



Warsaw, 29 April 2021

**PRESIDENT
OF THE ENERGY REGULATORY
OFFICE**
Rafał Gawin, PhD

DRR.WRG.748.10.2020.ABu1

DECISION

Pursuant to Article 8 (9), Article 25 (1) and Article 28 (1) and (2) 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 (EU OJ L 72 of 17 March 2017, p. 1 et seq.) in conjunction with Article 23 para. 2 item 11a and Article 30 para. 1 of the Act of 10 April 1997 on the Energy Law (JoL of 2021, item 716) and Article 104 of the Act of 14 June 1960 on the Code of Administrative Procedure (JoL of 2021, item 735)

after having examined the application

of the energy undertaking Operator Gazociągów Przesyłowych GAZ-SYSTEM Spółka Akcyjna with its registered office in Warsaw, attached to the letter of 18 December 2020 ref. no.: PU.070.7.2019.30, entitled "Application for the Approval of an Incremental Capacity Project according to Article 28 (1) NC CAM for the Market Border of Poland (E-Gas Transmission System) and Germany (Trading Hub Europe)", supplemented by letter of 22 February 2021, ref. no.: PU.0712.4.2021.34, by letter of 22 March 2021, ref. no.: PU.0712.4.2021.41 and by letter of 31 March 2020, ref. no.: PU.0712.4.2021.46

I hereby resolve

to approve the project proposal for incremental capacity for the market border of Poland (E-Gas Transmission System) and Germany (Trading Hub Europe) attached as Annex 1 hereto.

JUSTIFICATION

In fulfilment of the obligation arising under Article 28(1) of Commission Regulation (EU) 2017/459 of 16 March 2017 establishing a network code on capacity allocation mechanisms in the gas transmission systems and repealing Regulation (EU) No 984/2013 (hereinafter: "Regulation (EU) 2017/459"), on 18 December 2020 Gas Transmission Operator GAZ-SYSTEM S.A. with its registered office in Warsaw (hereinafter: "GAZ-

SYSTEM", "TSO" or "Applicant) submitted to the President of the Energy Regulatory Office (hereinafter: "the President of ERO") the document entitled "Application for the Approval of an Incremental Capacity Project according to Article 28 (1) NC CAM for the Market Border of Poland (E-Gas Transmission System) and Germany (Trading Hub Europe)" (hereinafter: "the project proposal") prepared in coordination with ONTRAS Gastransport GmbH (hereinafter: "ONTRAS").

On 22 December 2020, Bundesnetzagentur notified the President of ERO that ONTRAS submitted an analogous application and further notified of its completeness as at the submission date, that is, 18 December 2020.

On 14 January 2021 the President of ERO notified Bundesnetzagentur of receipt of the TSO's application for approval of the project proposal, and subsequently, pursuant to Article 28(2) sentence 3 of Regulation (EU) 2017/459, notified of the completeness of the application as at 18 December 2020.

By letters dated 1 February 2021, 18 March 2021, the President of ERO called the Applicant to correct and complete the application for approval of the project proposal and to provide explanations.

By letter of 22 February 2021, ref. no.: PU.0712.4.2021.34, letter of 26 March 2021, ref. no.: PU.0712.4.2021.41, and letter of 30 March 2021, ref. no.: PU.0712.4.2021.46 the Applicant provided explanations, made the relevant corrections and supplements.

On 13 April 2021 the President of ERO notified the party about the completion of the taking of evidence in the present administrative proceedings and about an opportunity to become acquainted with the administrative case file and to comment on the collected evidence, materials and submitted demands within 7 days from the date of receipt of the notification. The Applicant did not use its right to familiarize itself with the evidence.

In consideration of the evidence gathered, the President of ERO established the following:

Pursuant to Article 26 of Regulation (EU) 2017/459, GAZ-SYSTEM together with ONTRAS in the period from 1 July 2019 to 26 August 2019 conducted a non-binding assessment of the market demand for incremental capacity at the interconnection point (IP) GCP GAZ-SYSTEM/ONTRAS, which connects the entry-exit-system of Poland (E-Gas Transmission System) and the entry-exit-system of the Trading Hub Europe¹.

As part of the above process, a non-binding demand for firm capacity for the future gas years was reported on the GCP GAZ-SYSTEM / ONTRAS connection.

Market demand has been estimated based on the following reports received by ONTRAS:

¹ Currently, on the German side of the market border the market area of GASPOOL is still in place and active. In 1 October 2021 this market area will be merged with the market area of Net-Connect-Germany to the common German market area named Trading Hub Europe. However as in market demand assessment report assessed the future capacity situation and the project proposal refers to a new German market area, this Decision also refers to the future market area, Trading Hub Europe.

From EXIT- Capacity	To ENTRY- Capacity	Gas year	Amount (kWh/h)/y	Request was submitted to other TSOs	Additional Information (e.g. type of capacity)
<i>Poland</i>	<i>THE</i>	<i>2021/22 – 2035/36</i>	<i>2,025,676</i>	<i>Yes, to OGP GAZ- SYSTEM S.A.</i>	<i>Freely allocable firm capacity</i>

The market demand was estimated on the basis of the following notifications received by GAZ-SYSTEM:

From EXIT- CAPACITY	To ENTRY- CAPACITY	Gas year	Amount (kWh/h)/y	Request was submitted to other TSOs	Additional Information (e.g. type of capacity)
<i>Poland</i>	<i>THE</i>	<i>2021/22 – 2035/36</i>	<i>1,468,176</i>	<i>YES, to ONTRAS Gastransport GmbH</i>	<i>Freely allocable firm capacity</i>

Initially an incremental capacity demand of 1,468,176 kWh/h was submitted to both TSOs. Ultimately, based on the received correction of the demand for incremental capacity, the demand was adjusted so that the total capacity on both sides (including the existing technical capacity) at the interconnection point was adjusted to the level of 2 029 300 kWh / h and as such has been adopted under the project scope presented during the first public consultation. The originally reported demand would lead to divergent capacities at the interconnection point and would not be consistent with the intention of the request for equalization of the capacity level on both sides of the interconnection.

The Market Demand Assessment Report (MDAR) assessed the non-binding demand indications received in the demand assessment phase, and based on its conclusions, the involved TSOs developed technical studies based on Art. 27 (2) of Regulation (EU) 2017/459 related to the technical development of the Lasów gas station, together with a technical analysis of the required expansion of the national gas infrastructure.

Pursuant to Art. 27 (3) of Regulation (EU) 217/459 and the timeline indicated in the Demand assessment report for the incremental capacity between the Polish gas transmission system and the Trading Hub Europe, in the period from 10 August to 10 September 2020, GAZ-SYSTEM and ONTRA conducted public consultations of the incremental capacity preliminary project proposal.

Due to the fact that there are interlinkages between the incremental capacity project on the German side of the border and further incremental capacity projects stemming from demand requests on other German market borders, the consultation document states that the incremental capacity project for the GCP GAZ-SYSTEM/ONTRAS on the German side of the border cannot be considered solely and has different cost aspects.. Ultimately, the German TSOs analyzed alternatives for offering the incremental capacity of the GCP GAZ-SYSTEM / ONTRAS point in a way that would not affect the physical constraints between

the existing GASPOOL and NetConnect Germany entry/exit systems and the future THE exit/entry system. It was established that in the event of a reservation in the annual capacity auction in 2021 and a positive economic test result, ONTRAS will make an appropriate reallocation of the unused existing technical capacity within the ONTRAS network to the GCP GAZ-SYSTEM / ONTRAS entry point. Based on the above information, the subject matter and content of the application on the German side of the border have been amended accordingly.

In addition, in the above-mentioned public consultation of the initial project proposal ONTRAS and GAZ-SYSTEM received comments from one market participant. Comments received referred to the German aspects of the project proposal. The need for greater transparency in the application of a possible mandatory minimum premium (MMP) during the incremental capacity auction was indicated, and an explanation was requested in the process of the cancellation of capacities based on the provision laid down in consulted supplementary business terms and condition of ONTRAS for new capacities to be created. There was also a demand to provide the date and place of publication of the maximum tariff allowed for exercising the special right to terminate the contract. The Comments received referred to German aspects of the project proposal therefore, GAZ-SYSTEM did not react to the provided comments.

After the initial consultation of the project proposal on the Polish side, the project was also subjected to additional analysis, which showed that due to the observed significant increase in gas demand in the Lower Silesia region, it is necessary to reduce the level of offered incremental bundled capacity to 613,250 kWh/h.

Therefore, in the period from 17 November 2020 to 17 December 2020, a second market consultation was conducted, during which the TSOs received one inquiry regarding the possibility of including the existing firm capacity in the project and about the costs related to the reduction of the level of the related incremental capacity.

The project of the incremental capacity for the cross-border Poland - Germany interconnection point (GCP GAZ-SYSTEM / ONTRAS) consisting in enabling the physical flow of natural gas (group E) from Poland to Germany with an incremental capacity of 613 250 kWh / h, requires investments on both sides of the border. The capacities offered on the Polish and German sides of the GCP GAZ-SYSTEM / ONTRAS interconnection point are currently not equal, and the implementation of the project will allow for permanent and long-term equalization of the offered bundled capacities on a firm basis subject to the incremental capacity procedure, which are currently offered on the basis of annual TSO analyzes and system utilization forecasts.

The expansion of the GCP GAZ-SYSTEM / ONTRAS cross-border interconnection point on the Polish side involves:

- modernization of the measurement system at the Lasów station;
- construction of a reverse system at the Jeleniów compressor station,
- retrofitting drives / valves at the Lasów station.

The estimated investment will be approximately PLN 9.524 million (modernization of metering at the Lasów station - PLN 1.5 million, construction of a reverse connection at the Jeleniów compressor station - PLN 7.244 million and retrofitting with drives / valves at

the Lasów station - PLN 0.78 million). It is expected that the expenditure will be incurred in 2025, and the gas transmission service will start in the fourth quarter of 2026. The expenditure has been set for 2020 prices, therefore revenues and costs are discounted until this year. For the economic test, the power equal to 61 760 kWh / h was assumed, which is the minimum contractual power guaranteeing a positive test result.

In the course of these proceedings, the President of ERO considered the following:

The Applicant holds a licence for gas transmission within the territory of the Republic of Poland, granted by decision of the President of ERO of 30 June 2004, No. PPG/95/6154/W/2/2004/MS, as amended.

By decision of 23 June 2006, ref. no.: DPE-47-4(2)/6154/2006/BT, amended by decision of 18 December 2006, ref. no.: DPE-47-10(5)/6154/2006/MW, decision of 9 December 2009, ref. no.: DPE- 47-109(2)/6154/2009/BP, decision of 13 October 2010, ref. no.: DPE-4720-3(7)/6154/2010/BT and decision of 6 December 2018, ref. no.: DRG.DRG-1.4720.1.2018.KL, the President of ERO designated the Applicant as the gas transmission system operator in the territory of the Republic of Poland for the period until 6 December 2068.

By decision of 22 September 2014, No. DRG-4720-1 (13) / 2014/6154 / KF, the President of ERO granted the Applicant a certificate of compliance with the independence criteria specified in Art. 9d paragraph. 1a of the Energy Law in connection with the performance of the function of the transmission system operator on own networks.

Pursuant to Article 23 para. 2 item 11a of the Act of 10 April 1997 on the Energy Law (hereinafter: the Energy Law Act), the scope of activity of the President of ERO includes controlling the performance by a gas transmission system operator or an interconnected gas system operator and other gaseous fuel market participants of obligations arising from the provisions of Regulation (EC) No. 715/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the natural gas transmission networks and repealing Regulation (EC) No. 1775/2005, performance of other obligations of the regulatory authority under that Regulation and approval of the relevant points in the transmission system covered by the obligation referred to in Article 18 of that Regulation, as well as performance of the obligations of the regulatory authority under regulations adopted pursuant to Article 8 and Article 23 of Regulation 715/2009.

Regulation (EU) 2017/459 was adopted on the basis of Regulation 715/2009 and regulates capacity allocation mechanisms in the gas transmission systems for existing capacity and incremental capacity. The Regulation is binding in its entirety and directly applicable in all Member States of the European Union.

Pursuant to Article 28(1) of Regulation (EU) 2017/459, following the consultation and completion of the design phase for the incremental capacity project in accordance with Article 27 of that act, the relevant transmission system operators shall submit the incremental capacity project proposal to the relevant national regulatory authorities for coordinated approvals. The project proposal shall also be published by the transmission system operators concerned in at least one of the official languages of the Member States and, where possible, in English, and shall contain at least the following information:

- a) all offer levels reflecting the extent of the projected demand for incremental capacity at the relevant interconnection points following a market demand assessment and public consultation process;
- b) the general terms and conditions for network users to participate in, and gain access to capacity in the binding capacity allocation phase of the incremental capacity acquisition process, including any safeguards to be provided by network users, and how contractual arrangements will address any delays in the provision of capacity or disruptions to the project implementation;
- c) the schedule for implementing the incremental capacity project, including any changes that have occurred since public consultation, and measures to prevent delays and minimize their impact;
- d) economic test parameters;
- e) whether an extension of the time horizon for capacity contracting for an additional period of maximum 5 years beyond the allocation period of maximum 15 years from the beginning of exploitation may be required on an exceptional basis;
- f) where appropriate, the proposed alternative allocation mechanism, including its justification, and the conditions approved by the transmission system operator for the binding phase;
- g) where a fixed price approach is applied to the incremental capacity project, the indicators described in Article 24(b) of Commission Regulation (EU) No 2017/460 of 16 March 2017 establishing a network code on harmonized transmission tariff structures for gas (EU OJ L 72 of 17 March 2017, p. 29 et seq., hereinafter: "Regulation (EU) 2017/460").

Pursuant to Article 28(2) of Regulation (EU) 2017/459, within 6 months of receipt of a complete project proposal by the last of the competent regulatory authorities, they shall publish coordinated decisions on the project proposal. The national regulatory authorities shall inform each other of the receipt of the project proposal and its completeness in order to determine the start of the 6-month period.

When preparing the national regulatory authority's decision, each national regulatory authority shall consider the views of the other national regulatory authorities involved. In any case national regulatory authorities shall take into account any detrimental effects on competition or the effective functioning of the internal gas market associated with the incremental capacity projects concerned. If a relevant national regulatory authority objects to the submitted project proposal, it shall inform the other involved national regulatory authorities as soon as possible. In such a situation, all the national regulatory authorities involved shall take all reasonable steps to work together and reach a common agreement.

Pursuant to Article 8(9) of Regulation (EU) 2017/459, the exact proportion of capacity to be set aside in accordance with paragraph 8 of this Regulation shall be subject to approval by national regulatory authorities; this paragraph 8 stipulates that in the case of incremental capacity, an amount at least equal to 10% of the incremental technical capacity at the concerned interconnection point shall be set aside and offered no earlier than the annual quarterly capacity auction, held in accordance with the auction calendar during the gas year preceding the start of the relevant gas year.

In turn, pursuant to Article 25(1) of Regulation (EU) 2017/459, for a given incremental capacity project, the transmission system operator shall submit to the relevant national regulatory authority for approval the following information for each offer level:

- a) the reference prices estimated for the time horizon of the initial offer of incremental capacity that are used for the calculation of the parameter set out in Article 22(1)(a) and 24(2)(a), respectively in case separate or a single economic test is applied;
- b) the parameters set out in Article 22(1)(b) to (c) and 24(2)(b) to (c), respectively in case separate or a single economic test is applied;
- c) if applicable, the range of the level for the mandatory minimum premium referred to in Article 33(4) of Regulation (EU) 2017/460 for each offer level and interconnection point applied in the first auction and possibly in subsequent auctions in which the incremental capacity is offered as defined in Article 33(3) of Regulation (EU) 2017/460.

The project proposal submitted by the TSO contains all the formal elements necessary for its approval as listed in Articles 8(8), 25(1) and 28(1)(a-g) of Regulation (EU) 2017/459.

In view of the above, the following should be indicated:

1. Offer level (Articles 8(8) and 28(1)(a) of Regulation (EU) 2017/459)

In accordance with Article 3(5) of Regulation (EU) 2017/459, "offer level" means the sum of the available capacity and the respective level of incremental capacity offered for each of the yearly standard capacity products at an interconnection point.

The project proposal contains one offer level. The calculation of the offered existing capacity and the offered offer level 1 is presented in the tables below, which also provides information under Art. 11 sec. 6 of Regulation (EU) 2017/459, according to which the capacity to be offered in the annual capacity auction shall be equal to:

$$A - B - C + D + E - F$$

where:

A is the technical capacity of the transmission system operator for each 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).

Table 1: Depiction of the offered existing capacity (kWh/h/y) for **GAZ-SYSTEM** on the IP GCP GAZ-SYSTEM/ONTRAS (exit):

Table 1) Existing capacity	Sum of offered existing capacity (firm)	Available technical capacity [Art. 11 (6) NC CAM A]	Capacity set aside [Art. 11 (6) NC CAM B]	Previously sold technical capacity [Art. 11 (6) NC CAM C]	Additional capacity [Art. 11 (6) NC CAM D]	Incremental capacity [Art. 11 (6) NC CAM E]	Incremental capacity set aside [Art. 11 (6) NC CAM F]
GY 21/22	3,262	3,624	362	0	0		
GY 22/23	3,262	3,624	362	0	0		
GY 23/24	3,262	3,624	362	0	0		
GY 24/25	3,262	3,624	362	0	0		
GY 25/26	3,262	3,624 ²	362	0	0		

Table 2: Depiction of the offered Offer-level 1 (kWh/h/y) for **GAZ-SYSTEM** on the IP GCP GAZ-SYSTEM/ONTRAS (exit):

Table 2) Offer-level 1 (firm)	Sum of offered offer-level 1	Available technical capacity [Art. 11 (6) NC CAM A]	Capacity set aside [Art. 11 (6) NC CAM B]	Previously sold technical capacity [Art. 11 (6) NC CAM C]	Additional capacity [Art. 11 (6) NC CAM D]	Incremental capacity [Art. 11 (6) NC CAM E]	Incremental capacity set aside [Art. 11 (6) NC CAM F]
GY 21/22							
GY 22/23							
GY 23/24							
GY 24/25							
GY 25/26							
GY 26/27	493,499	3,624	725	0	0	613,250	122,650
GY 27/28	493,499	3,624	725	0	0	613,250	122,650
GY 28/29	493,499	3,624	725	0	0	613,250	122,650
GY 29/30	493,499	3,624	725	0	0	613,250	122,650
GY 30/31	493,499	3,624	725	0	0	613,250	122,650
GY 31/32	493,499	3,624	725	0	0	613,250	122,650
GY 32/33	493,499	3,624	725	0	0	613,250	122,650
GY 33/34	493,499	3,624	725	0	0	613,250	122,650
GY 34/35	493,499	3,624	725	0	0	613,250	122,650
GY 35/36	493,499	3,624	725	0	0	613,250	122,650
GY 36/37	493,499	3,624	725	0	0	613,250	122,650
GY 37/38	493,499	3,624	725	0	0	613,250	122,650
GY 38/39	493,499	3,624	725	0	0	613,250	122,650
GY 39/40	493,499	3,624	725	0	0	613,250	122,650
GY 40/41	493,499	3,624	725	0	0	613,250	122,650

Table 3: Depiction of the common offered existing capacity and of the common offered Offer-level 1 (kWh/h/y) for the marketing of bundled capacity for **GAZ-SYSTEM and ONTRAS** on the IP GCP GAZ-SYSTEM in direction Trading Hub Europe:

Common offered capacity	Existing capacity (FZK/firm)	Offer level 1 (FZK/firm)
GY 21/22	3,262	
GY 22/23	3,262	
GY 23/24	3,262	
GY 24/25	3,262	
GY 25/26	3,262	
GY 26/27		493,499
GY 27/28		493,499
GY 28/29		493,499
GY 29/30		493,499
GY 30/31		493,499
GY 31/32		493,499
GY 32/33		493,499
GY 33/34		493,499
GY 34/35		493,499
GY 35/36		493,499
GY 36/37		493,499
GY 37/38		493,499
GY 38/39		493,499
GY 39/40		493,499
GY 40/41		493,499

Table 3 presents the bundled offer level 1 to be offered by GAZ-SYSTEM and ONTRAS in the yearly product auction in 2021, taking into account the obligation to set aside capacity pursuant to Regulation (EU) 2017/459. The offer level will be made available to the market at the earliest from the gas year 2026/2027. According to Art. 8 (9) of Regulation (EU) 217/459, GAZ-SYSTEM and ONTRAS agreed that the amount of set aside technical capacity from the gas year 2026/2027 will be 20% of the existing and incremental capacity (for the previous gas years, 10% of the existing and incremental capacity will be set aside). The incremental capacity will be offered simultaneously with the existing capacity during the yearly product auction in 2021, while the existing capacity at the GCP GAZ-SYSTEM / ONTRAS point will be offered beyond the offer level from the gas year 2021/2022 to the gas year 2025/2026, in accordance with Art. 11 (3) Regulation (EU) 217/459.

Considering the above, it should be stated that the presented offer level in accordance with 28 (1) (a) of Regulation (EU) 2017/459 reflects the scope of the expected demand for incremental capacity and meets the legal requirements resulting from the above-mentioned regulation. The applicant, together with ONTRAS, has identified the standard bundled products to be offered in accordance with Art. 29 (1) of Regulation (EU) 2017/459. The offer level was prepared in accordance with Art. 11 (6) above the mentioned regulation and takes into account the obligation to set aside capacity according to the method indicated in that provision.

In the assessment of the ERO President, offering the amount of capacity specified in the project proposal serves as a possibly accurate assessment of the demand for capacity. In addition, what is important, the commitment of the auction participants to incur the fees for gas transmission service within the maximum allowed capacity even before the TSO starts to incur the expenses for the preparation and then implementation of the investment reduces the Applicant's risk related to the uncertainty of future revenues. This serves to protect the legitimate interests of both the TSO and all the users of the Polish transmission system. A similar justification applies to the proposed period of transmission service provision - 15 years. This is the number of years allowed by the provisions of Regulation (EU) 2017/459, assessed by the Applicant as a period providing sufficient protection of its interests.

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

Pursuant to Article 28(1)(b), the project proposal shall include 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.

For the purpose of offering incremental capacity, GAZ-SYSTEM and ONTRAS have prepared individual general terms and conditions in line with the national legal regulations.

In the opinion of the President of the Energy Regulatory Office, the provisions of the "General Terms and Conditions of participation in and access to capacity in the binding phase of incremental capacity auction on the border between Poland (E-Gas Transmission System) and Germany (Trading Hub Europe)" (hereinafter: "INC GT&C") are consistent with European and national law and adequately ensure a balance of protection of the Applicant and network users. In particular, the general provisions concerning the method of making incremental capacity available and the provisions concerning financial security and the consequences of a possible delay in making incremental capacity available or disruptions to the incremental capacity project for the market border of Poland (E-Gas Transmission System) and Germany (Trading Hub Europe) serve this protection.

3. Timelines of the incremental capacity project and measures to prevent delays and minimize the impact of delays (Article 28(1)(c) of Regulation (EU) 2017/459)

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

In the opinion of the ERO President, the Applicant has correctly described and justified the project implementation schedule included in the project proposal. The construction of the necessary investments projects providing capacity at the GCP point will commence when market participants commit to purchase adequate amounts of incremental capacity in the yearly product auction in 2021 and if each TSO obtains a positive result of the economic test.

The schedule provides that the deadline for the completion of investment tasks and the commissioning of the new infrastructure will take place in the third quarter of 2026.

The above-mentioned stages on the Polish side are the expected latest dates for the completion of further activities, taking into account the general schedule of the incremental capacity project and the requirement to ensure capacity at the beginning of the 2026/2027 gas year.

Measures to prevent delays and minimize their effects are defined in the INC GT&C as obligations of the TSO towards the network users. According to point 6 of the INC GT&C, such measures include:

- a. imposing on GAZ-SYSTEM an obligation to inform the System Users about the occurrence of any delays well in advance (6 months) while limiting the possibility of postponing the date of commencement of service provision (the notification may be submitted only once) and the maximum period of delay (24 months);
- b. the possibility for the System User to resign from all or part of the proposed reduced capacity allocation due to delays without the obligation to pay transmission fees;
- c. the ability to convert all or part of the capacity allocated to a System User under a yearly product to interruptible capacity.

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

Pursuant to Article 22(3) of Regulation (EU) 2017/459, an incremental capacity project shall be initiated if the economic test has a positive outcome on both sides of an interconnection point for at least one offer level that includes incremental capacity. The results of the economic tests shall be made available no later than 2 business days after the closing of the bidding round, simultaneously to individual network users participating in the respective auction (Article 11(10) of Regulation (EU) 2017/459).

Pursuant to Article 22(2)(a) of Regulation (EU) 2017/459, the outcome of the economic test application shall be positive, where the value of binding commitments of network users for contracting capacity is at least equal to the value of the share 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 as defined by the f-factor.

Pursuant to Article 25(1) and Article 28(1)(d) of Regulation (EU) 2017/459, parameters of the economic test for present values of binding commitments of network users and of the estimated increase in the allowed or target revenue of the TSO, f-factor and the reference prices and the range of the level for the mandatory minimum premium included in the application for project proposal approval are subject to approval by the relevant national regulatory authority.

I. Present value of binding commitments of network users for contracting capacity

The purpose of the economic test is to ensure the economic viability of the project and thus network users demanding incremental capacity are required to assume the corresponding financial risks associated with their demand to avoid captive customers from being exposed to the risk of such investments (recital 11 of Regulation (EU) 2017/459).

The economic test parameter specified in Article 22(1) is the present value of binding commitments of network users for contracting capacity, which is calculated as the discounted sum of the following parameters:

- (1) the sum of the respective estimated reference prices and a potential auction premium and a potential mandatory minimum premium multiplied by the amount of contracted incremental capacity;
- (2) the sum of a potential auction premium and a potential mandatory minimum premium multiplied by the amount of available capacity that was contracted in combination with the incremental capacity;

When calculating the present value of binding commitments of network users at the GCP GAZ-SYSTEM / ONTRAS exit point, the following was adopted:

- a) a reference price of PLN 1,854 / (MWh / h) / h (EUR 0.431) / (MWh / h) / h);
- b) in order to obtain a positive result of the economic test, the obligatory auction premium or the obligatory minimum premium is not required;
- c) reserved annual transmission capacity at the GCP exit point of 61 375 kWh / h.

The discounted value of binding commitments of network users at the GCP GAZ-SYSTEM / ONTRAS point, with a discount rate of 6% for the 15-year test period, is PLN 6,927,172.00.

II. Present value of the estimated increase in the allowed or target revenue of the TSO

A parameter of the economic test referred to in Article 22(1)(b) of Regulation (EU) 2017/459 is 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.

Definitions of the “allowed revenue” or “target revenue” are included in Regulation 2017/460. Pursuant to Article 3(11) thereof, “allowed revenue” means the sum of transmission services revenue and non-transmission services revenue for the provision of services by the transmission system operator for a specific time period within a given regulatory period which such transmission system operator is entitled to obtain under a non-price cap regime and which is set in accordance with Article 41(6)(a) of Directive 2009/73/EC.

The value of the current estimate of the allowed incremental capacity-related revenues of the transmission system operator corresponds to the value of the cost base of investment assets pertaining to the project implemented by the transmission system operator settled in the period covering contracted incremental capacity made available under bids submitted in the auction procedure for the GCP GAZ-SYSTEM / ONTRAS interconnection point.

For the calculation of the discounted value of the allowed revenue related to the implementation of the incremental capacity project for the border of the market areas Poland (E-Gas Transmission System) - Germany (Trading Hub Europe) in the years 2026-2041, a discount rate of 6% was adopted. This value is equal to the risk-free rate adopted for the purpose of calculating the reference rates approved by the President of the ERO in force in 2021.

When calculating the allowed income, the following were taken into account:

- a) initial regulatory value (RAV) of the property related to the expansion of the GCP point in the amount of PLN 9,524 thousand PLN;
- b) the value of annual depreciation charges amounting to 405 thousand PLN;
- c) annual operating costs (OPEX) of PLN 195 thousand; PLN;
- d) WACC equal to 6% of the RAV.

The discounted value of the allowed revenue at the GCP GAZ-SYSTEM / ONTRAS point is - 6,926,822.00 PLN.

III. F-factor

Pursuant to Article 23(1) of Regulation (EU) 2017/459, the level of the f-factor for a given offer level shall be set, taking into account the following:

- a) the amount of technical capacity set aside in accordance with Article 8(8) and (9);
- b) positive externalities of the incremental capacity project on the market or the transmission network, or both;
- c) the duration of binding commitments of network users for contracting capacity compared to the economic life of the asset;
- d) the extent to which the demand for the capacity established in the incremental capacity project can be expected to continue after the end of the time horizon used in the economic test.

Taking into account the position of the TSO that the project for the expansion of the GCP cross-border interconnection, i.e. for the border of the market areas Poland (E-Gas Transmission System) - Germany (Trading Hub Europe), is only a commercial project and the fact that no positive effects have been indicated for the cooperating systems transmission and markets, it is justified to adopt the f-factor equal to 1, as requested by the TSO. The applicant indicated that the project is of a nature that allows for offering transmission capacity on the basis of physical flow, and not a virtual reverse. The project will not affect the implementation of key projects related to the expansion of the Polish transmission system, the level of gas fuel prices in Poland and the improvement of the security of fuel supplies to customers on the Polish market.

Considering the above, the President of ERO accepts the adoption of the f-factor equal to 1 (in words: one).

IV. Reference price

Pursuant to Article 25(1)(a) of Regulation 2017/459, under the proceedings conducted, reference prices (rates) of transmission fees estimated for the project for the time horizon from 1 October 2026 to 1 October 2041, that is the period of 15 gas years, have been approved by this decision.

Referring to the position of the TSO on the adopted reference price, it is necessary to agree with the assumption that for the calculation of the present value of commitments of network users for contracting incremental capacity made available under bids submitted in the auction procedure for the GCP interconnection point referred to in Article 22(1)(a) of Regulation (EU) 2017/459, the reference price will be applied at the level of the fixed fee rate for the provision of gaseous fuel transmission services at the exit point from the high-methane gas transmission system according to the "Tariff for gas transmission services no 14" approved by the decision of the President of ERO no DRG.DRG-2.4212.7.2020JDo1 of

5 June 2020, in the amount of 1.854 PLN/(MWh/h)/h. This price will be used in calculations related to the economic test for the entire project time horizon, i.e. from 1 October 2026 to 1 October 2041.

Thus, the provisions of Article 33(1) of Regulation No 2017/460 stipulating that for the calculation of the economic test, reference prices shall be derived by including into the reference price methodology the relevant assumptions related to the offer of incremental capacity will not apply. The adoption of such a solution is supported by the fact that in the near future the Applicant will start implementing capital-intensive investment projects aimed at ensuring diversification of gas supply for Poland, implemented in cooperation with other European operators. Their implementation is only partially dependent on the schedule of actions undertaken by the TSO, and therefore taking into account their impact on the reference price in a 15-year horizon is difficult and could lead to results bearing a significant error.

V. Mandatory minimum premium

No application has been submitted for approval of the application of the compulsory minimum premium referred to in Art. 33 paragraph. 4 of Regulation (EU) 2017/460.

5. Possible extension of time horizon for contracting capacity (Article (28)(1)(e) of Regulation (EU) 2017/459)

No application for extension of the time horizon for the incremental capacity project has been submitted. Based on a joint decision, GAZ-SYSTEM and ONTRAS see no need to extend the time horizon for the incremental capacity project.

6. Alternative allocation mechanism for incremental capacity (Article 28(1)(f) of Regulation (EU) 2017/459)

No application for an alternative allocation mechanism has been submitted. GAZ-SYSTEM and ONTRAS decided not to apply an alternative allocation mechanism for the acquisition of incremental capacity pursuant to Article 28(1)(f) of Regulation (EU) 2017/459. Based on the joint decision, both operators will apply the standard auction procedure for incremental capacity in 2021.

7. Fixed price approach (Article 28(1)(f) of Regulation (EU) 2017/459)

No application for the fixed price approach has been submitted. GAZ-SYSTEM and ONTRAS decided not to apply the aforementioned approach to acquire incremental capacity in 2021.

In consideration of the above, the ERO President concluded that the content of the project proposal is consistent with the provisions of Regulation (EU) 715/2009, including the provisions of the regulations adopted on its basis, the provisions of the Energy Law Act, as well as the Ordinance of the Minister of Economy of 16 May 2018 on detailed conditions of gas system operation (Journal of Laws of 2018, item 1158).

In the present proceedings, the ERO President found the evidence submitted by the Applicant credible.

In the opinion of the ERO President, the project does not have a harmful effect on competition or the efficient functioning of the internal gas market. Neither does the project

cause any adverse effects for the existing infrastructure, and the interests of market participants are fully protected.

The subject-matter elements of the project proposal, as set out in Article 28(1) of Regulation (EU) 2017/459, were established in coordination with Bundesnetzagentur, with whom the ERO President remained in close contact and good cooperation throughout the proceedings and prior to the initiation of the proceedings. Neither Bundesnetzagentur nor the President of ERO objected to the submitted project proposals and both informed each other, by email, on 22 and 26 March 2021, respectively, of their intention to issue a decision on the approval of the project proposal.

In view of the above, it has been decided to adjudicate as set out in the ruling above.

NOTES OF GUIDANCE

1. This decision may be appealed to the Regional Court in Warsaw - Court of Competition and Consumer Protection (SOKiK), by my intermediation, within two weeks of its delivery (Article 30, para. 2 and 3 of the Energy Law Act in conjunction with Article 47946 item 1 and Article 47947 § 1 of the Civil Procedure Code - consolidated text: Journal of Laws of 2020, item 1575, as amended). The appeal should be sent to the Energy Regulatory Office, Al. Jerozolimskie 181, 02-222 Warsaw.
2. An appeal against a decision of the President of the Office should meet the requirements for a pleading and contain a designation of the appealed decision and the value of the subject of the dispute, stating the pleas in law, brief justification thereof, indication of evidence, as well as include a motion to repeal or amend the decision in whole or in part (Article 47949 of the Code of Civil Procedure).
3. The appeal against the decision of the President of ERO is subject to a fixed fee of PLN 1,000 (Article 32 para. 3 in conjunction with Article 3 para 2 item 9 of the Act of 28 July 2005 on Court Fees in Civil Cases - Journal of Laws of 2020, item 755, as amended).
4. During the time limit for lodging an appeal a party may waive its right to appeal to the SOKiK against the President of ERO (Article 127a § 1 of the Code of Administrative Procedure). As of the date of delivery to the public administration body of the statement on the party's renouncement of the right to file an appeal to the public administration body, the decision becomes final and legally binding (Article 127a § 2 of the Code of Administrative Procedure).
5. A decision shall be enforceable before the expiry of the time limit for lodging an appeal if it complies with the demand of all parties or if all parties have waived the right to lodge an appeal (Article 130 § 4 of the Code of Administrative Procedure).

Pursuant to Article 1 para. 1 item 1 section a) of the Act of 16 November 2006 on Stamp Duty (Journal of Laws of 2020, item 1546, as amended) in connection with part I item 53 of the appendix to this Act, the stamp duty of PLN 10 was paid.

Annex No. 1: "Application for the Approval of an Incremental Capacity Project according to Article 28 (1) NC CAM for the Market Border of Poland (E-Gas Transmission System) and Germany (Trading Hub Europe)" including a proposal for an incremental capacity project, including the INC GT&C

Copies to:

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