinance. Point 1 of the first sentence of Paragraph 24 of the EnWG 2011 empowers the federal government to determine the general methodology of calculating network charges. Point 3 of the same sentence empowers the federal government to determine in which cases of atypical network use individual network charges can be approved.

(9) Adopted on the basis of Paragraph 24 of the EnWG 2011, the Ordinance on Electricity Network Charges (*Stromnetzentgeltverordnung, 'StromNEV'*[6]) contains detailed provisions on the determination of network charges. Paragraph 3(2) of the StromNEV clarifies that network charges are paid for the services provided by the network operator at the network level to which a user is connected as well as all for the use of all upstream network levels. Paragraph 16(1) of the StromNEV establishes the guiding principle according to which network charges need to reflect the costs actually caused by network users.

(10) Against this background and in line with the empowerment laid down in point 1 of the first sentence of Paragraph 24 of the EnWG 2011, the StromNEV provides for the general methodology that network operators have to follow for calculating

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network charges. This calculation methodology is laid down in Paragraphs 4 to 14 of the StromNEV 2011.

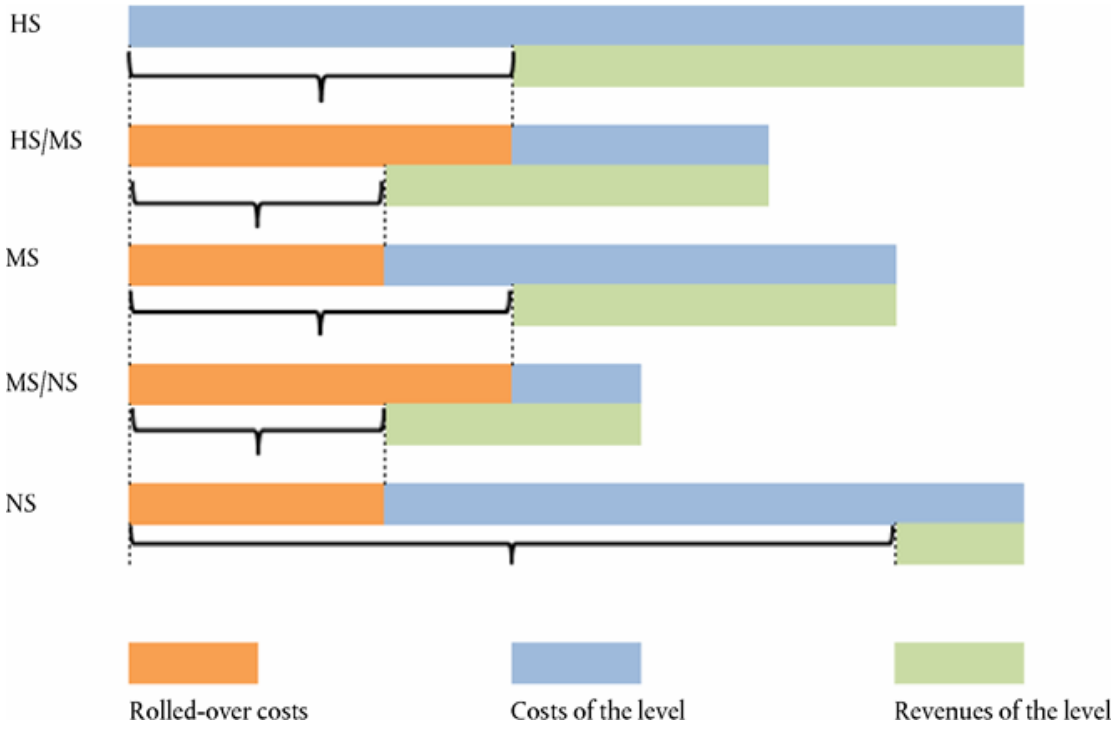
(11) This methodology consists of first taking the various annual cost elements of all networks together. Those are the construction costs of the electricity network (transmission and distribution lines, substations), the maintenance and the costs for operating the network, including the costs linked to so-called system services (primary, secondary and minute reserves[(7)], re-dispatching[(8)] and electricity to cover network losses[(9)]). Their annual amount is calculated based on the profit and loss account of the network operators (Paragraph 4 of the StromNEV 2011). They include not only material costs and personnel costs but also loan interests (Paragraph 5 of the StromNEV), depreciation (Paragraph 6 of the StromNEV 2011), a remuneration for the network operator's own capital (Paragraph 7 of the StromNEV 2011) and taxes (Paragraph 8 of the StromNEV 2011). Revenues like connection costs and subsidies have to be deducted (Paragraph 9 of the StromNEV). Metering costs, however, are not included in the network costs and are also subject to separate metering fees. The costs linked to the purchase of balancing energy[(10)] are not included in the network costs as it is invoiced separately to the users responsible for the imbalance.

(12) The total annual costs of the networks are then allocated to the different network and network levels (high voltage, substation levels, medium voltage, low voltage). Annex 2 of the StromNEV 2011 contains the list of those network levels.

(13) The next step in the determination of the network charges will be to convert the total annual costs of the networks into the network charges. They are determined top-down for each voltage level (from high voltage to low voltage). First the so-called specific annual costs of the high voltage level are determined by dividing the total annual costs of the high voltage level by the annual peak load measured on that high voltage level, as the peak load of the network level is viewed as the main cost determining factor. This is expressed in EUR/kW. Via the 'simultaneity function' of each grid level described in recital 14 below, the specific annual costs will be converted into a price per connection capacity, in EUR/kW and into a price per unit of electricity consumed, in EUR/kWh. The same exercise is then done for the next voltage level. However the total annual costs of the next voltage level will be composed on its own costs and of rolled-over costs from the upstream voltage level. The rolled over costs correspond to the total costs of the upstream level minus the network charges obtained from network users (final consumers and electricity suppliers directly connected to that voltage level). The following figure 1 shows the roll-over of costs. In a network in which electricity flows top-down, network users will thus have to bear the costs of the network level to which they are connected, as well as part of the costs of the upstream networks as those networks are used to transmit the electricity to them as well.

Figure 1 **Roll-over of network costs for the determination of network charges** ([1])

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([1]) In the figure, HS stands for high voltage, MS stands for medium voltage, NS stands for low voltage, HS/MS stands for the substation in which high voltage is transformed to medium voltage, MS/NS stands for the substation converting medium voltage to low voltage. Source: Commission based on description provided by Germany and completed with the information contained in Figure 1 of the BNetzA Report 'Netzentgeltsystematik Elektrizität' of December 2015 available under https://www.bundesnetzagentur.de/SharedDocs/Downloads/DE/Sachgebiete/Energie/Unternehmen_Institutionen/Netzentgelte/Netzentgeltsystematik/Bericht_Netzentgeltsystematik_12-2015.pdf?__blob=publicationFile&v=1.

(14) In order to ensure an allocation to the various network users reflecting the actual costs caused by an individual network user as required by Paragraph 16(1) of the StromNEV, the simultaneity function is applied for the voltage level being considered. The simultaneity function referred to above under recital 13 is described in Paragraph 16(2) StromNEV and Annex 4 of StromNEV 2011. This function attributes to each network user a 'simultaneity factor' between 0 and 1. The simultaneity factor expresses the probability — based on historical figures — that the electricity consumption of the individual network user in question contributes to the annual peak load of the network level concerned. The simultaneous annual peak load of the network is an important cost driver of the network given that this annual peak load is important for the dimensioning of network in which electricity is flowing top-down. The idea behind the simultaneity function is that network users which have a higher probability of contributing to the annual peak load will pay a higher capacity tariff. The users of each network level are the final consumers directly connected to the high voltage level as well as downstream network levels. The simultaneity factors of all network users of the network level

considered are then introduced into a graph on the y-axis and put in correlation with the number of annual hours of full use (x-axis). This results into the simultaneity function. This function is linear and continuous but composed of two linear parts which intersect at a kink[(11)] at 2 500 annual usage hours made[(12)]. The simultaneity function is then converted into a tariff per connection capacity[(13)] in EUR/kW and into a tariff per unit of electricity consumed[(14)] in EUR/kWh.

(15) When establishing the network charges, network operators must also take into account the maximum revenue level allowed for each one of them by the Federal Network Agency (*Bundesnetzagentur*, 'BNetzA') (on the maximum revenue level allowed, see also recital 43). In practice, this maximum revenue level, which is established by benchmarking with other network operators, will have as consequence that high costs resulting from inefficiencies cannot be recovered through network charges. This system aims at improving the efficiency of the network operators. Where a modification of the maximum revenue level authorized would lead to a reduction of network charges, the network operator has to adapt the network charges (Paragraph 17(2) of the Ordinance on the introduction of efficiency incentives for energy supply networks – *Verordnung über die Anreizregulierung der Energieversorgungsnetze*, ARegV 2011[(15)]).

(16) The methodology described in recitals 11 to 15 above implements the 'principle of cost-causality' when determining the network charges for the majority of network users. Paragraph 19 of the StromNEV addresses the network charges to be paid in line with the principle of cost-causality by so-called atypical network users, i.e. users with a consumption or load pattern that differs significantly from the consumption or load profile of the other users as provided for in point 3 of the first sentence of Paragraph 24 of the EnWG 2011. The heading of Paragraph 19 of the StromNEV is 'atypical network use'.

(17) Paragraph 19(2) of the StromNEV identifies two groups of atypical network users: Firstly, users whose annual peak load predictably and significantly deviates from the simultaneous annual peak load of all other network users connected to the same network (first sentence of Paragraph 19(2) of the StromNEV). Typically this concerns network users who are systematically consuming outside peak load times because for instance they are running equipment at night. This first category of atypical network users is hereinafter designated as 'non-peak consumers'. Secondly, users with an annual electricity consumption reaching minimum 7 000 hours of use[(16)] and exceeding 10 gigawatt hours (GWh) (second sentence of Paragraph 19(2) of the StromNEV). This second category of atypical network users is hereinafter designated as 'baseload consumers'.

(18) Before the amendment introduced by Article 7 of the Law of 26 July 2011 and described more in detail below in section 2.2, Paragraph 19(2) of the StromNEV as amended by the Law of 3 September 2010 ('StromNEV 2010'[(17)]) stated that both non-peak and baseload consumers were to pay individual network charges as also explicitly provided under the empowerment laid down in point 3 of the first sentence of Paragraph 24 of the EnWG 2011 (see recital 7 above).