



Warsaw, 26 of April 2024

PRESIDENT
ENERGY REGULATORY OFFICE
Rafał Gawin, Ph.D.

DRR.WRG.745.1.2024.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.), Article 23 para. 2 item 11a of the Act of 10 April 1997 on the Energy Law (JoL of 2024, item 266, as amended, hereinafter referred to as "Energy Law") in conjunction with and Article 104 of the Act of 14 June 1960 on the Code of Administrative Procedure (JoL of 2024, item 572 as amended, hereinafter referred to as "Code of Administrative Procedure") and Article 30 para. 1 of the Energy Law

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 8 January 2024 ref. no.: 2023-231336 PG 0710.2.2023.10, entitled "Application for the Approval of an Incremental Capacity Project according to Article 28 (1) NC CAM for the border between Poland and the Ukraine", accepted as complete on 8 January 2024, then supplemented on 15 March 2024 by letter ref. no. 2024-44943 PG.0710.2.2023.14, on 8 April 2024 by letter ref. no. 2024-54347 PG.0710.2.2023.17, on 23 April 2024 r. by letter ref. no. 2024-66803 PG.0710.2.2023.19.

I hereby resolve

to approve the project proposal for incremental capacity for the border between the market areas of Poland and the Ukraine, entitled "Application for the Approval of an Incremental Capacity Project according to Article 28 (1) NC CAM for the border between Poland and the Ukraine" attached as Annex 1 hereto (hereinafter referred to as "Project Proposal", "Application") 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 referred to as 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 referred as: "Regulation (EU) 2017/459", "NC CAM"), on 8 January 2024 Gas Transmission Operator GAZ-

SYSTEM S.A. with its registered office in Warsaw (hereinafter referred as: "GAZ SYSTEM", "TSO" or "Applicant") submitted to the President of the Energy Regulatory Office (hereinafter referred as: "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" prepared in coordination with LLC "Gas Transmission System Operator of Ukraine" (hereinafter referred as GTSOU). The Application was accepted as complete on 8 January 2024 and the issue was communicated to the NEURC by the letter dated 7 February 2024. Analogically on the Ukrainian side GTSOU submitted the complete Application to the Ukrainian Regulator – National Energy and Utilities Regulatory Commission of Ukraine (hereinafter: "NUERC") and NEURC communicated the issue to the President of ERO by the letter dated 26 January 2024.

By the letter dated 5 March 2024 the President of ERO informed the Applicant about the prolongation of the proceedings for the approval of the application proposal till 30 April 2024 and 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 the letter dated 15 March 2024, the Applicant submitted explanations and made the partial corrections. Therefore, the President of ERO by the letter dated 28 March 2024 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 the letter dated 29 March 2024 the applicant requested for the prolongation of the period given to answer. By the letter dated 2 April 2024 the President of ERO granted a consent for the prolongation of the period to answer. By the letter dated 8 April 2024 the Applicant submitted explanations and made the partial corrections. By the letter dated 23 April 2024 no 2024-66803 PG.0710.2.2023.19 supplemented the Application by completing the final corrections and submitted the final version of the application.

The president of ERO by the letter dated 7 February 2024 and NEURC by the letter dated 26 January 2024 mutually notified each other about the dates of receiving complete applications – respectively NUERC received the complete from GTSOU and the President of ERO received the complete application from GAZ-SYSTEM. Both Regulators mutually confirmed also to each other the willingness to issue the coordinated Decision.

On 24 April 2024 the President of ERO notified NEURC of receipt from GAZ-SYSTEM of the final version of the application for approval of the project proposal aiming to coordinate the Decision of both Regulators, according to the Art 28 NC CAM, confirmed and sent to NEURC the arrangements that were a subject of coordination together with the agreed deadline of issuing the coordinated Decision.

On 24 April 2024 NEURC notified the President of ERO of receipt from GTSOU of the final version of the application for approval of the project proposal and sent to the President of ERO the formal letter including arrangements together with the agreed deadline of issuing the coordinated Decision.

On 25 April 2024 the President of ERO notified the Applicant about the completion of the taking of evidence in the present administrative proceedings and about taking note included in the letter dated 23 April 2024 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:

On the basis of the of the conducted from 3 July to 28 August 2023 market demand assessment 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, there is no existing firm capacity between the entry-exit system of Poland and Ukraine in the requested direction.

According to Art 26 NC CAM in the Report from the assessment of market demand: Market Demand Assessment Report (hereinafter referred as “MDAR”) both operators assessed non-binding notifications received in the framework of the conducted from 3 July to 28 August 2023 market demand assessment. The non-binding demand received by GAZ-SYSTEM and GTSOU were identical and amounted to 4 181 150 [(kWh/h)/year]¹ for the direction from Poland to Ukraine, for the gas years 2029/2030 - 2044/2045.

Based on the outcome of the MDAR for the incremental capacity process starting in 2023 between the Polish gas transmission system and the Ukrainian gas transmission system, published on both TSOs’ websites on 23 October 2023, the TSOs concerned have begun the design phase based on Article 27 of NC CAM.

As a result of the technical studies, GAZ-SYSTEM and GTSOU proposed implementing an incremental capacity project at the current interconnection point GCP GAZ-SYSTEM/UA TSO (direction UA) between Poland and Ukraine.

In accordance with Article 28 of the NC CAM, following consultations and completion of the design phase for the incremental capacity project in accordance with Article 27, transmission system operators submitted the proposal for the incremental capacity project to the relevant national regulatory authorities for coordinated approvals under the Incremental procedure 2023-2025.

Previous incremental capacity procedure at the Polish-Ukrainian border, initiated in 2021 (INCREMENTAL CYCLE 2021-2023), was terminated in line with Article 22(3) of NC CAM. In the annual auction for incremental capacity on both sides of an interconnection point at the border of Polish and Ukrainian markets which took place on 3 July 2023, no amount of incremental capacity was booked by any market participant², therefore, the outcome of the economic test was negative on both sides of the interconnection point at Polish-Ukrainian border.

Taking into account the previous incremental capacity process 2021-2023 and based on the demand indication received in the demand assessment phase under the incremental capacity process 2023-2025, GAZ-SYSTEM and GTSOU decided to maintain in the current Project Proposal the same offer level i.e., 3 869 863 kWh/h³ and the same technical solution as approved by the National Regulatory Authorities in 2023.

Considering maturity of the technical solution that constituted the basis for the decision of the NRAs in 2023 both Transmission System Operators declared the readiness to conduct the auction in July

¹ The indications were provided by the market in m³/h, thus it was assumed that the energy content in 1 m³ of natural gas is 11.15 kWh.

² On 3 July 2023, GAZ-SYSTEM and GTSOU proposed the common offer level of incremental capacity (i.e., 3 869 863 kWh/h) for bundled capacity at IP GCP GAZ-SYSTEM/UA TSO.

³ Assumed gross calorific value 11,15 kWh/m³ (0/25).

2024. This approach will also allow planning the investment process directly after completion of the design phase⁴.

In accordance with Article 6(2) of the NC CAM, no later than 8 weeks after the start of the annual yearly capacity auction at least in each odd-numbered year, the concerned transmission system operators on each side of an entry-exit system border shall produce common market demand assessment reports, each covering all interconnection points of at least one entry-exit system border. The market assessment report shall evaluate the prospective demand for incremental capacity of all network users pursuant to paragraph 8 and shall state whether an incremental capacity project is initiated. The implementation of the procedure in an accelerated formula does not contradict the provisions of NC CAM, on the contrary, in this case it enables the achievement of the objectives pursued by the European Commission in the implementation of the indicated provisions into the European Law.

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: 4Q/2030

Cost estimation⁵:

With a maximum capacity of 3 869 863 kWh/h approximately 1 684 526 thousand PLN (365 407 thousand EUR) for the pipeline section and approximately 36 904 thousand PLN (8 005 thousand EUR) for the metering station.

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)⁶. The costs of reconstruction of compressor station "Komarno" will be financed on account of depreciation costs envisaged under the respective tariff

⁴ Design contracts signed in 2022 on Polish side of the project.

⁵ 1 EUR= 4.61 PLN was used for calculation of the costs in EUR.

⁶ The average monthly exchange rate of the NBU for November 2023 was used to calculate the cost in euros (1 EUR = UAH 39.01).

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 2024⁷ and if the results of the following economic tests are also positive for GAZ-SYSTEM and GTSOU and GAZ-SYSTEM together with GTSOU will conclude the agreement on implementation of the project.

For the economic test of GAZ-SYSTEM was used the incremental capacity of 3 095 890 kWh/h pursuant art 11(6) of NC CAM.

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 No. PPG/95/6154/W/2/2004/MS granted by decision of the President of ERO of 30 June 2004, 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.

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 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 on the Energy Law, 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 (hereinafter referred as "Regulation 715/2009"), 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

⁷ GAZ-SYSTEM and GTSOU will market the offer level at an annual yearly auction on the 1th of July 2024 on the GSA Platform.

capacity. The Regulation is binding in its entirety and is 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 in 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 that must accept network user 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 of 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. 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 at 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)

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 July 2024 as presented in table 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 (1) (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 1st of July 2024 on the GSA Platform.

The Offer Level can be marketed to network users no earlier than gas year 2030/2031 due to time framework of the completion of the investment 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 Articles 8 (8) and (9) NC CAM.

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) of the 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 (offer level), 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 implementation one on the GAZ-SYSTEM and one on the GTSOU side. 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 of the project 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 2024 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 IV Q of 2030.

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

Time period	Milestone
01/07/2024	Yearly capacity auction in July followed by an economic test
3Q/2024	Concluding the agreement between GAZ-SYSTEM and GTSOU for implementation of the project
2Q/2025	Building permits obtained
1Q/2027	Construction contracts signed
1Q/2030	Permit to use obtained
4Q/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 System Users of the occurrence of any delays in appropriate advance, while limiting the possibility of postponing the date of commencement of the provision of gas transmission services in terms of incremental capacity made available under the Auction to a period not longer than 24 months (in words: twenty-four months), on the basis of a written notification provided to the System User at least 6 months before the planned date of commencement of the provision of gas transmission services as part of the incremental capacities made available in the frameworks of the Auction, together with the determination of the reason for the postponement and the new date of commencement of the provision of gas transmission services within the incremental capacity made available within the Auction.
- b) the possibility of resignation by the System User within 14 days (in words: fourteen days) after receiving the initial information about the proposed capacity reduction provided to the System User in the form of a written notification. The System User will be entitled to resign, in whole or in part, from the reduced capacity allocation proposed to him, as well as to convert all or part of the capacity allocated to him as part of the Auction for a given annual product into capacity on an interruptible basis.

Moreover, in terms of the timeline of implementation 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.”

“The construction phase will only start if there is a commitment by network users to acquire the respective incremental capacities in the yearly auction 2024 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 3,214 PLN/ (MWh/ h) / h (0,697 EUR/(MWh / h) / h) for a standard long-term product on the exit point from the transmission system,
- b) in order to obtain a positive result of the economic test, the obligatory minimum premium (Mandatory Minimum Premium) was not applied for the services of gas transmission on the exit from the transmission system,
- 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 7,60% for the 15-year test period, is 502 680 thousand PLN.

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 corresponds to the value of the investment funds cost concerning the project implemented by the transmission system operator 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 completion 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 “The Tariff No. 17 for Gaseous Fuels Transmission for 2024 Change No. 1”

The calculation tool created by GAZ-SYSTEM for determining the allowed revenues related to the completion of the project is based on parameters and assumption adopted for the calculation of fixed fee rates for the provision of transmission services approved by the President of the URE decision for the tariff for 2024.

The discounted value of allowed revenue at the GCP GAZ-SYSTEM /UA TSO point is PLN 1 063 235 thousand.

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 and the ability to meet the demand arising from the potential gas market development in the south-east Poland. The f-factor has been estimated on the assumption that the construction of the pipeline section indicated in Section 4. *Timetable for the incremental capacity project (Art. 28 (1) (c) NC CAM)* will ensure supply towards Ukraine and allow for the future increased supply to existing and new network users. The distribution of revenues associated with the operation of the DN1000 Wronów – Rozwadów and DN1000 Rozwadów – Strachocina gas pipelines is a result of the expected percentage of incremental capacity in the total planned capacity of the above-mentioned pipelines.

On the basis of the above, GAZ-SYSTEM estimated an f-factor of 0.47.

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 0.47, it is not necessary to apply a mandatory minimum premium (mandatory minimum premium equals 0 (in words: “zero”) PLN/(MWh/h)/h).

Therefore, GAZ-SYSTEM requests approval of an f-factor which amounts to 0.47 for the application of the economic test.

To conclude, the economic test presented by the Applicant gives a positive result for the adopted factor $f = 0.47$

Considering the above, the President of ERO accepts the adoption of the f-factor equal to 0.47 (in words: “zero point forty seven”).

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 by GAZ-SYSTEM under the project of incremental capacity for the market border of Poland and Ukraine, i.e. for the time horizon of 15 gas years.

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 3.214 PLN / (MWh/h)/h (0,697 EUR/(MWh/h)/h)

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 3.214 PLN/(MWh/h)/h (0.697 EUR/(MWh/h)/h) which corresponds to the fixed rate of the charge for the provision of gas transmission services at the exit point, binding from 1 January 2024 to 1 January 2025 in accordance with “The Tariff No. 17 for Gaseous Fuels Transmission Change No. 1” approved by the decision of the President of URE DRG-2.4212.45.2023. JDo1 on 13 December 2023.

Mandatory Minimum Premium

There is no 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 0.47.

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 0.47, it is not necessary to apply a mandatory minimum premium. In the analysed project mandatory minimum premium equals 0 (in words: "zero") PLN/(MWh/h)/h).

Taking into account the above, the President of ERO accepts no adoption of a mandatory minimum premium, which was not necessary to be applied in order to obtain a positive result of the economic test for gas transmission services at the exit from the transmission system.

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) in particularly having regard the following:

In the submitted test for the incremental capacity project on the Poland-Ukraine border took into account the comments of the President of ERO regarding the division of expenditures and costs (including depreciation) of the project due to the planned use of the DN 1000 Wronów-Rozwadów-Strachocina gas pipeline for the purpose of intra-system and inter-system use of transmission capacity. This approach reduces over-subsidisation between inter- and intra-system flows.

In the opinion of the Operator, the analysis of potential natural gas flows in the expanded transmission system confirmed the advisability of the construction of the Wronów-Rozwadów-Strachocina gas pipeline with a diameter of DN 1000, which will allow this gas pipeline to be a component of the integral part of the already existing and planned backbone of the national network with a diameter of 1000 mm. It would be pointless to build a gas pipeline with a diameter of DN 700, which would result in restrictions of the market development in the region of Eastern Polish.

The incremental capacity project on the Poland-Ukraine border is included in the National Ten-Year Development Plan for 2024-2033, (hereinafter referred to as "NTYDP 2024-2033") in part A, which was agreed with the President of ERO in cooperation with the Minister of Climate and Environment in the letter dated 8 February 2024 no DRG. DRG-3.4311.6.2023.RTu.

The gas pipelines in question are part of the Centre-East Corridor functional programme (pages 129-130 of the NTYDP 2024-2033), whose main objectives are:

- increasing the capacity of the system in terms of new connections,
- increasing transmission capacity in the eastern part of the transmission system,
- security of supply in the context of the lack of supplies from the East.

The gas pipelines Wronów-Rozwadów-Strachocina have the following objectives:

- construction of a mainline supplying the Ukrainian transmission system,
- ensuring transmission parameters in the Poland-Slovakia direction,
- providing the possibility of gas transport between Wronów and Strachocina,
- together with the Gustorzyn-Wronów pipeline, they can constitute a bidirectional gas transport route between central Poland (Gustorzyn node supplied from the North Gate direction and the

planned FSRU Terminal), eastern Poland (interconnector Poland - Lithuania) and southeastern Poland (interconnectors Poland - Ukraine, Poland - Slovakia).

Furthermore, as stated in the NTYDP 2024-2033, in the event of the implementation of the Poland-Ukraine connection not being realized based on the incremental capacity procedure, the need of presenting an alternative investment task between Wronów and Strachocina in the next KDRP cannot be ruled out, due to the aging existing main infrastructure in this section

The calculation of the f-factor was conducted based on Article 23(1)(a-d) of the NC CAM, taking into account the degree of capacity utilization for future needs of entities that will use transmission capacity at intra-system exit points, i.e., 4 363 888 kWh/h and incremental capacity offered on a long terms at the inter-system exit point Poland-Ukraine, i.e., 3 869 863 kWh/h. The analysis does not consider 100% utilization of the Hermanowice pumping station for inter-system flows, but due to the slight share of expenses related to the Hermanowice station in the total project costs, the impact of such simplification is insignificant for project evaluation. The f-factor determines the share of expenses and costs that must be recovered from incremental capacity orders at the interconnection point.

The reference price estimated for the time horizon of the offer of incremental capacity offered by GAZ-SYSTEM in the frames of the incremental capacity project for the border between Poland and the Ukraine was accepted in the amount of 3.214 PLN/(MWh/h)/h (0.697 EUR/(MWh/h)/h) which corresponds to the binding from 1 January 2024 to 1 January 2025 "The Tariff No. 17 for Gaseous Fuels Transmission Change No. 1" approved by the decision of the President of URE DRG-2.4212.45.2023. JDo1 on 13 December 2023.

An economic test was carried out, with the assumed level of incremental capacity offered and the required level of revenues from binding obligations of network users to obtain a positive result of the economic test with the f-factor equal to 0.47 (in words "zero point forty-seven") confirmed the lack of necessity to apply mandatory minimum premium. For the analysed project the mandatory minimum premium is equal to 0 (in words "zero") PLN /(MWh/h)/h.

Following documents submitted by the Operator i.e., Incremental capacity project for the border between Poland and Ukraine and economic test, in terms of approval of indicative rates of transmission fees for the years 2030 – 2045 for the project in question, confirm the legitimacy of the project implementation at the current interconnection point GCP GAZ-SYSTEM/UA TSO (direction UA) between Poland and Ukraine and to propose the common offer level of bundled capacity which has to be market in the frames of the Auction of annual products in the point GCP GAZ-SYSTEM/UA TSO in 2024 i.e. 1 of June 2024 on the GSA Platform according to the Tab. 1 of herein decision.

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 NC CAM.

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 2024.

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

No application for the fixed price approach has been submitted. GAZ-SYSTEM and GTSOU decided not to apply the fixed price approach for the incremental capacity project in terms of the yearly auction in 2024.

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, 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. Neither NEURC nor the President of ERO objected to the submitted project proposals and both informed each other on 24 April 2024 of their intention to issue a decision on the approval of the project proposal.

Regardless of the fact that on websites of the both Regulators as well as websites of GAZ-SYSTEM and GTSOU decision with the appendixes: Project Proposal and the INC GT&C in English and in their respective national languages, only the Polish and Ukrainian versions respectively, shall be considered as binding.

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. 2023 item 1550, as amended, hereinafter referred as: “Code of Civil Procedure”). 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. 1 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. 2023 item 1144, 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).

Rafał Gawin

/ signed with the qualified electronic signature /

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 PROJECT PL UA_INC GT&C

Copy for:

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Represented by Plenipotentiary
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