

# Construction cost contributions for battery storage systems: new legal clarity or new obstacles?

## WHAT THE BGH RULING OF 15 JULY 2025 MEANS FOR THE PLANNING AND FINANCING OF BATTERY STORAGE PROJECTS



### Executive Summary

- Grid operators are entitled to charge construction cost contributions for connecting battery storage systems to the grid. The German Federal Network Agency is not required to prohibit grid operators from charging such contributions.
- On the one hand, this decision creates legal clarity. Grid operators can collect construction cost contributions and have scope to decide whether they wish to create transparent and non-discriminatory incentives for the establishment of battery storage systems when charging construction cost contributions.
- On the other hand, this also calls into question the economic viability of storage projects depending on how local grid operators go about collecting these contributions.

### A. Introduction

On 15 July 2025, the German Federal Court of Justice (BGH) issued a landmark decision<sup>1</sup> on the permissibility of charging construction cost contributions (*Baukostenzuschüsse*, BKZ) for the connection of battery energy storage systems to the grid. The BGH has overturned the prior ruling of the Düsseldorf Higher Regional, clarifying that the German Federal Network Agency (BNetzA) is not obliged to prohibit grid operators from charging a construction cost contribution for battery storage systems. According to the court, treating such systems in the same way as other end consumers is objectively justified based on the demand price model (*Leistungspreismodell*).

The BGH's ruling has far-reaching implications for the entire energy and storage sector, particularly with regard to

<sup>1</sup> German Federal Court of Justice (BGH), order of 15 July 2025 - EnVR 1/24.



the development, financing and economic viability of battery energy storage systems (hereinafter “BESS”) in Germany. In this Update, we summarise the background and content of the rulings issued by the Federal Court of Justice and Düsseldorf Higher Regional Court and venture an assessment of the potential implications for the energy storage industry.

## Background: Regulation of battery storage systems

Battery storage systems are playing an increasingly central role in Germany’s energy infrastructure. They are a vital component in integrating renewable energy sources, increasing the flexibility of the nation’s electricity system and ensuring grid stability. The regulation of battery storage systems is complex and spans various national and European legal bases. The most important legislation is presented below:

- **Section 3 no. 15d of the German Energy Industry Act (EnWG):** An energy storage facility is an “*installation in an electricity grid that postpones the final utilisation of electrical energy to a subsequent point in time after its generation, or that converts electrical energy into a storable form of energy, stores such energy and then converts it back into electrical energy or uses it as another energy carrier*”.
- **Section 118 (6) EnWG:** Newly constructed storage facilities commissioned from 4 August 2011 onwards are exempt from grid fees for 20 years for electricity purchased for storage purposes, provided that the stored electricity is fed back into the same grid at a later point in time.
- **Section 5 (4) of the German Electricity Tax Act (StromStG):** Stationary battery storage systems that temporarily store electricity and feed it back into the supply grid are considered part of the supply grid and

are exempt from electricity tax for the stored electricity.

- **Art. 3 (1) Directive (EU) 2019/944:** Member States must not unduly hamper investments in energy storage.
- **Art. 42 Directive (EU) 2019/944:** Storage facilities must be able to connect to and access transmission systems under non-discriminatory, transparent and appropriate conditions.

## B. Subject of the BGH decision of 15 July 2025

The case is based a dispute in which a BESS operator requested the connection of a battery storage system with a charging and discharging capacity of 1.725 MW and a storage capacity of 3.45 MWh to the grid in May 2021.

The system was to be operated as a stand-alone storage facility, meaning that the stored energy would not be consumed on site. The system was intended for use in electricity trading on the intraday market, as well as for providing balancing and reactive power<sup>2</sup>.

The grid operator assigned the storage system a grid connection point in the 20 kV medium-voltage grid and charged the BESS operator a construction cost contribution calculated according to the demand price model<sup>3</sup>.

The demand price model is based on two key factors:

- **Ordered connected load:** This is the contractually agreed maximum power rating (in kW or MW) required by the subscriber at the grid connection point.
- **Demand price of the grid level:** The demand price is the price published by the grid operators that reflects the average costs for the provision of grid capacity at the respective grid level.

<sup>2</sup> Thanks to their balancing power, battery storage systems are able to compensate for short-term fluctuations in the electricity grid and stabilise the grid frequency by quickly absorbing or releasing energy. The provision of reactive power ensures voltage stability. This makes stand-alone battery storage systems a key component for ensuring a secure energy supply.

<sup>3</sup> The calculation is based on the Federal Network Agency’s position paper on calculating and charging construction cost contributions from 2009, available at: [https://www.bundesnetzagentur.de/DE/Beschlusskammern/1\\_GZ/BK6-GZ/\\_bis\\_2010/2006/BK6-06-003/BK6p-06-003\\_Positionspapier%20BKZ.pdf?\\_\\_blob=publicationFile&v=1](https://www.bundesnetzagentur.de/DE/Beschlusskammern/1_GZ/BK6-GZ/_bis_2010/2006/BK6-06-003/BK6p-06-003_Positionspapier%20BKZ.pdf?__blob=publicationFile&v=1) (last accessed: 5 August 2025).



The amount of the construction cost contribution is calculated using the following formula:

**Construction cost contribution = average demand price × ordered load**

The operator then initiated anti-trust proceedings with the Federal Network Agency and petitioned for a ban on charging construction cost contributions for battery storage systems. The Federal Network Agency rejected the operator's petition, confirming that the collection of construction cost contributions was essentially permissible for medium voltage connections.

### **C. Düsseldorf Higher Regional Court rules in favour of the storage system operator**

The operator lodged an appeal against the Federal Network Agency's decision with the Düsseldorf Higher Regional Court<sup>4</sup>. The Higher Regional Court overturned the Agency's decision, obliging it to make a new decision taking into account the court's legal opinion. The Düsseldorf Higher Regional Court ruled that charging the construction cost contribution was abusive, as the calculation failed to adequately consider the special features of BESS. In particular, the court pointed out that BESS cannot feed energy into and extract energy from the grid simultaneously, and that a differentiated approach is therefore required.

### **D. Federal Network Agency publishes new position paper in the interim**

In November 2024, the Federal Network Agency published a new position paper on calculating and charging construction cost contributions<sup>5</sup>. In it, the Agency maintained that grid operators are essentially entitled to charge construction cost contributions for BESS above the low voltage level. The demand price model remains relevant, but is adjusted to include the application of an arithmetic mean of demand prices over a five-year period, in order to mitigate future price fluctuations.

<sup>4</sup> Düsseldorf Higher Regional Court, order of 20 December 2023 - VI-3 Kart 183/23.

<sup>5</sup> Federal Network Agency, Ruling Chamber 8, Position paper on calculating and charging construction cost contributions, as of

### **E. BGH approves contribution cost contributions for battery storage systems: key takeaways from the BGH ruling**

In its ruling, the BGH confirmed that charging construction contribution costs for battery storage systems is essentially permissible. This is based on Section 17 (1) of the Energy Industry Act (EnWG), which stipulates that grid connection conditions must be appropriate, non-discriminatory and transparent. The BGH deemed the demand price model to fulfil these requirements. According to the BGH, battery storage systems are generally comparable to other end consumers in terms of the load on the electricity grid. In the court's view, the dual function of battery storage systems, i.e. absorbing electricity (consumption) and releasing it again (generation), does not warrant general special treatment.

The court's main arguments are outlined below in detail:

### **Treating grid-connected battery storage systems in the same way as other end consumers is justified**

The BGH acknowledged that battery storage systems differ from other end consumers in that they do not consume the electricity drawn from the distribution grid immediately, but feed it back into the grid at a later date. The construction cost contribution calculated on the basis of the local demand price also has a stronger location-based controlling effect for battery storage systems than for other end consumers. Nevertheless, the court deemed it objectively justified in terms of the spirit and purpose of the construction cost contribution to treat grid-connected battery storage systems the same as other end consumers. This gives grid operators, who are obliged to provide connection to the grid, certain room for manoeuvre in this respect.

November 2024, available at [https://www.bundesnetzagentur.de/DE/Beschlusskammern/BK08/BK8\\_04\\_InfoRundschr/43\\_Leitfaeden/Downloads/Positionspapier\\_DL.pdf?blob=publication-File&v=7](https://www.bundesnetzagentur.de/DE/Beschlusskammern/BK08/BK8_04_InfoRundschr/43_Leitfaeden/Downloads/Positionspapier_DL.pdf?blob=publication-File&v=7) (last accessed: 17 July 2025).



### Grid dimensioning and associated costs

According to the BGH, one of the critical factors is that battery storage systems also place a burden on the grid with their connected load, causing costs that are to be borne proportionately by all end users via a construction cost contribution.

The BGH emphasised that charging construction cost contributions is a legitimate instrument for ensuring efficient grid planning and dimensioning. If battery storage systems were exempt from paying such contributions, the costs would have to be passed on to end consumers, while the economic profit from operating the storage systems would only benefit the system operators. This would lead to unjustified privileges and discriminatory treatment in favour of battery storage systems.

### No special treatment for storage systems that benefit the grid

One of the storage system operator's core arguments was that battery storage systems that are operated in ways that benefit the grid in particular – i.e. those that contribute to grid stability or help to avoid supply bottlenecks – should be exempt from paying construction cost contributions or at least receive some kind of preferential treatment. While the BGH acknowledged that storage systems can benefit the grid, it did not consider this sufficient grounds for a general exemption from the obligation to pay contributions. The court pointed out that such effects could be taken into account in flexible grid connection agreements or through targeted discounts.<sup>6</sup>

### Construction cost contributions also not inadmissible under EU law

In the BGH's opinion, there is also no obligation under EU law, in particular the Internal Electricity Market Directive<sup>7</sup>, to generally exempt storage facilities from having to pay construction cost contributions. The Directive only

requires that investments in storage facilities are not “unduly hampered”, leaving considerable room for manoeuvre for member states in terms of implementation. The BGH also pointed out that storage facilities are already supported by other regulations – such as the exemption from grid fees and various tax privileges – and that an additional exemption from construction cost contributions is therefore unnecessary.

### F. Future developments and recommendations

This recent decision from the BGH provides legal clarity for network operators. They can continue to charge construction cost contributions for the connection of battery storage systems to the grid in accordance with the demand price model.

Irrespective of the legal assessment, this naturally represents a considerable financial burden for the electricity storage industry, as the amount of the construction cost contributions – depending on the location and the connected load – can account for a significant proportion (up to 20%) of the investment costs. Operators will need to include these costs in their calculations in future. In the case of new projects, the updated calculation methods presented in the Federal Network Agency's position paper from November 2024 must also be applied. Operators can no longer expect reimbursement of any construction cost contributions already paid.

At the same time, the ruling raises new questions. In particular, if grid operators are to assess how beneficial a battery storage facility is for the grid, this could – given the over 850 distribution grid operators in Germany – result in inconsistencies when it comes to the reduction or complete waiver of construction cost contributions. It also remains to be seen whether the decision can be applied to all types of battery storage systems (such as large or mixed storage systems).

Legislative action is still needed to provide grid operators and the energy storage industry with legal certainty and

<sup>6</sup> In its most recent position paper, the Federal Network Agency has already raised the possibility of regional discounts and flexible connection models to specifically support storage systems that benefit the grid.

<sup>7</sup> Directive (EU) 2019/944 of the European Parliament and of the Council of 5 June 2019 concerning common rules for the internal market in electricity and amending Directive 2012/27/EU.



thus make Germany's energy system more attractive for viable battery storage projects.

In practice, greater use should be made of flexible grid connection agreements<sup>8</sup> and discounts to facilitate a reduction in construction cost contributions for battery storage projects that benefit the grid.

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<sup>8</sup> A flexible grid connection agreement is a contractual arrangement between the operator of a battery storage system and the

grid operator that allows the grid connection capacity to be utilised dynamically according to current grid and market requirements.



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