



Warsaw, 29 April 2021

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

DRR.WRG.748.8.2020.ABu1

DECISION

Pursuant to Article 8 (9) and Article 28 (1) and (2) of Commission Regulation (EU) 2017/459 of 16 March 2017 establishing a network code on capacity allocation mechanisms in gas transmission systems and repealing Regulation (EU) No 984/2013 (EU OJ L 72 of 17 March 2017, p. 1 et seq.) in conjunction with Article 23 para. 2 item 11a and Article 30 para. 1 of the Act of 10 April 1997 on the Energy Law (JoL of 2021, item 716) and Article 104 of the Act of 14 June 1960 on the Code of Administrative Procedure (JoL of 2021, item 735)

after having examined the application

of the energy undertaking Operator Gazociągów Przesyłowych GAZ-SYSTEM Spółka Akcyjna with its registered office in Warsaw, attached to the letter of 28 October 2020 ref. no.: PU.070.7.2019.22, entitled " Application for the Approval of an Incremental Capacity Project according to Article 28 (1) NC CAM on the border between Poland TGPS and Germany (Trading Hub Europe)", supplemented on 30 October 2020, 18 November 2020, and on 18 December 2020, as well as by letter of 22 February 2021, ref. no.: PU.0712.4.2021.36 and by letter of 22 March 2021, ref. no.: PU.0712.4.2021.39

I hereby resolve

to approve the project proposal for incremental capacity for the market border of Poland TGPS (Transit Gas Pipeline System) and Germany (Trading Hub Europe), attached as Annex 1 hereto.

JUSTIFICATION

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

President of ERO") the document entitled "Application for the Approval of an Incremental Capacity Project according to Article 28 (1) NC CAM on the border between Poland TGPS and Germany (Trading Hub Europe)" (hereinafter: "the project proposal") prepared in coordination with GASCADE Gastransport GmbH (hereinafter: " GASCADE ").

On 30 October 2020, 18 November 2020 and on 18 December 2020, the Applicant supplemented the application by sending the original documents, a power of attorney and a project proposal signed by the attorney.

On 5 November 2020, Bundesnetzagentur notified the President of ERO that GASCADE submitted an analogous application and then notified that a complete application had been submitted on 16 March 2021.

On 14 January 2021 the President of ERO notified Bundesnetzagentur of receipt of the TSO's application for approval of the project proposal, and subsequently, pursuant to Article 28(2) sentence 3 of Regulation (EU) 2017/459, notified of the receipt of a complete application on 22 March 2021.

By letters dated 1 February 2021, 8 February 2021 and 18 March 2021, the President of ERO called the Applicant to correct and complete the application for approval of the project proposal and to provide explanations.

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

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

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

Pursuant to Article 26 of Regulation (EU) 217/459, GAZ-SYSTEM together with GASCADE in the period from 1 July 2019 to 26 August 2019 conducted a non-binding assessment of the market demand for incremental capacity at the interconnection point (IP) Mallnow, which connects the entry-exit-system of Poland TGPS (Transit Gas Pipeline System – Polish section of the Yamal-Europe pipeline) and the entry-exit-system of the Trading Hub Europe (THE)¹.

As part of the above procedure, GAZ-SYSTEM has not received any non-binding indications of demand for transmission capacity - the technical capacity currently available on the Polish side of the border is 38,812,499 kWh / h. However, on the German side of the entry-exit system, non-binding notifications of demand for incremental capacity were received according to the table below:

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

From "EXIT CAPACITY"	To "ENTRY CAPACITY"	Gas years	Amount (kWh/h)/ y	Request is submitted to other TSOs	Additional Information
Poland TGPS	Trading Hub Europe	2022/2023- 2036/2037	9.629.000	No	Freely allocable firm capacity; Capacity request is in addition to the existing bookable freely allocable firm capacities.

Considering that on the German side of the border there is an interest in changing the type of product offered from interruptible capacity (DZK) to firm capacity (FZK), the involved German transmission system operators have started the planning phase of relevant projects.

Ultimately, the technical analysis for the Poland TGPS and THE market areas, in accordance with Art. 27 sec. 2 of Regulation (EU) 2017/459, the value of - 16 951 000 kWh / h was applied as incremental firm capacity (FZK) to be established at the entry point to Trading Hub Europe.

The indicated value is a consequence of the amendment to the German regulation on access to the gas network (GasNZV) of 2017, which imposed on gas transmission system operators the obligation to merge the two market areas currently existing in Germany - NetConnect Germany (NCG) and GASPOOL - into one market area German Trading Hub Europe (THE), by 1 April 2022 at the latest (section 21 GasNZV). The merger planned on 1 October 2021, has an impact on the existing capacity, as it reduces the capacity at entries to Germany. In addition, only approved technical capacities (basic capacity) within the meaning of Section 9 (2) 4 p. 1 of the German GasNZV regulation can be taken into account in the procedure of creating incremental capacity.

As a result of the above, at the border between Poland TGPS and THE, the application for the creation of incremental capacity had to be adjusted after the publication of the non-binding MDAR (Market Demand Assessment Report), which indicated that the total firm capacity (FZK) at the border should amount to a total of 27 828 000 kWh / h. As the basic firm capacity (FZK) approved by the Bundesnetzagentur on 22 April 2020 at the Mallnow interconnection point is 10,877,000 kWh / h, the difference in the firm capacity (FZK) to the requested capacity is 16,951,000 kWh / h. Accordingly, GASCADE, in consultation with the submitting entity and the Bundesnetzagentur, decided to consider 16,951,000 kWh / h as the incremental capacity to be generated by the project.

The summary of MDAR report states that GASCADE will start a project for the creation of incremental capacity. Since the non-binding demand for incremental capacity between GASCADE and GAZ-SYSTEM was requested only on the German side of the border and capacities to a sufficient extent are already available on the Polish side of the market area border there was no need to conduct technical analysis on Polish side of the IP Mallnow. However, in accordance with Regulation (EU) 217/459, the consultation of the project proposal was carried out jointly so that the offer level for incremental capacity to be created on the German side can be offered as a bundled capacity.

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

As part of the above consultations, the operators received comments from one market participant. In connection with the inquiry to reduce the existing firm capacity (FZK) from 17.512 MWh / h to 10.877 MWh / h, the German TSO explained that the adjustment of the level of the existing FZK firm capacity available for long-term bookings is related to the connection of two market areas, NCG and GASPOOL (information on Market zone connections in Germany can be found at www.marktgebietzusammenlegung.de). In addition, an explanation was requested in the process of the cancellation of capacities based on the provision laid down in consulted supplementary business terms and condition of GASCADE for new capacities to be created. It was also indicated that there is a need for greater transparency when applying the possible mandatory minimum premium (MMP) during the incremental capacity auction.

The comments received were related to the German aspects of the project proposal, therefore GAZ-SYSTEM did not respond to the comments submitted.

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

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

By decision of 17 November 2010, No. DPE-4720-4 (8) / 2010/6154 / BT, the President of the ERO appointed the Applicant as the transmission system operator on the assets owned by SGT EuRoPol GAZ Spółka Akcyjna with its registered office in Warsaw (i.e. the Polish Section Of the Yamal-Europe Transit Gas Pipeline) for the period until December 31, 2025. The area of operation of the transmission system operator results from the licence for the gas transmission granted to the entrepreneur SGT EuRoPol GAZ Spółka Akcyjna with its registered office in Warsaw on July 18, 2008. No. PPG / 102 / 3863 / W / 2/2008 / BP, i.e. performs the functions of operator on the section of the Yamal-Europe gas transmission pipeline located on the territory of the Republic of Poland and running through the following voivodeships: Podlaskie, Mazowieckie, Kujawsko-Pomorskie, Wielkopolskie and Lubuskie.

By decision of May 19, 2015, ref. DRG-4720-2 (28) / 2014/2015/6154 / KF, the President of ERO granted the Applicant a certificate of independence under the independent system operator model in connection with the performance of the transmission system operator for Polish section of the Yamal Transit Gas Pipeline System - Western Europe (Poland TGPS).

Pursuant to Article 23 para. 2 item 11a of the Act of 10 April 1997 on the Energy Law (hereinafter: the Energy Law Act), the scope of activity of the President of ERO includes controlling the performance by a gas transmission system operator or an interconnected gas system operator and other gaseous fuel market participants of obligations arising from the provisions of Regulation (EC) No. 715/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the natural gas transmission networks

and repealing Regulation (EC) No. 1775/2005, performance of other obligations of the regulatory authority under that Regulation and approval of the relevant points in the transmission system covered by the obligation referred to in Article 18 of that Regulation, as well as performance of the obligations of the regulatory authority under regulations adopted pursuant to Article 8 and Article 23 of Regulation 715/2009.

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

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

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

Pursuant to Article 28(2) of Regulation (EU) 2017/459, within 6 months of receipt of a complete project proposal by the last of the competent regulatory authorities, they shall publish coordinated decisions on the project proposal. The national regulatory authorities

shall inform each other of the receipt of the project proposal and its completeness in order to determine the start of the 6-month period.

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

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

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

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

The project proposal submitted by the TSO contains the elements necessary for its approval, in accordance with Art. 28 (1) of Regulation (EU) 2017/459, however the formal requirements set out therein should be understood in the present case as referring to a specific project as a whole, and not separately to each of the involved TSOs. The provision of Art. 3 point 11 of the above-mentioned regulation stipulates that in the binding phase of the incremental capacity process, only one TSO may ask network users for binding capacity contracting obligations.

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.

In accordance with Article 11 (3) of Regulation (EU) 2017/459 when offering incremental capacity, the offer levels may be offered in yearly capacity auctions for a maximum of 15 years after the start of operational use. In this project, it covers the period from the gas year 2027/2028 to the gas year 2041/2042 inclusive.

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

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

where:

A is the technical capacity of the transmission system operator for each standard capacity products;

B for annual yearly auctions offering capacity for the next 5 years, is the amount of technical capacity (A) set aside in accordance with Article 8(7); for annual yearly auctions for capacity beyond the first 5 years, is the amount of technical capacity (A) set aside in accordance with Article 8(7);

C is the previously sold technical capacity, adjusted by the capacity which is re-offered in accordance with applicable congestion management procedures;

D is additional capacity, for such year, if any;

E is the incremental capacity for such year included in a respective offer level, if any;

F is the amount of incremental capacity (E), if any, set aside in accordance with Article 8(8) and (9).

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

Table 1) Existing capacity	Sum of offered existing capacity (firm) EXIT	Art. 11 (6) NC CAM A	Art. 11 (6) NC CAM B	Art. 11 (6) NC CAM C	Art. 11 (6) NC CAM D	Art. 11 (6) NC CAM E	Art. 11 (6) NC CAM F
		Technical capacity EXIT	Capacity set aside	Previously sold technical capacity	Additional capacity	Incremental capacity	Incremental capacity set aside
GWJ 21/22	34 931 249	38 812 499	3 881 250	-	-		
GWJ 22/23	34 931 249	38 812 499	3 881 250	-	-		
GWJ 23/24	34 931 249	38 812 499	3 881 250	-	-		
GWJ 24/25	34 931 249	38 812 499	3 881 250	-	-		
GWJ 25/26	34 931 249	38 812 499	3 881 250	-	-		
GWJ 26/27	31 049 999	38 812 499	7 762 500	-	-		
GWJ 27/28	31 049 999	38 812 499	7 762 500	-	-		
GWJ 28/29	31 049 999	38 812 499	7 762 500	-	-		
GWJ 29/30	31 049 999	38 812 499	7 762 500	-	-		
GWJ 30/31	31 049 999	38 812 499	7 762 500	-	-		
GWJ 31/32	31 049 999	38 812 499	7 762 500	-	-		
GWJ 32/33	31 049 999	38 812 499	7 762 500	-	-		
GWJ 33/34	31 049 999	38 812 499	7 762 500	-	-		
GWJ 34/35	31 049 999	38 812 499	7 762 500	-	-		
GWJ 35/36	31 049 999	38 812 499	7 762 500	-	-		
GWJ 36/37							
GWJ 37/38							
GWJ 38/39							
GWJ 39/40							
GWJ 40/41							
GWJ 41/42							

Table 2: Depiction of the **technically available capacity of GAZ-SYSTEM to be made available for the Offer-level** (kWh/h/y) on the IP Mallnow (exit):

Table 2) Offer-level 1	Sum of existing capacity to be made available for the offer-level 1 EXIT	Art. 11 (6) NC CAM A	Art. 11 (6) NC CAM B	Art. 11 (6) NC CAM C	Art. 11 (6) NC CAM D	Art. 11 (6) NC CAM E	Art. 11 (6) NC CAM F
		Technical capacity EXIT	Capacity set aside	Previously sold technical capacity	Additional capacity	Incremental capacity	Incremental capacity set aside
GWJ 21/22							
GWJ 22/23							
GWJ 23/24							
GWJ 24/25							
GWJ 25/26							
GWJ 26/27							
GWJ 27/28	31 049 999	38 812 499	7 762 500	-	-	-	-
GWJ 28/29	31 049 999	38 812 499	7 762 500	-	-	-	-
GWJ 29/30	31 049 999	38 812 499	7 762 500	-	-	-	-
GWJ 30/31	31 049 999	38 812 499	7 762 500	-	-	-	-
GWJ 31/32	31 049 999	38 812 499	7 762 500	-	-	-	-
GWJ 32/33	31 049 999	38 812 499	7 762 500	-	-	-	-
GWJ 33/34	31 049 999	38 812 499	7 762 500	-	-	-	-
GWJ 34/35	31 049 999	38 812 499	7 762 500	-	-	-	-
GWJ 35/36	31 049 999	38 812 499	7 762 500	-	-	-	-
GWJ 36/37	31 049 999	38 812 499	7 762 500	-	-	-	-
GWJ 37/38	31 049 999	38 812 499	7 762 500	-	-	-	-
GWJ 38/39	31 049 999	38 812 499	7 762 500	-	-	-	-
GWJ 39/40	31 049 999	38 812 499	7 762 500	-	-	-	-
GWJ 40/41	31 049 999	38 812 499	7 762 500	-	-	-	-
GWJ 41/42	31 049 999	38 812 499	7 762 500	-	-	-	-

Table 3: Depiction of the common offer of existing capacity and of **the common offer of Offer-level 1** (kWh/h/y) for the marketing of bundled capacity in 2021 for **GAZ-SYSTEM and GASCADE** on the IP Mallnow in direction Trading Hub Europe, taking into account Regulation (EU) 217/459 obligation to set aside capacity.

Table 3) Common capacity level to be offered	Existing capacity from PL to THE (FZK)	Offer-level 1 from PL to THE (FZK)
GWJ 21/22	20 390 400	-
GWJ 22/23	9 789 300	-
GWJ 23/24	9 789 300	-
GWJ 24/25	9 789 300	-
GWJ 25/26	9 789 300	-
GWJ 26/27	-	-
GWJ 27/28	-	22 262 400
GWJ 28/29	-	22 262 400
GWJ 29/30	-	22 262 400
GWJ 30/31	-	22 262 400
GWJ 31/32	-	22 262 400
GWJ 32/33	-	22 262 400
GWJ 33/34	-	22 262 400
GWJ 34/35	-	22 262 400
GWJ 35/36	-	22 262 400
GWJ 36/37	-	22 262 400
GWJ 37/38	-	22 262 400
GWJ 38/39	-	22 262 400
GWJ 39/40	-	22 262 400
GWJ 40/41	-	22 262 400
GWJ 41/42	-	22 262 400

Table 3 presents the related offer level 1, which will be made available to the market at the earliest from the gas year 2027/2078. Pursuant to Art. 8 (9) of Regulation (EU) 217/459, GAZ-SYSTEM and GASCADE agreed that the amount of the technical capacity to be set aside, from the gas year 2027/2028 would amount to 20% of the existing and incremental capacity.

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

In the assessment of the ERO President, offering the amount of capacity specified in the project proposal serves as a possibly accurate assessment of the demand for capacity. In addition, what is important, the commitment of the auction participants to incur the fees for gas transmission service within the maximum allowed capacity even before the TSO starts to incur the expenses for the preparation and then implementation of the investment reduces the Applicant's risk related to the uncertainty of future revenues. This serves to protect the legitimate interests of both the TSO and all the users of the Polish transmission

system. A similar justification applies to the proposed period of transmission service provision - 15 years. This is the number of years allowed by the provisions of Regulation (EU) 2017/459, assessed by the Applicant as a period providing sufficient protection of its interests.

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

Pursuant to Article 28(1)(b), the project proposal shall include the general rules and conditions that a network user must accept to participate and access capacity in the binding capacity allocation phase of the incremental capacity process, including any collaterals to be provided by network users and how possible delays in the provision of capacity or the event of a disruption to the project are dealt with contractually.

GAZ-SYSTEM S.A. under this incremental capacity project, will not make any incremental capacity available in the binding phase of capacity allocation. However, due to the fact that the offer level taking into account the incremental capacity to be created on the German side will be offered as bundled capacity, GAZ-SYSTEM has prepared individual "General terms and conditions of participation and access to capacity in the binding phase of capacity allocation corresponding to incremental capacity on the German side of the border between Poland TGPS (Transit Gas Pipeline System) and Germany (Trading Hub Europe)". As the demand for incremental capacity was reported only on the German side, and the capacity is already sufficiently available on the Polish side and GAZ-SYSTEM has not initiated the incremental capacity project, the above terms and conditions largely refer to the General Terms and Conditions of GAZ-SYSTEM S.A. for the Polish section of the Yamal-Western Europe Transit Gas Pipeline System (Poland TGPS).

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.

Due to the fact that the change of interruptible capacity (DZK) to firm capacity (FZK) was requested only on the German side of the entry-exit system, and the current capacity on the Polish side is sufficient and will not change, there is no need to undertake any investment activities on the Polish side of the entry-exit system. Therefore, GAZ-SYSTEM has not submitted the project schedule.

Considering the lack of planned investment activities on the part of the Applicant, there are also no grounds to indicate information on measures to prevent delays and minimize their effects.

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

Pursuant to Article 25(1) and Article 28(1)(d) of Regulation (EU) 2017/459, parameters of the economic test for present values, 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.

GAZ-SYSTEM does not incur any investment costs due to the availability of sufficient capacity on the Polish side of the border, and thus there was no need to establish the f-factor and conduct an economic test. For this reason, the results of the economic test on the German side will be binding for the project on both sides of the border.

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 GASCADE 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 GASCADE decided not to apply an alternative allocation mechanism for the acquisition of incremental capacity pursuant to Article 28(1)(f) of Regulation (EU) 2017/459. Based on the joint decision, both operators will apply the standard auction procedure for incremental capacity in 2021.

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

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

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

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

In the opinion of the ERO President, the project does not have a harmful effect on competition or the efficient functioning of the internal gas market. Neither does the project cause any adverse effects for the existing infrastructure, and the interests of market participants are fully protected.

The subject-matter elements of the project proposal, as set out in Article 28(1) of Regulation (EU) 2017/459, were established in coordination with Bundesnetzagentur, with whom the ERO President remained in close contact and good cooperation throughout the proceedings and prior to the initiation of the proceedings. Neither Bundesnetzagentur nor the President of ERO objected to the submitted project proposals and both informed each other, by email, on 30 and 26 March 2021, respectively, of their intention to issue a decision on the approval of the project proposal.

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

NOTES OF GUIDANCE

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

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

Annex No. 1: "Application for the Approval of an Incremental Capacity Project according to Article 28 (1) NC CAM on the border between Poland TGPS and Germany (Trading Hub Europe)" including a proposal for an incremental capacity project, including the INC GT&C

Copies to:

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