



Warsaw, 28 of April 2023

PRESIDENT
ENERGY REGULATORY OFFICE
Rafał Gawin, Ph.D.

DRR.WRG.745.6.2022.MJS

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 2022, item 1385, as amended) and Article 104 of the Act of 14 June 1960 on the Code of Administrative Procedure (JoL of 2022.2000 as amended)

after having examined the application

of the energy undertaking Operator Gazociągów Przesyłowych GAZ-SYSTEM Spółka Akcyjna (Gas Transmission Operator GAZ-SYSTEM S.A.) with its registered office in Warsaw attached to the letter of 14 November 2022 ref. no.: PG.0712.2.2022.7, entitled "Application for the Approval of an Incremental Capacity Project according to Article 28 (1) CAM NC for the border between Poland and the Ukraine", supplemented by confirmed power of attorney and accepted as complete on 2 December 2022, then supplemented on 28 February 2023 by letter ref. no. PG.0712.2.2022.11, on 13 March 2023 by letter ref. no. PG.0712.2.2022.17, on 27 March by letter ref. no. PG.0712.2.2022.20 and on 19 April 2023 by letter ref. no. PG.0712.2.2022.22

I hereby resolve

to approve the project proposal for incremental capacity for the border between the market areas of Poland and the Ukraine, attached as Annex 1 hereto and 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 and Ukraine (hereinafter the "INC GT&C") attached as Annex 2 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 14 November 2022 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 Border between Poland and Ukraine” (hereinafter: "the project proposal", "application") prepared in coordination with LLC "Gas Transmission System Operator of Ukraine" (hereinafter, GTSOU). The application was supplemented by confirmed power of attorney and accepted as complete on 2 December 2022 analogically on the Ukrainian side on 15 November 2022 GTSOU submitted the complete application to the Ukrainian Regulator – National Energy and Utilities Regulatory Commission of Ukraine (hereinafter: "NUERC").

By the letter dated 12 January 2023, ref. no.: DRR.WRG.745.6.2022.MJS the President of ERO informed the Applicant about the prolongation of the proceedings for the approval of the application proposal till 14 March 2023. By the letter dated 13 February 2023, ref. no.: DRR.WRG.745.6.2022.MJS called the Applicant to correct and complete the application for approval of the project proposal and to provide explanations especially considering the parameters of the economic test. By letter of 28 February 2023, ref. no.: PG.0712.2.2022.11, the Applicant submitted explanations and made the relevant corrections. Therefore the Applicant supplemented the application by letter of 13 March 2023, ref. no.: PG.0712.2.2022.17. The President of ERO by the letter dated 13 March 2023, ref. no.: DRR.WRG.745.6.2022.MJS informed the Applicant about the prolongation of the proceedings for the approval of the application proposal till 2 May 2023. The Applicant by the letter of 27 March 2023, ref. no.: PG.0712.2.2022.20 supplemented the application and then by the letter dated 19 April 2023 ref. no.: PG.0712.2.2022.22 submitted the final version of the application.

On 6 and 7 April 2023, the President of ERO and NEURC mutually notified each other about the dates of receiving complete applications – respectively NUERC received the complete application on 15 November 2022 from GTSOU and the President of ERO received the application on 13 November 2022 supplemented by confirmed power of attorney and accepted as complete on 2 December 2022. Both Regulators mutually confirmed to each other the willingness to issue the coordinated decision.

On 21 April 2023 the President of ERO notified NEURC of receipt from GAZ-SYSTEM of the final version of the application for approval of the project proposal and sent to NEURC the Formal Letter of arrangements together with the agreed deadline of issuing the coordinated decision.

On 24 April 2023 NEURC notified the President of ERO of receipt from GTSOU of the final version of the application for approval of the project proposal.

On 26 April 2023 NEURC sent to the President of ERO the Formal Letter of arrangements together with the agreed deadline of issuing the coordinated decision.

On 19 April 2023 by the letter ref. no.: PG.0712.2.2022.22 Applicant informed that resigns from its right to familiarize itself with the collected materials of evidence and about not to provide the additional comments and explanations to the collected materials of evidence.

On 26 April 2023 the President of ERO by the letter ref. no.: DRR.WRG.745.6.2022.MJS notified the Applicant about the completion of the taking of evidence in the present administrative proceedings and about taking note that Applicant resigns from its right to familiarize itself with the collected materials of evidence and that the Applicant does not provide additional comments and explanations to the collected materials of evidence.

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

Transmission System Operators i.e.: Operator Gazociągów Przesyłowych GAZ-SYSTEM S.A. and LLC “Gas Transmission System Operator of Ukraine” have received non-binding demand indications for the firm capacity in the direction from Poland to Ukraine. Currently, between Poland and Ukraine (in the direction from Poland to Ukraine) there is no technical capacity. Firm capacity or interruptible conditionally firm capacity is made available, depending on the situation in the Polish transmission system.

On the basis of the non-binding notifications received, the operators have prepared a joint report from the assessment of market demand: Market Demand Assessment Report (hereinafter: MDAR), which was published on the websites of GAZ-SYSTEM¹ and GTSOU² on 25 October 2021. The MDAR assessed non-binding notifications received in the framework of the conducted from 5 July to 30 August 2021 market demand assessment. Then, based on the MDAR results GAZ-SYSTEM and GTSOU conducted research to prepare the project incremental capacity on the Polish-Ukrainian border.

No comments were received in the public consultation of the Draft Project Proposal held from 17 January 2022 to 17 March 2022, neither by GAZ-SYSTEM nor by GTSOU.

As a result of the market demand assessment and design phase, GAZ-SYSTEM and GTSOU suggest implementing an incremental capacity project at the current interconnection point between Poland and Ukraine (in the direction from Poland to Ukraine) (hereinafter, GCP GAZ-SYSTEM/UA TSO).

The suggested incremental capacity project covers the demand indication received in the demand assessment phase on the level of 3 869 863 kWh/h³.

Description of the project on the Polish side (GAZ-SYSTEM)

Expansion required within the GAZ-SYSTEM grid:

In order to ensure the possibility of gas transmission in the direction from Poland to Ukraine with a maximum capacity of 3 869 863 kWh/h, the following investments are required on the Polish side:

- Construction of a new DN 1000 gas pipeline Wronów – Rozwadów (L=107 km)
- Construction of a new DN 1000 gas pipeline Rozwadów – Strachocina (L=140 km)
- Construction of metering station in Hermanowice

Expected commissioning: 2Q/2030

Cost estimation⁴:

With a maximum capacity of 3 869 863 kWh/h approximately EUR 359.2 million for the pipeline section including EUR 6.7 million for the metering station.

¹ https://www.gaz-system.pl/fileadmin/pliki/taryfa/pl/MDAR_2021_PL-UA_GAZ-SYSTEM_TSOUA_ENG_final.pdf

² https://tsoua.com/wp-content/uploads/2021/10/MDAR_2021_PL-UA_ENG.pdf

³ Assumed gross calorific value 11.15 kWh/m³ (0/25)

⁴ 1 EUR= 4.80 PLN was used for calculation of the costs in EUR

Description of the project on the Ukrainian side (GTSOU)

Expansion required within the GTSOU grid:

In order to ensure the security of natural gas supply and the diversification of sources and routes of natural gas transmission (in particular, LNG) to Ukraine, GTSOU is implementing several capital intensive projects. The reconstruction of the compressor station "Komarno" in the Lviv region is necessary to ensure constant availability and additional flexibility of transporting natural gas from Poland to Ukraine with a maximum capacity of 3 869 863 kWh/h.

Expected commissioning: 4Q/2028

Cost estimation:

According to the feasibility study approved by the order of GTSOU No. 75 dated 09.02.2023, the estimated cost of the reconstruction of compressor station "Komarno" is UAH 3 213.838 million excluding VAT (EUR 82.3 million excluding VAT)⁵. The costs of reconstruction of compressor station "Komarno" will be financed on account of depreciation costs envisaged under the respective tariff of the gas transmission system operator. After the binding phase of the incremental capacity procedure, the value indicators of reconstruction costs may be updated due to inflation adjustments only.

The timeframes of work completion may be updated due to existing uncertainty related Russia's full-scale war with Ukraine.

It should be also underlined that the construction phase will only start if there is a commitment by network users to acquire the respective incremental capacities in the yearly auction 2023⁶ and if the results of the following economic tests are also positive for GAZ-SYSTEM and GTSOU. GAZ-SYSTEM together with GTSOU will conclude the agreement on implementation of the project.

Do testu ekonomicznego GAZ-SYSTEM przyjęto moc równą 3.095.890 kWh/h (na podstawie art. 11 ust. 6 CAM NC), która jest minimalną mocą umowną gwarantującą pozytywny wynik tego testu.

For the economic test the incremental capacity of 3.095.890 kWh/h pursuant art 11(6) of NC CAM was used as the minimal capacity level to guarantee the positive outcome of this test.

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

Gas Transmission Operator GAZ-SYSTEM S.A. 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 the President of ERO of 6 December 2018, ref. no.: DRG.DRG-1.4112.32.2018.KL the deadline of the license for gas transmission was prolonged until 6 December 2068.

⁵ The average monthly exchange rate of the NBU for March 2023 was used to calculate the cost in euros (1 EUR = UAH 39.07)

⁶ GAZ-SYSTEM and GTSOU will market the offer level at an annual yearly auction on the 3rd of July 2023 on the GSA Platform.

Gas Transmission Operator GAZ-SYSTEM S.A. is designated as the gas transmission system operator in the territory of the Republic of Poland for the period until 6 December 2068 by the decision of the President of URE dated 23 June 2006 ref. no.: DPE-47-4(2)/6154/2006/BT, as amended. 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 104 para 1 KPA (Code of Administrative Procedure) the public administration body settles the matter by issuing a decision, unless the provisions of the code provide otherwise.

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 the complete project proposal by the last of the relevant regulatory authorities, those national regulatory authorities shall publish coordinated decisions on the project proposal defined in paragraph 1 in one or more official languages of the Member State and to the extent possible in English. The decisions shall include justifications. 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 months 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(8) of this Regulation shall be subject to approval by national regulatory authorities; this paragraph 8(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-f) 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). According to Article 28 (1) (a) NC CAM, GAZ-SYSTEM and GTSOU apply to the relevant NRAs to approve the common Offer Level for bundled capacity products to be marketed at GCP GAZ-SYSTEM-UA TSO at the yearly capacity auction in 2023 as presented below. The offer level takes into account the obligations to set aside capacity based on the calculation methodology described in Article 11(6) of NC CAM.

Tab no. 1 Incremental offer level (Art. 28 ust. 1 lit. a) NC CAM).

Year	From 2030/2031 To 2044/2045
Offer Level	3 095 890 kWh/h
Incremental capacity – to be offered	3 095 890 kWh/h
Incremental capacity – total	3 869 863kWh/h
Existing Capacity	0

Source: GAZ -SYSTEM

GAZ-SYSTEM and GTSOU will market the offer level at an annual yearly auction on the 3rd of July 2023 on the GSA Platform.

The Offer Level can be marketed to network users no earlier than gas year 2030/2031 because of the project's specifics on the Polish side of the Polish-Ukrainian border.

The Offer Level – 3.095.890 kWh/h does not cover the 20% of the incremental capacity set aside according to the art. 8 ust 8 i 9 CAM NC.

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 abovementioned regulation. The applicant, together with GTSOU, 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 President of ERO, 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 GTSOU have prepared individual general terms and conditions that must be accepted by the system user before the incremental capacity auction.

In the opinion of the President of ERO, 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 and Ukraine” (hereinafter: "INC GT&C") that are attached as annex no 2 to this decision 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 and Ukraine 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.

There are two timelines of the project realisation one on the GAZ-SYSTEM and one on the GTSOU side. In the application In the opinion of the President of ERO, 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 GAZ SYSTEM/UA TSO point will commence when market participants commit to purchase adequate amounts of incremental capacity in the yearly product auction in 2023 and if each TSO obtains a positive result of the economic test.

The GAZ-SYSEM Timeline foresees that the completion of investment tasks and the commissioning of the new infrastructure is to come on 2Q of 2030.

Tab. no 2 Timelines of the incremental capacity project realization (Article 28(1) NC CAM)

Time period	Milestone
03/07/2023	Yearly capacity auction in July followed by an economic test
3Q/2023	Concluding the agreement between GAZ-SYSTEM and GTSOU for implementation of the project
1Q/2024	Design contracts signed
4Q/2026	Building permits obtained
2Q/2027	Construction contracts signed
1Q/2030	Permit to use obtained
2Q/2030	Commissioning of the project

Source: GAZ -SYSTEM

Time periods for signing contracts and obtaining building permits are indicated as the latest finished milestones, taking into account the three separate investment tasks in the common scope of the incremental project.

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 within 14 days after receiving initial information from GAZ-SYSTEM about the proposed capacity reduction provided to the System User in the form of a written notification;
- c) the ability to convert all or part of the capacity allocated to a System User under a yearly product to interruptible capacity.

Moreover in terms of the timeline of realisation of the incremental capacity project pursuant to Article 28(1)(c) there are following reservations included in the application: **“The timeframes of**

work completion may be updated due to existing uncertainty related Russia’s full-scale war with Ukraine.” and also “The construction phase will only start if there is a commitment by network users to acquire the respective incremental capacities in the yearly auction 2023 and if the results of the following economic tests are also positive for GAZ-SYSTEM and GTSOU. GAZ-SYSTEM together with GTSOU will conclude the agreement on implementation of the project.”

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.

According to Article 28 (1) (d) NC CAM, GAZ-SYSTEM and GTSOU send requests to approve the parameters of the economic test.

The economic test is based on the following parameters according to Article 22 (1) NC CAM:

- I. The present value of the binding commitments of the network users for contracting capacity.
- II. The present value of the estimated increase in the allowed or target revenue of the TSO associated with the incremental capacity included in the respective Offer Level.
- III. The f-factor.

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) of Regulation (EU)2017/459 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 /UA TSO exit point, the following was adopted:

- a) a reference price of PLN 2,532 PLN/ (MWh / h) / h (EUR 0,528) / (MWh / h) / h) for a standard long-term product on the exit point from the transmission system, which corresponds to the agreed rate of the fee for the provision of gas transmission services at the exit point, in force from 1 January 2023 to 31 December 2023, according to "Tariff Amendment No 1 for the transmission of gaseous fuels No. 16", approved by the decision of the President of ERO DRG. DRG2.4212.72.2022.JDo1 dated 15 December 2022.
- b) in order to obtain a positive result of the economic test, the obligatory minimum premium (Mandatory Minimum Premium) was applied for the services of gas transmission on the exit from the transmission system on amount of 2,684 PLN/ (MWh/h)/h (EUR 0,559 EUR/(MWh/h)h);
- c) reserved annual transmission capacity at the GCP GAZ-SYSTEM/UA TSO exit point of 3 095 890 kWh / h.

The discounted value of binding commitments of network users at the GCP GAZ-SYSTEM /UA TSO point, with a discount rate of 4,81% for the 15-year test period, is PLN 1.083.415,00.

II. Present value of the estimated increase in the allowed revenues due to capacity increase - GAZ-SYSTEM

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 target value of the estimated increase in allowed revenues reflected in the economic test corresponds to the value of the investment funds cost concerning the project implemented by the

transmission system operator and settled in the period covering the contracted incremental capacity made available as part of offers submitted in the auction procedure for GCP GAZ-SYSTEM/UA TSO.

GAZ-SYSTEM adopted a discount rate of 4.81% for the calculation of the discounted value of the allowed revenue related to the realization of the project for the market border of Poland and Ukraine in the years 2030-2045.

The discount rate used in the calculation (4.81%) was determined at the weighted cost of capital (WACC) adopted for the Tariff No. 16 for gaseous fuels transmission for 2023. This value was determined using the calculation tool provided by GAZ-SYSTEM. The calculation tool reflects the current practice, including the calculation parameters for determining the allowed revenues approved by the President of the URE for the tariff for 2023.

The discounted value of allowed revenue at the GCP GAZ-SYSTEM /UA TSO point is PLN 1.083.403,00.

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.

The project assumptions are based on the non-binding demand indications received in the demand assessment phase. This f-factor was estimated based on the assumption that the given incremental capacity project is purely a market-driven project and that the full cost of the project shall be covered by the capacity bookings in the relevant binding capacity auction. Thus, on the GAZ-SYSTEM side, there are no conditions allowing GAZ-SYSTEM to request an approval involving an f-factor which is less than 1.

In addition, considering the level of incremental capacity to be offered and the required level of revenues from the binding commitments of the network users to pass the economic test with an f-factor equalling 1, it is also necessary to apply a mandatory minimum premium of PLN 2.684/(MWh/h)/h (EUR 0.559/(MWh/h)/h).

Therefore, GAZ-SYSTEM requests approval of an f-factor which amounts to 1 for the application of the economic test.

To conclude, the economic test presented by the Applicant gives a positive result for the adopted factor $f = 1$, which results from the fact that the value of the current obligations of system users for contracting incremental capacity (Article 22(1)(a) CAM NC) is equal to the percentage (100%, i.e. $f=1$) of the present value of the estimated increase in allowed revenues (Article 22(1)(b) CAM NC),

determined by means of the factor f (in accordance with Article 22(2)(a) CAM NC). It must be reserved that the incremental capacity of ca. 3.095.890 kWh/h should be ordered by system users in the incremental capacity auction procedure for 15 years as the minimal capacity level to guarantee the positive outcome of the economic test.

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

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 2030 to 1 October 2045, that is the period of 15 gas years, have been approved by this decision.

The reference prices were set for the time horizon of the incremental capacity offered under the project for the market border of Poland and Ukraine, i.e. for the time horizon of 15 gas years, i.e. from 1 October 2030 until 1 October 2045 amounting to PLN 2.532 / (MWh/h)/h (EUR 0.528 / (MWh/h)/h), were used in the economic test carried out by GAZ-SYSTEM to calculate the current value of the liabilities of network users in the scope of contracting incremental capacity made available under offers placed in the auction procedure at GCP GAZ-SYSTEM/UA TSO.

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 GCP GAZ-SYSTEM/UA TSO referred to in Article 22(1)(a) of Regulation (EU) 2017/459, the reference price will be applied at the level of PLN 2.532 / (MWh/h)/h (EUR 0.528 / (MWh/h)/h)

It should be emphasized that GAZ-SYSTEM is currently undergoing the implementation of capital-intensive investment projects aimed at ensuring the diversification of gas supplies to Poland. The dynamics of the implementation of these projects is difficult to predict. This is due to the fact that the projects will be implemented with the cooperation of other European gas transmission system operators and that their implementation is only partly dependent on the schedule of operation undertaken by GAZ-SYSTEM.

Taking into consideration the above mentioned, the President of ERO accepts to adopt a reference price at the level of the fixed fee for the provision of gas transmission services at the exit point amounting to PLN 2.532 / (MWh/h)/h (EUR 0.528 / (MWh/h)/h) binding from 1 January 2023 to 31 December 2023. This method is in accordance with "The Tariff No. 16 for Gaseous Fuels Transmission Change No. 1" approved by the decision of the President of URE DRG-2.4212.72.2022. JDo1 on 15 December 2022.

Mandatory Minimum Premium

There is a necessity to apply a mandatory minimum premium underlined in the application, taking into consideration the level of the offered incremental capacity and the level of revenue required of the binding commitments of the system users to obtain a positive result of the economic test with the f factor equal to 1 the applicant stated that it is necessary to apply a mandatory minimum premium of PLN 2.684 / (MWh/h)/h (EUR 0.559 / (MWh/h)/h).

Taking into account the above, the President of ERO accepts the adoption of a mandatory minimum premium, which was applied in order to obtain a positive result of the economic test for gas transmission services at the exit from the transmission system in the amount of PLN 2.684/(MWh)/h, i.e. EUR 0.559/(MWh)/h. At the time of submitting the non-binding demand, users were not aware that the transmission fee rate at the exit point would be higher by more than 100%.

To conclude, according to the information contained in the application, the President of ERO accepts the information and parameters of the economic test (Article 25 and Article 28(1)(d) of Regulation (EU) 2017/459) as follows:

The outlays were determined for 2023 prices (which results from the economic test), hence the revenues and costs are discounted until this year.

Assumptions used for the economic test:

- the year for which the present value of cash flows is arrived at – 2023
- offer level – 3.095.890 kWh/h (does not include 20% of capacity set aside pursuant to Article 11(6) of the CAM NC),
- the date of commencement of the transmission service - 4Q 2030,
- the test covers a 15-year time horizon (4Q 2030 - 3Q 2045),
- discount rate - 4.81% (WACC value adopted in the Tariff for the transmission of gaseous fuels No. 16 for 2023),
- factor f equal to 1 (discounted user fees will fully cover the discounted increase in regulated revenue),
- reference price for a standard long-term product at the exit from the transmission system in the amount of PLN 2.532/(MWh)/h (EUR 0.528/(MWh)/h), which corresponds to the agreed rate of the fee for the provision of gas transmission services at the exit point, in force from 1 January 2023 to 31 December 2023, according to "Amendment No. 1 of the tariff for the transmission of gaseous fuels No. 16", approved by the decision of the President of ERO DRG. DRG-2.4212.72.2022.JDo1 of 15 December 2022,
- a mandatory minimum premium (Mandatory Minimum Premium) for gas transmission services at the exit from the transmission system was applied in the amount of PLN 2.684/(MWh)/h, i.e. EUR 0.559/(MWh)/h.

The presented economic test gives a positive result for the adopted coefficient $f = 1$, which results from the fact that the value of system users' current obligations for contracting incremental capacity (Article 22(1)(a) CAM NC) is equal to the percentage (100%, i.e. $f=1$) of the present value of the estimated increase in permitted revenues (Article 22(1)(b) CAM NC), determined by the factor f (in accordance with Article 22(2)(a) of the CAM NC).

Taking into account the information presented and explanations provided by GAZ-SYSTEM and taking into account the comments of the President of ERO regarding the correctness of the economic test by introducing appropriate corrections, the President of ERO accepts the assumptions of the submitted economic test for the project of incremental capacity for the border of the market areas of Poland (transmission system of high-methane natural gas group E) - Ukraine, pursuant to Article 28 paragraph 1, in conjunction with Article 22 paragraph 1 of the CAM NC.

However, it must be reserved that in order for the economic test to be positive, the level of the minimum incremental capacity that system users should order in the auction procedure for a period of 15 years should amount ca. 3.095.890 kWh/h.

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 GTSOU 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 GTSOU 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 2023 r.

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 GTSOU decided not to apply the aforementioned approach to acquire incremental capacity in 2023.

In consideration of the above, the President of ERO 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) and thereby approve the information contained in the project proposal resulting from Articles 8(9), 25(1) and 28(1) of Regulation (EU) 2017/459.

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

In the opinion of the President of ERO, 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 negative 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 Ukrainian Regulator (NEURC), with whom the President of ERO remained in close contact and good cooperation throughout the proceedings and prior to the initiation of the proceedings. Neither NEURC nor the President of ERO objected to the submitted project proposals and both informed each other, by email, on April 2023 and 20 April 2023, 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 intermediation of the President of ERO, within 14 days of its delivery (Art. 30, para. 2 and 3 of the Energy Law Act in conjunction with Art. 479⁴⁶ point 1 and Art. 479⁴⁷ § 1 of the Code of Civil Procedure of November 17, 1964 – consolidated

version: Journal of Laws No. 2021 item 1805, as amended). The appeal should be sent to the Energy Regulatory Office, Jerozolimskie 181 Ave., 02-222 Warsaw.

2. An appeal against a decision of the President of ERO should meet the requirements prescribed for a pleading and contain the indication of the contested decision and the value of the subject of dispute, citing the allegations, a brief justification for them, indication of evidence, as well as include a motion to repeal or amend the decision in whole or in part (Art. 479⁴⁹ of the Code of Civil Procedure).
3. An appeal against the decision of the President of ERO is subject to a fixed fee of PLN 1,000, in accordance with Art. 32 para. 3 in conjunction with Art. 3 para 2 point 9 of the Act of 28 July, 2005 on Court Costs in Civil Cases (consolidated version: Journal of Laws No. 2022 item 1125, as amended). A party may apply for exemption from court costs, pursuant to the provisions of Art. 100 et seq. of the Act on Court Costs in Civil Cases and for granting legal aid by appointing a lawyer or legal advisor, pursuant to the provision of Art. 117 of the Code of Civil Procedure.
4. During the period for lodging an appeal a party may waive its right to lodge an appeal to the SOKiK against the President of ERO (Art. 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 waiver of the right to lodge an appeal, the decision becomes final and legally binding (Art. 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 (Art. 130 § 4 of the Code of Administrative Procedure).

Annex 1

Application for the Approval of an Incremental Capacity Project according to Article 28 (1) NC CAM for the Border between Poland and Ukraine

Annex 2

INCREMENTAL CAPACITY PL UA_GT&C

Copies to:

Operator Gazociągów Przesyłowych GAZ-SYSTEM S.A.

Represented by Plenipotentiary

Ms Agnieszka Ozga

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