



Warsaw, 29 April 2021

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

DRR.WRG.748.9.2020.ABu1

DECISION

Pursuant to Article 8 (9), Article 25 (1) and Article 28 (1) and (2) of Commission Regulation (EU) 2017/459 of 16 March 2017 establishing a network code on capacity allocation mechanisms in gas transmission systems and repealing Regulation (EU) No 984/2013 (EU OJ L 72 of 17 March 2017, p. 1 et seq.) in conjunction with Article 23 para. 2 item 11a and Article 30 para. 1 of the Act of 10 April 1997 on the Energy Law (JoL of 2021, item 716) and Article 104 of the Act of 14 June 1960 on the Code of Administrative Procedure (JoL of 2021, item 735)

after having examined the application

of the energy undertaking Operator Gazociągów Przesyłowych GAZ-SYSTEM Spółka Akcyjna with its registered office in Warsaw (hereinafter: "transmission system operator", "TSO" or "Applicant"), attached to the letter of 29 October 2020 ref. no.: PU.070.7.2019.23, entitled "Application for the Approval of an Incremental Capacity Project according to Article 28 (1) NC CAM for the Border between Poland and the Czech Republic", supplemented on 18 November 2020, and on 18 December 2020, as well as by letter of 22 February 2021, ref. no.: PU.0712.4.2021.32, by letter of 26 March 2021, ref. no.: PU.0712.4.2021.43 and by letter of 31 March 2021, ref. No.: PU.0712.4.2021.45

I hereby resolve

to approve the project proposal for incremental capacity for the border between the market areas of Poland and the Czech Republic, 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 30 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") for approval 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 the Czech Republic", (hereinafter: "the project proposal") prepared in coordination with NET4GAS s.r.o. (hereinafter: "NET4GAS").

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

On 9 November 2020, the Czech Energy Regulatory Office (hereinafter: "ERU") notified the President of ERO that NET4GAS, submitted an analogous application and further notified of its completeness as at the submission date, that is, 30 October 2020.

On 13 November 2020 the President of ERO notified ERU of receipt of the TSO's application for approval of the project proposal, and subsequently, pursuant to Article 28(2) sentence 3 of Regulation (EU) 2017/459, notified of the completeness of the application as at 18 December 2020.

By letters dated 1 February 2021 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.0712.4.2021.32 , letter of 26 March 2021, ref. no.: PU.0712.4.2021.43 and by letter of 31 March 2021, ref. No.: PU.0712.4.2021.45 the Applicant provided explanations and made the relevant corrections.

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

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

Pursuant to Article 26 of Regulation (EU) 2017/459, GAZ-SYSTEM together with NET4GAS conducted a non-binding assessment of the market demand for incremental capacity between the Polish and Czech transmission systems, which began on 1 July 2019 and lasted until 26 August 2019.

Transmission System Operators, that is GAZ-SYSTEM and NET4GAS received non-binding requests for firm capacity from Poland to the Czech Republic at the border of the GAZ-SYSTEM entry-exit system with the NET4GAS entry-exit system.

On the basis of the non-binding notifications received, the operators developed a joint market demand assessment report. The MDAR report (Market Demand Assessment Report)

assessed the non-binding notifications received as part of the conducted market demand assessment and estimated the potential demand for incremental capacity within the respective entry-exit system and determined whether an incremental capacity project execution should be initiated.

The market demand was assessed on the basis of the following notifications:

1. received by GAZ-SYSTEM for firm capacity:

| From Exit | To Entry | Gas year | Quantity (kWh/h)/y | Application submitted to other TSOs | Additional information (e.g. capacity type) |
|-----------|----------------|-------------------|--------------------|--|---|
| Poland | Czech Republic | 2021/22 – 2035/36 | 1,267,920 | Up to 1,167,920 – yes, to NET4GAS, over 1,167,920 - no | No |

2. received by NET4GAS for firm capacity:

| From Exit | To Entry | Gas year | Quantity (kWh/h)/y | Application submitted to other TSOs | Additional information (e.g. capacity type) |
|-----------|----------------|-------------------|--------------------|-------------------------------------|---|
| Poland | Czech Republic | 2021/22 – 2035/36 | 1,167,920 | Yes, to GAZ-SYSTEM | No |

The difference in the notifications submitted to each TSO resulted from the fact that GAZ-SYSTEM additionally received a notification of demand for 100,000 kWh/y in the direction from Poland to the Czech Republic for the gas years from 2020/2021 to 2034/2035.

On the basis of the MDAR (Market Demand Assessment Report) results, the relevant TSO performed technical analyses in accordance with Article 27 of Regulation (EU) 217/459. In order to balance the level of incremental capacity requested, the TSOs assumed an incremental capacity requirement of 1,270,000 kWh/h/y for further technical analyses.

At present, there is no technical capacity between the transmission system of Poland and the Czech Republic in the direction for which demand has been indicated. The existing interconnection point Cieszyn/Český Těšín between Poland and the Czech Republic only allows for a firm gas transmission from the Czech Republic to the Polish transmission system at a level of approx. 0.5 bcm/year.

Following technical analyses, in order to meet the indicated demand for incremental capacity from Poland to the Czech Republic, GAZ-SYSTEM and NET4GAS agreed on the location for the incremental capacity project at the existing Cieszyn/Český Těšín interconnection point. The incremental capacity project for the above-mentioned interconnection point between Poland and the Czech Republic consists in enabling the physical flow of natural gas (Group E) from Poland to the Czech Republic with an incremental capacity of 1,270,000 kWh/h/year.

The expansion of the cross-border interconnection point Cieszyn/Český Těšín on the Polish side involves:

- construction of gas pipeline DN700 Oświęcim - Tworzeń (50 km);
- extension of the Kędzierzyn compressor station with an additional compressor;
- modernization of the Cieszyn measuring station.

Estimated outlays in 2020 prices will amount to approx. EUR 74.7m (approx. EUR 61.3m for gas pipeline DN700 Oświęcim - Tworzeń, EUR 12.9m for an additional compressor station at Kędzierzyn compressor station and EUR 465 thousand for modernization of the measuring station in Cieszyn), including 25% reserve. The investment is expected to be completed in Q4 2028.

Pursuant to Article 27 of Regulation (EU) 217/459 and the schedule indicated in the report on market demand for incremental capacity between the Polish and Czech gas transmission systems, on 13 January 2020, GAZ-SYSTEM and NET4GAS launched a public consultation of the preliminary proposal for the project of incremental capacity between the transmission systems of Poland and the Czech Republic, which ended on 13 February 2020. The operators did not receive any comments from market participants.

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

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

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

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

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

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

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

- a) all offer levels reflecting the extent of the projected demand for incremental capacity at the relevant interconnection points following a market demand assessment and public consultation process;
- b) the general terms and conditions for network users to participate in, and gain access to capacity in the binding capacity allocation phase of the incremental capacity acquisition process, including any safeguards to be provided by network users, and how contractual arrangements will address any delays in the provision of capacity or disruptions to the project implementation;
- c) the schedule for implementing the incremental capacity project, including any changes that have occurred since public consultation, and measures to prevent delays and minimize their impact;
- d) economic test parameters;
- e) whether an extension of the time horizon for capacity contracting for an additional period of maximum 5 years beyond the allocation period of maximum 15 years from the beginning of exploitation may be required on an exceptional basis;

- f) where appropriate, the proposed alternative allocation mechanism, including its justification, and the conditions approved by the transmission system operator for the binding phase;
- g) where a fixed price approach is applied to the incremental capacity project, the indicators described in Article 24(b) of Commission Regulation (EU) No 2017/460 of 16 March 2017 establishing a network code on harmonized transmission tariff structures for gas (EU OJ L 72 of 17 March 2017, p. 29 et seq., hereinafter: "Regulation (EU) 2017/460").

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

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

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

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

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

incremental capacity is offered as defined in Article 33(3) of Regulation (EU) 2017/460.

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

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

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

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 2028/2029 to the gas year 2042/2043 inclusive.

In order to unify the offer on both sides of the Cieszyn point, the operators assumed that a single offer level will be offered in the incremental capacity auction, which in gas years 2028/2029-2043/2044 will amount to 1,143,000 kWh/h (90% of the reported demand).

The common offer level for the associated capacity products to be offered in the auction of annual products at the point Cieszyn/Český Těšín in July 2021 is shown in the table below.

| Year | from 2028/2029 to 2042/2043 |
|---|--------------------------------|
| Offer level [kWh/h]/y | 1,143,000 |
| Incremental capacity [kWh/h]/y - to be offered | 1,143,000 |
| Incremental capacity [kWh/h]/y - total | 1,270,000 |
| Existing capacity [kWh/h]/y | 0 |

In view of the above, it should be concluded that the offer level presented in accordance with Article 28(1)(a) of Regulation (EU) 2017/459 reflects the scope of the expected demand for incremental capacity and corresponds to the legal requirements under the aforementioned Regulation. The Applicant, together with NET4GAS, has identified standard related products to be offered in accordance with Article 29(1) of Regulation 2017/459. The offer level has been prepared in accordance with Article 11(6) of the aforementioned Regulation and takes into account the obligation to set aside capacity according to the method indicated in this provision.

In accordance with the above Article, 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).

Pursuant to Article 8(9) of Regulation (EU) 2017/459 GAZ-SYSTEM and NET4GAS have agreed that the amount of set aside incremental technical capacity will be 10% of the incremental capacity within the bundled offer level to be offered in short-term products.

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.

The Applicant and NET4GAS have agreed to submit to the regulatory authorities general terms and conditions, separate for the Applicant and NET4GAS, consistent with national laws.

In the opinion of the President of the Energy Regulatory Office, the provisions of the "General Terms and Conditions of participation in and access to capacity in the binding phase of incremental capacity auction on the border between Poland and the Czech

Republic" (hereinafter: " INC GT&C ") are consistent with European and national law and adequately ensure a balance of protection of the Applicant and network users. In particular, the general provisions concerning the method of making incremental capacity available and the provisions concerning financial security and the consequences of a possible delay in making incremental capacity available or disruptions to the incremental capacity project for the border of the market area Poland - Czech Republic serve this protection.

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

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

In the opinion of the ERO President, the Applicant has correctly described and justified the project implementation schedule included in the project proposal. The construction of the necessary investment projects providing capacity at the Cieszyn point will commence when market participants commit to purchase adequate amounts of incremental capacity in the yearly product auction in 2021 and when each TSO obtains a positive result of the economic test. The schedule envisages that the planning and construction period will last until Q2-Q3 2028 and the start of operation of the new infrastructure will be in Q3 2028.

The periods for signing contracts and obtaining construction permits were indicated as the latest completion dates taking into account three separate investment tasks within the common incremental capacity 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;
- c. the ability to convert all or part of the capacity allocated to a System User under a yearly product to interruptible capacity.

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

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

Pursuant to Article 22(2)(a) of Regulation (EU) 2017/459, the outcome of the economic test application shall be positive, where the value of binding commitments of network users for contracting capacity is at least equal to the value of the share of the estimated increase in the allowed or target revenue of the transmission system operator associated with the incremental capacity included in the respective offer level as defined by the f-factor.

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

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

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

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

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

For the economic test of the Cieszyn expansion project, a discounted value of commitments of network users in Cieszyn point was obtained – PLN 198,985,585.00 (EUR 46,275,717.00).

When calculating the value of binding commitments of network users at the Poland-Czech Republic exit point, the following was adopted:

- a) the reference price with the obligatory auction premium of 3,213 PLN/ (MWh / h) / h;
- b) reserved annual transmission capacity at the Poland - Czech Republic exit point in the amount of 1,143,000 kWh / h.

The discounted value of network users' liabilities at the Poland - Czech Republic point, with a discount rate of 6% for the 15-year test period, amounts to 198,985,585.00 PLN.

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

A parameter of the economic test referred to in Article 22(1)(b) of Regulation (EU) 2017/459 is the present value of the estimated increase in the allowed or target revenue of the transmission system operator associated with the incremental capacity included in the respective offer level.

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

A discount rate of 6% was used to calculate the discounted value of the allowed revenue related to the implementation of the incremental capacity project for the Poland-Czech Republic border in the years 2028-2043. This value is equal to the risk-free rate adopted for the purpose of calculating reference rates approved by the President of ERO and applicable in 2021.

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

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

- a) the initial regulatory value (RAV) of the property related to the extension of the Cieszyn point in the amount of PLN 321,218 thousand PLN;
- b) the value of annual depreciation charges amounting to PLN 8,810 thousand PLN;
- c) annual operating costs (OPEX) of PLN 7 740 thousand PLN;
- d) WACC equal to 6% of the WRA.

The discounted value of the allowed revenue at the Cieszyn point is - 198,985,299.00 PLN.

III. F-factor

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

- a) the amount of technical capacity set aside in accordance with Article 8(8) and (9);
- b) positive externalities of the incremental capacity project on the market or the transmission network, or both;

- c) the duration of binding commitments of network users for contracting capacity compared to the economic life of the asset;
- d) the extent to which the demand for the capacity established in the incremental capacity project can be expected to continue after the end of the time horizon used in the economic test.

Taking into account the position of the TSO, which indicated that the project for the expansion of the Cieszyn / Český Těšín cross-border interconnection is only a commercial project and no positive effects have been presented for the cooperating transmission systems and markets, it is justified to adopt the f-factor equal to 1.

The project allows for offering transmission capacity on the basis of physical flow, and not a virtual reverse. The project will not affect the manner of implementation of key projects related to the expansion of the GAZ-SYSTEM transmission system, the size of gas fuel prices in Poland, and will not improve the security of gas fuel supplies locally (near Cieszyn).

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

IV. Reference price

Pursuant to Article 25(1)(a) of Regulation 2017/459, under the proceedings conducted, reference prices (rates) of transmission fees estimated for the project for the time horizon from 1 October 2028 to 1 October 2043, that is the period of 15 gas years, have been approved by this decision.

Referring to the position of the TSO on the adopted reference price, it is necessary to agree with the assumption that for the calculation of the present value of commitments of network users for contracting incremental capacity made available under bids submitted in the auction procedure for the Cieszyn interconnection point referred to in Article 22(1)(a) of Regulation (EU) 2017/459, the reference price will be applied at the level of the fixed fee rate for the provision of gaseous fuel transmission services at the exit point from the high-methane gas transmission system according to the "Tariff for gas transmission services no 14" approved by the decision of the President of ERO no DRG.DRG-2.4212.7.2020JDo 1 of 5 June 2020, in the amount of 1.854 PLN/(MWh/h)/h. This price will be used in calculations related to the economic test for the entire project time horizon, i.e. from 1 October 2028 to 1 October 2043.

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

on the reference price in a 15-year horizon is difficult and could lead to results bearing a significant error.

V. Mandatory minimum premium

Pursuant to Article 25(c) of Regulation 2017/459 the range of the level for the mandatory minimum premium referred to in Article 33(4) of Regulation (EU) 2017/460 is subject to approval by the regulatory authority, 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.

Pursuant to Article 33(4) of Regulation (EU) 2017/460, the level of the mandatory minimum premium shall enable a positive economic test outcome with the revenues generated by the offered capacity in the first auction or alternative allocation mechanism in which the incremental capacity is on offer.

Taking into account the level of incremental capacity offered and the required level of revenues from binding network user commitments to obtain a positive outcome of the economic test with the f-factor equal to 1, it should be noted that it is necessary to apply a mandatory minimum premium of 1.337 PLN/(MWh/h)/h (0.31 EUR/(MWh/h)/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 NET4GAS 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. NET4GAS and GAZ-SYSTEM 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 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 ERU, with whom the ERO President remained in close contact and good cooperation throughout the proceedings and prior to the initiation of the proceedings.

Neither ERU nor the President of ERO objected to the submitted project proposals and both informed each other, by email, on March 19, 2021 and April 9, 2021, respectively, of their intention to issue a decision on the approval of the project proposal, indicating the material elements thereof.

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

NOTES OF GUIDANCE

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

body of the statement on the party's renouncement of the right to file an appeal to the public administration body, the decision becomes final and legally binding (Article 127a § 2 of the Code of Administrative Procedure).

5. A decision shall be enforceable before the expiry of the time limit for lodging an appeal if it complies with the demand of all parties or if all parties have waived the right to lodge an appeal (Article 130 § 4 of the Code of Administrative Procedure).

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

Annex No. 1: "Application for the Approval of an Incremental Capacity Project according to Article 28 (1) NC CAM for the Border between Poland and the Czech Republic" including a proposal for an incremental capacity project, including the INC GT&C

Copies to:

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