



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:

Operator Gazociągów Przesyłowych GAZ-SYSTEM S.A.
ul. Mszczonowska 4
02-337 Warszawa



**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**

2020-10-30



The application for an incremental capacity project for the market border between Poland and the Czech Republic has to be approved by the respective national regulatory authorities (NRAs). This document presents a common project proposal for the interconnection point Cieszyn/Český Těšín as agreed by:



Operator Gazociągów Przesyłowych

NET4GAS, s.r.o.

GAZ-SYSTEM S.A.

Mszczonowska 4 St.

02-337 Warsaw

Poland

Na Hřebenech II 1718/8

140 21 Prague 4 - Nusle

Czech Republic



According to Article 28 (1) NC CAM, Operator Gazociągów Przesyłowych GAZ-SYSTEM S.A. (hereinafter referred to as: GAZ-SYSTEM) submits this proposal for approval through the President of the Energy Regulatory Office (URE) and NET4GAS, s.r.o. (hereinafter referred to as: NET4GAS) submits this proposal for approval through the Energy Regulatory Office (ERÚ) for an incremental capacity project for the market border between Poland and the Czech Republic. The interconnection point at Cieszyn/Český Těšín (hereinafter referred to as: IP Cieszyn/Český Těšín, IP Cieszyn or IP Český Těšín) connects the abovementioned adjacent gas transmission systems.



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1. Introduction to the application of the project proposal for incremental capacity

Transmission system operators GAZ-SYSTEM and NET4GAS have received non-binding demand indications for firm capacity in the direction from Poland to the Czech Republic at the interconnection point between the entry-exit system of GAZ-SYSTEM and the entry-exit system of NET4GAS.

The Market Demand Assessment Report (MDAR) assessed the non-binding demand indications received in the demand assessment phase from 1 July 2019 to 26 August 2019.

The following aggregated non-binding demand indication **received by GAZ-SYSTEM** for firm capacity has been used as the basis for the demand assessment:

<i>From</i>	<i>To</i>	<i>Gas year</i>	<i>Amount (kWh/h)/y</i>	<i>Request was submitted to other TSOs</i>	<i>Additional Information (e.g. type of capacity)</i>
<i>EXIT-CAPACITY</i>	<i>ENTRY-CAPACITY</i>				
<i>Poland</i>	<i>Czech Republic</i>	<i>2021/22 – 2035/36</i>	<i>1,267,920</i>	<i>Up to 1,167,920 - Yes, to NET4GAS, Above 1,167,920 – No</i>	<i>No</i>

The following aggregated non-binding demand indication **received by NET4GAS** for firm capacity has been used as the basis for the demand assessment:

<i>From</i>	<i>To</i>	<i>Gas year</i>	<i>Amount (kWh/h)/y</i>	<i>Request was submitted to other TSOs</i>	<i>Additional Information (e.g. type of capacity)</i>
<i>EXIT-CAPACITY</i>	<i>ENTRY-CAPACITY</i>				
<i>Poland</i>	<i>Czech Republic</i>	<i>2021/22 – 2035/36</i>	<i>1,167,920</i>	<i>YES, to GAZ-SYSTEM</i>	<i>No</i>

The indications submitted for each TSO were not the same. The difference occurred due to the fact that GAZ-SYSTEM received an additional demand indication for 100,000 kWh/h/y in the direction from Poland to the Czech Republic for the gas years from 2020/2021 to 2034/2035.

Based on the outcome of the MDAR published on both TSOs' websites on 21 October 2019, the TSOs concerned developed technical studies according to Article 27 NC CAM. To align the level of requested incremental capacity, the TSOs decided to consider for further technical analysis the demand for incremental capacity at the level of 1,270,000 kWh/h/y.

Currently, there is no existing technical capacity between the entry-exit system of Poland and the Czech Republic in the requested direction. The existing interconnection point between Poland and the Czech

Republic at IP Cieszyn/Český Těšín enables firm gas transmission only in one direction, from the Czech to the Polish transmission system, with a capacity of approx. 0.5 bcm annually.

As a result of the technical studies, to meet the requested demand for incremental capacity from Poland towards the Czech Republic, GAZ-SYSTEM and NET4GAS propose implementing an incremental capacity project at the existing IP Cieszyn/Český Těšín.

Moreover, at present, GAZ-SYSTEM and NET4GAS, based on the decisions of their respective competent national authorities, hold an exemption from offering reverse flow capacity at IP Cieszyn/Český Těšín which is valid until 31 December 2022. The project, if implemented, would make IP Cieszyn/Český Těšín bi-directional in line with Article 5(4) of Regulation (EU) 2017/1938 of 25 October 2017 concerning measures to safeguard the security of gas supply.

No comments were received in the public consultation of the Draft Project Proposal held from 13 January 2020 to 13 February 2020, neither by GAZ-SYSTEM nor by NET4GAS.

In this document, the following abbreviations are used:

NC CAM = Commission Regulation (EU) 2017/459;

NC TAR = Commission Regulation (EU) 2017/460.

Following the structure of Article 28 (1) NC CAM, this application is structured as followed:

- Offer Level of the incremental capacity (Art. 28 (1) (a) NC CAM),
- Terms and Conditions for the Incremental Capacity Auction to be accepted by the network user for the acquisition of incremental capacity (Art. 28 (1) (b) NC CAM),
- Timetable for the project of incremental capacity (Art. 28 (1) (c) NC CAM),
- Parameters of the economic test (Art. 28 (1) (d) NC CAM),
- Information on a possible extended time horizon for contracting incremental capacity (Art. 28 (1) (e) NC CAM),
- Information on an alternative allocation mechanism (Art. 28 (1) (f) NC CAM),
- Information on a possible fixed price approach (Art. 28 (1) (g) NC CAM).

2. Offer Level for incremental capacity (Art. 28 (1) (a) NC CAM)

According to Article 28 (1) (a) NC CAM, GAZ-SYSTEM and NET4GAS request to approve the common Offer Level for bundled capacity products to be marketed at IP Cieszyn/Český Těšín in the yearly capacity auction in 2021 as presented below. The Offer Level takes into account the obligations to set aside capacity based on the calculation methodology described in Article 11(6) of NC CAM.

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

The Offer Level can be marketed earliest as of gas year 2028/2029 because of the project’s specifics on both sides of the Czech-Polish border.

As there is no existing capacity available at IP Cieszyn/Český Těšín in the direction from Poland to the Czech Republic, both GAZ-SYSTEM and NET4GAS consider only a 10% reservation quota for incremental capacity under the bundled Offer Level. The amount of the set-aside capacity shall be subject to the approval of the Polish and Czech NRAs.

GAZ-SYSTEM and NET4GAS will market the Offer Level in an annual yearly auction on the GSA Platform.

3. Terms and Conditions for the incremental capacity auction to be accepted by the network user for the acquisition of incremental capacity (Art. 28 (1) (b) NC CAM)

For the marketing of incremental capacity (i.e. the Offer Level) in the yearly capacity auction 2021, GAZ-SYSTEM and NET4GAS have developed individual terms and conditions for the incremental capacity auction to be accepted by the network user before the incremental capacity auction.

According to Article 28 (1) (b) NC CAM,

- GAZ-SYSTEM requests the URE to approve its “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” provided along with this application (hereinafter: INC GT&C). To be eligible to participate in the auction, network users will have to accept the INC GT&C as well as other GAZ-SYSTEM rules that are required to participate in the auction on a regular basis, such as the General Terms and Conditions of the Transmission Contract, the Transmission Network Code, and the Tariff.

- NET4GAS requests the ERÚ to approve its Terms and Conditions for the Incremental Capacity Auction which have been sent along with this application. For NET4GAS, the general rules and conditions that a network user must accept to participate and to access capacity in the binding capacity allocation phase of

the incremental capacity process are set out in Annex 1 of this document (“Contract for Provision of Gas Transmission Service”) and in the [Network Code](#) of NET4GAS.

Regardless of the fact that both GAZ-SYSTEM and NET4GAS both publish terms and conditions for the incremental capacity auction in English and in their respective national languages, only the Polish and Czech versions respectively, shall be considered as binding.

4. Timetable for the incremental capacity project (Art. 28 (1) (c) NC CAM)

According to Article 28 (1) (c) NC CAM, GAZ-SYSTEM requests to approve the following timetable for its incremental capacity project.

Time period	Milestone
05/07/2021	Yearly capacity auction in July followed by an economic test
3Q/2024	Design contracts signed
3Q/2026	Building permits obtained
1Q/2027	Construction contracts signed
2-3Q/2028	Commissioning of the project
01/10/2028	Expected start of commercial operation of the new infrastructure

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.

According to Article 28 (1) (c) NC CAM, NET4GAS requests to approve the following timetable for its incremental capacity project.

Time period	Milestone
30/06/2021	Auction participants to sign “Contract for Provision of Gas Transmission Service”
05/07/2021	Yearly capacity auction in July followed by an economic test
01/06/2026	Withdrawal right date if permits and/or land rights are not secured (per sections 5.1. of N4G “Contract for Provision of Gas Transmission Service”
01/10/2028	Expected start of commercial operation of the new infrastructure

The construction phase will only start if there is a commitment by the market to acquire the respective incremental capacities in the yearly auction 2021 and if there is also a positive result of the following economic test for each of the TSOs concerned.

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

Expansion required within the GAZ-SYSTEM grid:

In order to ensure the possibility of transporting gas in the direction from Poland to the Czech Republic with a maximum capacity of 1,270,000 kWh/h, the following investments are required on the Polish side:

- Construction of a new DN 700 gas pipeline Oświęcim – Tworzeń (L=50 km)
- A separate single unit at the Kędzierzyn compressor station
- Modernisation of the Cieszyn metering station

In addition, on the Polish side, finalisation of the North-South Gas Corridor and in particular construction of the new DN 500 Skoczów – Komorowice – Oświęcim gas pipeline are indispensable investments to provide the reverse flow at IP Cieszyn. However, these investments will not be a part of the concerned incremental project and shall not affect the below provided provisional timeline of the incremental capacity project.

Expected commissioning: 2-3Q/2028

Cost estimation:

Approximately EUR 61.3 million for the pipeline section + EUR 12.9 million for the additional unit at the Kędzierzyn compressor station and EUR 465,000 for the Cieszyn metering station modernisation.

Description of the project on the Czech side (NET4GAS)

New infrastructure required to be implemented on the NET4GAS side:

In order to ensure the possibility of transporting gas in the direction from Poland to the Czech Republic with a maximum capacity of approximately 1,270,000 kWh/h, the following investments are required on the Czech side:

- Construction of a new DN 500 gas pipeline Libhošť - Třanovice (L=60 km)
- A new compressor station (two units + back-up) connected to the new and also to the existing DN500 Libhošť – Třanovice

Implementation of the abovementioned infrastructure components will enable NET4GAS to offer the incremental capacity demanded, assuming the delivery pressure on the border is at least 46 barg. This is the basic precondition for such a technical solution of the incremental capacity project between Poland and the Czech Republic.

Expected start of operation: 4Q/2028¹

Cost estimation: Approximately EUR 93.1 million for the pipeline section + EUR 42.8 million for the compressor station, including a 25% buffer.

Summary of project proposal technical parameters:

	CZ	PL
DN	500	700
PN (CZ) / MOP (PL); bar	63.0	84.0
Border point	<i>Český Těšín / Cieszyn</i>	
Pipeline length	60 km	50 km
Border transfer station	-	Current BTS is already bidirectional and is expected to also be used for this project
Compressor station (MW)	2 x 3.5 MW + 1 x 3.5 MW back up	1 x 8 MW
Metering station	-	Modernisation of metering system by exchanging turbine gas meters into ultrasonic meters
Border delivery pressure		
Direction PL → CZ	46.0 barg	
Maximum daily capacity to CZ		
mcm/d @0°C	2.73	2.73
GWh/d	30.48	30.48
Max. hourly capacity to CZ		
mcm/h @0°C	0.11	0.11

¹ Value amended since the publication of the Draft Project Proposal in January 2020 to take into account the expected impact of various implementation risks following a review of the project's planning assumptions.

GWh/h	1.27	1.27
CAPEX (mEUR)	135.9	74.7
CAPEX accuracy (± %)	25% buffer already included in estimate quoted above	25% buffer already included in estimate quoted above
Cleanability	Bidirectional	
Start of commercial operation	4Q/2028 ²	4Q/2028

5. Parameters of the economic test (Art. 28 (1) (d) in conjunction with Art. 22 (1) NC CAM)

According to Article 28 (1) (d) NC CAM, GAZ-SYSTEM and NET4GAS request to approve the parameters of the economic test.

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

- a) The present value of the binding commitments of the network users for contracting capacity
- b) 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
- c) The f-factor

Reference price for determining the present value of the binding commitments of network users – GAZ-SYSTEM

According to Art. 22 (1) (a) in conjunction with Art. 25 (1) (a) of the NC CAM, the President of the URE approves the reference prices estimated for the time horizon of the incremental capacity offered by GAZ-SYSTEM as part of the incremental project for the market border of Poland and the Czech Republic. The reference prices, amounting to PLN 1,854 /(MWh/h)/h (EUR 0.43 /(MWh/h)/h), will be used in the economic test carried out by GAZ-SYSTEM to calculate the current value of the liabilities of network users in the scope of contracting incremental capacity made available under offers placed in the auction procedure at IP Cieszyn.

The reference prices should be set for the time horizon of the incremental capacity offered under the project for the market border of Poland and the Czech Republic, i.e. for the time horizon of 15 gas years, i.e. from 1 October 2028 until 1 October 2043.

² Value amended since the publication of the Draft Project Proposal in January 2020 to take into account the expected impact of various implementation risks following a review of the project's planning assumptions.

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

Reference rates estimation for a 15-year time horizon, with such a high dynamic implementation of strategic investment projects may bring unrealistic and unreliable results in the form of an increase in transmission charges, which will reduce the level of capacity required to achieve a positive result from the economic test.

Given the above arguments, GAZ-SYSTEM proposes to adopt, for the purposes of the economic test for all the years covered by the analysis, a reference price at the level of the fixed fee for the provision of gas transmission services at the exit point binding from 1 January 2021 to 31 December 2021. This method is in accordance with "The Tariff for Gas Transmission Services No. 14" approved by the decision of the President of the URE No. DRG-2.4212.7.2020.JDo1 on 5 June 2020.

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

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 and settled in the period covering the contracted incremental capacity made available as part of offers submitted in the auction procedure for IP Cieszyn.

GAZ-SYSTEM adopted a discount rate of 6% for the calculation of the discounted value of the allowed revenue related to the realization of the project for the market border of Poland and the Czech Republic in the years 2028-2043.

This value is equal to the risk-free rate adopted for the purposes of the calculation of the reference rates binding in 2021, and it has been approved by the President of the URE.

This value was determined using the calculation tool provided by GAZ-SYSTEM. The calculation tool reflects the current practice, including the calculation parameters for determining the allowed revenues approved by the President of the URE for the tariff for 2021.

F-factor for GAZ-SYSTEM

The f-factor must take the following into account:

- a) The amount of technical capacity set aside according to Articles 8 (8) and (9) NC CAM;

- b) The positive externalities of the incremental capacity project on the market, the transmission network, or both;
- c) The duration of the binding commitments of the network users for contracting capacity compared to the economic life of the asset;
- d) The extent to which the demand for the capacity established in the incremental capacity project can be expected to continue after the end of the time horizon used in the economic test.

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

In addition, considering the level of incremental capacity to be offered and the required level of revenues from the binding commitments of the network users to pass the economic test with an f-factor equaling 1, it is also necessary to apply a mandatory minimum premium of PLN 1,337/(MWh/h)/h (EUR 0.31/(MWh/h)/h).

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

Based on the above considerations, the economic test calculation tool provided by GAZ-SYSTEM has been filled in accordingly and is attached along with this application.

Reference price for determining the present value of the binding commitments of network users – NET4GAS

NET4GAS expects the reference price to equal the current entry tariff of CZK 219.46 /MWh/d/y at the Cieszyn interconnection point. Noting that even the allocation of all incremental capacity available for booking in the 2021 auction at this reference price would clearly not generate sufficient revenues for a positive economic test outcome, NET4GAS also proposes a mandatory minimum premium of 14,239.54 CZK/MWh/d/y.

The total price – consisting of the sum of the reference price plus the mandatory minimum premium - is quoted in nominal terms and is subject to adjustment for inflation as set forth in the pricing methodology given in the *Principles of Price Regulation for the Period 2021-2025* by the Czech NRA (ERÚ) and further applied via their Price Decision for specific auctions. For the purpose of this economic test calculation, NET4GAS assumes that these inflation adjustments will amount to 2% per annum.

In addition to the abovementioned tariffs, flow-based charges – described in the Czech NRA's Principles of Price Regulation and set in the ERÚ's price decisions, will be payable by the shippers. From the point of

view of NET4GAS, these charges are cost-neutral (i.e. not generating any profit or loss over time) and shall therefore not be considered in the economic test.

NET4GAS proposes that a discount rate of 8.32% - equivalent to the pre-tax nominal Weighted Average Cost of Capital applicable to transit projects in the Czech Republic under the rules of the 5th Regulatory Period, is used to determine the present value of the binding commitments of the network users in the economic test following the auction in 2021.

Present value of the estimated increase in the allowed revenues due to capacity increase – NET4GAS

Using a discount rate of 8.32% (as described above), NET4GAS calculates that the present value of the estimated increase in its target revenue associated with this project is CZK 2,445.1 M.

F-factor for NET4GAS

The f-factor must take the following into account:

- a) The amount of technical capacity set aside according to Articles 8 (8) and (9) NC CAM;
- b) The positive externalities of the incremental capacity project on the market, the transmission network, or both;
- c) The duration of the binding commitments of the 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.

Like GAZ-SYSTEM, NET4GAS views this incremental project as purely a market-driven one and therefore believes that the project's full cost must be covered by the capacity bookings made in the relevant binding capacity auction. **NET4GAS thus requests to approve an f-factor which amounts to 1 for the application of the economic test.**

6. Possible extended time horizon for contracting incremental capacity (Art. 28 (1) (e) NC CAM)

Based on a common decision, GAZ-SYSTEM and NET4GAS agree that, for this incremental capacity project, no extended time horizon for contracting incremental capacity is needed.

7. Alternative allocation mechanism (Art. 28 (1) (f) NC CAM)

GAZ-SYSTEM and NET4GAS abstain from an application of an alternative allocation mechanism for the acquisition of incremental capacity according to Article 28 (1) (f) NC CAM. Based on a common decision, both TSOs will apply the standard auction procedure for incremental capacity in 2021.

8. Application of a fixed price approach (Art. 28 (1) (g) NC CAM)

GAZ-SYSTEM abstains from applying for a fixed price approach for the acquisition of incremental capacity in 2021 according to Article 28 (1) (g) NC CAM.

NET4GAS notes that project will follow a fixed-price approach in line with the obligation stemming from the abovementioned Principles of Price Regulation for the Period 2021-2025, Chapter 10.6. NET4GAS proposes that the value of the RP parameter as defined in Article 24 (b) NC TAR is set at 0 and that the determination of the IND parameter defined in that same article will follow the same rules as set out in the current Price Decision of the Energy Regulatory Office (#4/2020).



9. Contact information



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**GENERAL TERMS AND CONDITIONS OF PARTICIPATION IN AND ACCESS TO
CAPACITY IN THE BINDING PHASE OF ALLOCATION OF INCREMENTAL CAPACITY
ON THE BORDER BETWEEN POLAND AND THE CZECH REPUBLIC**

(hereinafter the 'INC GT&C')

1. General provisions

- 1.1. This INC GT&C regulates the general terms and conditions that the System User must accept in order to participate in the Auction and to gain access to the incremental capacity made available in the Auction.
- 1.2. Transmission services for the capacity allocated under the Auction will be provided in accordance with the transmission contract, this INC GT&C, as well as in accordance with the General Terms and Conditions of the Transmission Contract applicable at any given time (hereinafter: "GTC"), TNC and the Tariff. This INC GT&C, after allocating capacity resulting from the Auction, will regulate the specific rules for the provision of transmission services by GAZ-SYSTEM to the System User in terms of capacity allocated to that System User as part of the Auction. This INC GT&C does not exclude the GTC provisions, in particular regarding financial securities, confirming the financial ability of the System User to meet its financial obligations towards GAZ-SYSTEM for the performance of the transmission contract, including ways and terms of using them by GAZ-SYSTEM.
- 1.3. By submitting an offer in the Auction, the System User accepts without reservation the conditions set out in GTC, TNC, the Tariff and in this INC GT&C.
- 1.4. This INC GT&C was prepared in Polish and English language versions. In the event of a discrepancy between the Polish and English language versions of this INC GT&C, the Polish version shall prevail.

2. Definitions

- 2.1. Auction - annual yearly capacity auction conducted on the terms set forth in the CAM Network Code, under which the incremental capacity of the Cieszyn interconnection point shall be made available.

- 2.2. GAZ-SYSTEM - company under the name of Operator Gazociągów Przesyłowych GAZ-SYSTEM S.A. with its seat in Warsaw, acting as the transmission-system operator within Poland;
- 2.3. TNC - currently binding Transmission Network Code compiled pursuant to binding provisions of the law and published on GAZ-SYSTEM's website (<https://en.gaz-system.pl/strefa-klienta/iriesp/instrukcja-ruchu-i-eksploatacji-sieci-przesylowej/>). This INC GT&C refers to the Transmission Network Code approved by the decision of the President of the Energy Regulatory Office of March 26, 2019 (ref.: DRR.WRG.4322.1.2019.AK1) or any subsequent TNC version replacing or amending the aforesaid.
- 2.4. NET4GAS - company under the name of NET4GAS, s.r.o. with its seat in Prague, acting as the transmission system operator within the Czech Republic;
- 2.5. GSA Platform - platform to offer capacity in the relevant transmission systems at the Cieszyn interconnection point by GAZ-SYSTEM and NET4GAS;
- 2.6. Project - project to create a new technical capacity at the existing Cieszyn interconnection point based on capacity allocation in a preceding incremental capacity procedure;
- 2.7. Tariff - currently applicable list of prices, fee rates and their application rules, compiled by GAZ-SYSTEM and introduced as binding in settlements with the System User, published on the GAZ-SYSTEM website (<https://www.gaz-system.pl/strefa-klienta/taryfa/taryfa-i-stawki-oplat/>). This INC GT&C refers to the Tariff No. 14 approved by the decision of the President of the Energy Regulatory Office of 5 January, 2021 (ref.: DRR.WRG.4322.4.2020.IWa), or to any subsequent Tariff version replacing or amending the aforesaid;
- 2.8. System User - entity using the transmission system under a transmission contract, being either a Shipper (ZUP) and/or Network User according to TNC.

3. Binding phase of incremental capacity allocation

- 3.1. In the binding phase of incremental capacity allocation under the Project, GAZ-SYSTEM shall make available incremental capacity for the Cieszyn interconnection point, in the flow direction from Poland to the Czech Republic and in the form of fifteen (15) yearly incremental capacity products, covering fifteen (15) gas years, from 1 October 2028 06:00 a.m. to 1 October 2043, 06:00 a.m.

- 3.2. During the binding phase of incremental capacity allocation, each yearly product shall be made available through one, separate Auction for incremental capacity at the level of 1,143,000 [kWh/h].
 - 3.3. The yearly incremental capacity products covering the period from 1 October 2028, 06:00 a.m. to 1 October 2043, 06:00 a.m. shall be made available through an Auction for the Cieszyn interconnection point, in the flow direction from Poland to the Czech Republic.
 - 3.4. Capacity allocation to System Users that acquired the capacity in the Auction shall be, subject to point 6.8, conditional on the GAZ-SYSTEM 's investment decision to implement the Project. GAZ-SYSTEM shall take the investment decision to implement the Project provided that GAZ-SYSTEM and NET4GAS shall have obtained positive economic test results and entered into an agreement for the implementation of the Project.
4. Terms of participation in an Auction
- 4.1. GAZ-SYSTEM shall conduct the binding phase of incremental capacity allocation on the GSA Platform, in accordance with the terms and conditions for using the platform binding on the day of conducting the Auction, and with the TNC.
 - 4.2. The following is required in order to participate:
 - a) entering into a transmission contract with GAZ-SYSTEM in accordance with the provisions of the TNC;
 - b) submitting a power of attorney for the persons authorized to participate in the Auction to GAZ-SYSTEM, unless the System User has already presented such power of attorney;
 - c) successful from GAZ-SYSTEM's perspective registration on the GSA Platform;
 - d) submission of financial securities in the value and form set out in this INC GT&C;no later than one week before the Auction starts.
 - 4.3. The incremental capacity will be allocated through the Auction as bundled capacity. In order to participate in the Auction, the System User must also meet the participation conditions defined by NET4GAS.

4.4. Transmission services in respect of the capacity allocated in the Auction shall be provided in accordance with the concluded transmission contract (including INC) along with its appendices, referred to in point 4.2. a), as well as in compliance with the TNC and the Tariff, both as binding at each such time. Following to the capacity allocation as a result of the Auction, this INC GT&C shall constitute an appendix to the transmission contract concluded between GAZ-SYSTEM and the System User, regulating the detailed rules for the provision of transmission services by GAZ-SYSTEM to the relevant System User in respect of the incremental capacity allocated to that System User in the Auction.

5. Financial Security for participation in the Auction and incremental capacity allocation

5.1. In order to participate in the Auction, the System User shall submit a financial security confirming the System User's financial capability to perform the obligations owed to GAZ-SYSTEM under the bid, in the form, date and amount specified in this INC GT&C.

5.2. The System User has to establish the security in one of the following forms:

5.2.1. bank guarantee;

5.2.2. cash deposit.

5.3. The System User shall establish the security no later than 1 (one) week before the Auction, delivering a document in writing to GAZ-SYSTEM evidencing the establishment of a financial security (i.e. original bank guarantee or confirmation of bank transfer to GAZ-SYSTEM 's bank account).

5.4. The System User shall establish a financial security in the amount determined in accordance with point 5.5 below, but not lower than the equivalent of PLN 10,000.00 (ten thousand Polish zlotys).

5.5. The value of the financial security to be submitted by the System User in case of applying for capacity allocation in the Auction for:

(i) one (1) yearly product — shall be twice the monthly average of the System User's financial obligations to GAZ-SYSTEM;

(ii) two (2) yearly products — shall be three times the monthly average of the System User's financial obligations to GAZ-SYSTEM;

(iii) three (3) yearly products — shall be four times the monthly average of the System User's financial obligations to GAZ-SYSTEM;

- (iv) four (4) yearly products — shall be five times the monthly average of the System User's financial obligations to GAZ-SYSTEM;
 - (v) five (5) yearly products — shall be six times the monthly average of the System User's financial obligations to GAZ-SYSTEM;
 - (vi) from six (6) to seven (7) yearly products — shall be seven times the monthly average of the System User's financial obligations to GAZ-SYSTEM;
 - (vii) from eight (8) to nine (9) yearly products — shall be eight times the monthly average of the System User's financial obligations to GAZ-SYSTEM;
 - (viii) from ten (10) to eleven (11) yearly products — shall be nine times the monthly average of the System User's financial obligations to GAZ-SYSTEM;
 - (ix) from twelve (12) to thirteen (13) yearly products — shall be ten times the monthly average of the System User's financial obligations to GAZ-SYSTEM;
 - (x) fourteen (14) yearly products — shall be eleven times the monthly average of the System User's financial obligations to GAZ-SYSTEM;
 - (xi) fifteen (15) yearly products — shall be twelve times the monthly average of the System User's financial obligations to GAZ-SYSTEM;
— calculated on the basis of the amount of capacity covered by the offer of a given System User as part of the annual product for which it submits the offer covering the highest level of capacity from all those requested by a given System User under the Auction, and published by GAZ-SYSTEM indicative transmission fee rate adopted by GAZ-SYSTEM to carry out an economic test.
- 5.6. The financial security shall be established in Polish currency (PLN).
- 5.7. If establishing the security in the form of bank guarantee, GAZ-SYSTEM requires the guarantee document to provide that the guarantee is irrevocable, non-transferable, unconditional and payable on GAZ-SYSTEM's first demand and issued by a bank with current rating from a rating agency (minimum acceptable level is Baa2 for Moody's, BBB for Standard & Poor's, or BBB for Fitch), the content of which has been accepted by GAZ-SYSTEM. In case bank company issuing a bank guarantee, as appropriate, during the period referred to in point 5.13, loses the minimum rating referred to in the sentence above, the System User is obliged to

immediately, no later than within 30 (thirty) days from the loss of the rating, to provide financial security that meets the requirements of this INC GT&C. The bank guarantee will be subject to the provisions of Polish law. If the guarantee was not issued in Polish, it should be submitted to GAZ-SYSTEM along with sworn translation into Polish.

- 5.8. Subject to the remaining provisions of point 5, the System User may submit financial security in the form of bank guarantee valid for a period shorter than the System User's obligation to maintain the security referred to in point 5.13., though no shorter than 1 (one) year, provided that the security shall be renewed for the period of at least one following year fifteen (15) Business Days before expiry. The bank should entitle GAZ-SYSTEM to demand the payment of the value of the guarantee if the System User has not renewed the bank guarantee and has not submitted to GAZ-SYSTEM the proof of having established a new bank guarantee in accordance with the provisions of point 5, fifteen (15) Business Days before expiry .
- 5.9. Financial security established in the form of cash deposit should be paid to the following bank account indicated by GAZ-SYSTEM: 94 1140 1977 0000 5803 0100 1031. The transfer should be entitled: "Financial security INC CIESZYN". The time of submission of the security shall be deemed to be when GAZ-SYSTEM's account is credited.
- 5.10. If the System User applies for capacity allocation in the Auction at a level resulting in a greater value of the System User's financial obligations owed to GAZ-SYSTEM than arising from the financial security established by the System User, or if the System User has submitted a bid in the Auction without having established the required financial security, the System User shall pay to GAZ-SYSTEM a contractual penalty corresponding to the value of the required financial security, as determined in accordance with the provisions of this INC GT&C. GAZ-SYSTEM shall be entitled to draw on the financial security established by the relevant System User against the contractual penalty due. If the System User submits an offer as part of the Incremental capacity auction without establishing any required financial security, the System User will be obliged to pay to GAZ-SYSTEM a contractual penalty in the amount corresponding to the value of the required financial security, determined in accordance with the provisions of this INC GT&C.

- 5.11. Within ten (10) Business Days after completion of the capacity allocation in the Auction, the System User shall have the right to have the value of the submitted financial security adjusted to the capacity level allocated to the System User, i.e. the calculation of the amount of financial security based on the amount of capacity allocated as part of the annual product for which the System User obtained the highest amount of capacity from all annual products allocated to him as a result of the Auction.
- 5.12. From the moment of providing the System Users with the capacity created as a result of the Project implementation by GAZ-SYSTEM and NET4GAS, the amount of financial security that the System User is required to maintain will be calculated on the basis of the fees for the provision of transmission services for the annual product for which the System User obtained the highest amount of capacity from all annual products allocated to the System User as a result of the Auction, in accordance with the current Tariff.
- 5.13. The System User who obtained the incremental capacity under the Auction is obliged to maintain the financial security submitted to GAZ-SYSTEM in full and in the form provided for in this INC GT&C, from the moment specified in point 5.3 until the last day of the second (2) month after the end of the last gas year of transmission services provided to the System User as part of the capacity allocated in the binding phase of the incremental capacity.
- 5.14. Financial security established in the form of financial deposit shall be paid back with interest arising from the bank account contract relating to the account in which the financial security was kept, minus maintenance costs and bank commission for transferring the money to the System User's bank account.
- 5.15. GAZ-SYSTEM will be entitled to use financial security in the event that the System User delays payment of claims arising from compensation claims, contractual penalties and/or for reimbursement of expenses specified in the INC GT&C, after the prior written indication by GAZ-SYSTEM of an additional fourteen-day period for payment of these claims and not earlier than one (1) month after the original payment deadline.
- 5.16. In the event that GAZ-SYSTEM uses financial security in the cases specified in this INC GT&C, the System User will be required to supplement the financial security to the full required amount determined in accordance with the provisions of this INC GT&C

each time within one (1) month from the use of financial security by GAZ-SYSTEM.

5.17. In the event that the System User does not maintain the correct and in line with the INC GT&C financial security in the full amount calculated in accordance with the provisions of this INC GT&C, in particular if the System User does not supplement or deliver the financial security in accordance with the provisions of point 5.7, 5.11., and/or 5.16., the System User will be required to pay to GAZ-SYSTEM a contractual penalty: (i) in the amount corresponding to the value of the required financial security determined in accordance with the provisions of this INC GT&C, when such System User does not maintain such security, or (ii) the difference between the value of the required financial security and the value of the maintained financial security determined in accordance with the provisions of this INC GT&C, when the financial security maintained by the System User is too low in relation to its required amount determined in accordance with the provisions of this INC GT&C. GAZ-SYSTEM will be entitled to use the financial security established by the given System User against the contractual penalty due.

6. Delays in the provision of the capacity, and/or disruption in the implementation of the Project

6.1. GAZ-SYSTEM shall notify System Users sufficiently in advance of any delays in making available the incremental capacity allocated in the Auction and/or any disruption in the implementation of the Project.

6.2. The starting date for the provision of gas transmission services in respect of the incremental capacity provided under the Auction may be postponed (delayed) by GAZ-SYSTEM for a period no longer than 24 (say: twenty-four months), subject to a notification provided to the System User in writing. The notification, setting out the reason for postponing the starting date and the new starting date for the provision of gas transmission services in respect of the incremental capacity made available in the Auction, shall be sent to the System User at least 6 (say: six) months before the planned date and time of starting the provision of gas transmission services in respect of the incremental capacity made available in the Auction. In such a case, the date of commencement of the provision of gas transmission services in the scope of incremental capacity made available under the Auction will change in

accordance with the notification of GAZ-SYSTEM (new date). The System User shall not be entitled to any claims against GAZ-SYSTEM on this account with the exception of cases where the postponement of the date was caused by GAZ-SYSTEM's willful misconduct. For the avoidance of doubt, the notification on postponing the starting date for the provision of gas transmission services in respect of the incremental capacity made available in the Auction may be given more than 1 (say: one) time, provided that the total deferment of the starting date for the provision of gas transmission services in respect of the incremental capacity made available in the Auction does not exceed 24 (say: twenty-four) months. The System User shall have no claims against GAZ-SYSTEM on account of any such deferment of the date and time of starting the provision of gas transmission services in respect of the incremental capacity made available in the Auction with the exception of cases where the postponement of the date was caused by GAZ-SYSTEM's willful misconduct.

- 6.3. In the event of delays in implementing the Project and/or on enabling the incremental capacity, the capacity allocated in the binding phase of incremental capacity allocation available for the relevant gas year shall be prorated and reduced among the System Users having acquired capacity within the relevant yearly product in the Auction. GAZ-SYSTEM shall reduce the capacity allocated in the Auction to the bid level implemented in the Project, so that the sum total of capacity levels offered to the individual System Users within the relevant yearly product does not exceed 100% of the technical capacity for relevant gas year.
- 6.4. Within 14 (say: fourteen) days after receiving initial information from GAZ-SYSTEM about the proposed capacity reduction provided to the System User in the form of a written notification, the System User shall be entitled to surrender all or part of the proposed reduced capacity allocation, as well as to transform the whole or part of the capacity allocated to that System User in the Auction for the relevant yearly product into interruptible capacity. In the absence of a prompt response from the System User to GAZ-SYSTEM's initial information about the proposed capacity reduction, the System User shall be deemed to have accepted the proposed reduction.
- 6.5. The System User that has surrendered all or part of the proposed reduced capacity allocation shall not be required to pay transmission fees.

- 6.6. Depending on the number of confirmations received, GAZ-SYSTEM shall, electronically, through the Information Exchange System (IES), provide System Users that accepted the proposed capacity reduction with initial information about such additional available capacity which may be allocated to them, pro rata based on the capacity already allocated to them. System Users shall have 14 (fourteen) days to confirm or reject the allocation of additional capacity proposed to them.
- 6.7. In the event of any delays in implementing the Project and/or in making the incremental capacity available, the System User shall not have any right to use the capacity that was not made available at a later date.
- 6.8. GAZ-SYSTEM shall not be liable for the System User's lost profits or any special, indirect and/or consequential damage arising from delays in implementing the Project and/or making the incremental capacity available with the exception of cases where the above-mentioned damages result from the willful misconduct of GAZ-SYSTEM. Moreover, GAZ-SYSTEM shall not be liable for any of the System User's damage, including loss of profits, special, indirect and/or consequential damage, arising from impossibility in implementation of the Project and/or making the incremental capacity available on time being a result of circumstances: (i) for which NET4GAS or acting in its behalf entities are liable, (ii) caused by force majeure.
- 6.9. In the event of delay in GAZ-SYSTEM's commencement of provision of gas transmission services in respect of the capacity allocated in the Auction, the System User shall have the obligation to exercise necessary care to minimize the loss so caused, in particular by taking any and all possible action to postpone the time of gas offtake, resell the gas, and/or change the transmission route with the exception of cases where the delay was caused by GAZ-SYSTEM's willful misconduct.
- 6.10. In case of a delay in the commencement of provision of gas transmission services by GAZ-SYSTEM, GAZ-SYSTEM's liability shall be limited to the value of the lowest loss the System User could have objectively incurred and duly proven by the System User, subject to the provision of point 6.9 above with the exception of cases where the delay was caused by GAZ-SYSTEM's willful misconduct.

6.11. By submitting a bid in the Auction, the System User undertakes to ensure that the transmission contract concluded with GAZ-SYSTEM along with the appendix setting out the capacity period and level allocated to the System User in consequence of the Auction is maintained in force, throughout the duration of the capacity allocation made in accordance with the principles set out in this INC GT&C. If the transmission contract and/or the aforesaid appendix is terminated before the expiry of their term of duration of the capacity allocation made in accordance with the principles set out in these GTC INC, the System User shall pay to GAZ-SYSTEM a contractual penalty calculated in accordance with clause 6.12.

6.12. The contractual penalty shall be equal to a part of project implementation costs incurred by GAZ-SYSTEM, calculated as follows:

$$\mathbf{K = C \times M}$$

Where:

K — expenditures incurred by GAZ-SYSTEM in Project implementation that the System User is obliged to pay (in PLN);

C — sum of expenditures incurred by GAZ-SYSTEM and estimated expenditures GAZ-SYSTEM has to pay toward Project implementation (in PLN) in particular any compensation to the Project's contractors for design and construction works and/or other TSOs due to resignation from the implementation of the Project, with the exception of cases where the termination by the System User of the transmission contract or the attachment specifying the level and period of the capacity allocated to a given System User as a result of the Auction is a consequence of force majeure;

M — ratio of the sum total of capacity (contracted capacity) allocated to the System User throughout its duration to the sum of the total capacity of the Entry/Exit Point allocated by GAZ-SYSTEM in the Auction throughout its duration;

6.13. The value of project-implementation costs incurred by GAZ-SYSTEM S.A. that the System User has to pay shall be adjusted, after the commissioning of the Project, pro rata to the positive or negative difference between the planned and actual project implementation costs incurred by GAZ-SYSTEM.

6.14. If the transmission contract entered into between the System User and GAZ-SYSTEM and/or the appendix setting out the capacity

period and level allocated to the User in the Auction is terminated after the commissioning of the Project, the value of the costs determined in accordance with clause 6.12 shall be reduced pro rata as at the moment of termination, in accordance with the following formula:

$$\mathbf{SK = K \times (1 - R/Z)}$$

where:

SK — adjusted value of expenditures incurred by GAZ-SYSTEM in Project implementation and costs of Project implementation that the System User is obliged to pay (in PLN);

K — 100% of the expenditures toward the implementation and costs of implementation of the Project by GAZ-SYSTEM that the System User is obliged to pay (in PLN);

R — sum of capacity allocated to the System User and consumed during the period from Project commissioning to the submission of termination notice by the System User;

Z — sum of capacity (contracted capacity) allocated to the System User in the binding phase of incremental capacity allocation.

- 6.15. GAZ-SYSTEM shall have the right to draw from the amount of financial security submitted by the System User towards the reimbursement of costs.
- 6.16. If GAZ-SYSTEM's damage arising from the early termination by the System User of the transmission contract and/or the appendix setting out the capacity level and period allocated to the System User as a result of the Auction exceeds the value of the cost reimbursement due as calculated in accordance with the provisions of clauses 6.11. to 6.14., GAZ-SYSTEM shall have the right to claim compensation in excess of the value of the cost reimbursement due.
- 6.17. After the commissioning of the Project, the System User shall have the right to resell the capacity acquired in the Auction, on terms set forth in the TNC, on condition that the buyer shall accede to the System User's rights and obligations set forth in this INC GT&C.