

V NKO G 01/21/1

Gas Connect Austria GmbH
Management
Floridsdorfer Hauptstraße 1
1210 Wien
ÖSTERREICH

via Acta Nova with confirmation of service

OFFICIAL DECISION

As a result of the proceedings conducted upon application by GAS CONNECT AUSTRIA GmbH, the E-Control Executive Board, in line with Article 28 of Commission Regulation (EU) 2017/459 establishing a network code on capacity allocation mechanisms in gas transmission systems and repealing Regulation (EU) No 984/2013 (CAM NC), OJ L 72/1, 17.03.2017, and in line with section 32 para. 1 *Gaswirtschaftsgesetz* (Gas Act) 2011, Federal Law Gazette (FLG) I no 107/2011, as amended by the federal act in FLG I no 150/2021, in conjunction with section 7 para. 1 and section 21 para. 1 *Energie-Control-Gesetz* (E-Control Act), FLG I no 110/2010, as amended by the federal act in FLG I no 150/2021, hands down the following

I. Decision

The applications by GAS CONNECT AUSTRIA GmbH of 28 May 2021 are granted as follows:

1. The application for marketing incremental capacity in both directions at the Austrian-Czech Reintal interconnection point is granted for offer level 1 (CZATi small) and offer level 2 (CZATi large).
2. The application for capacity allocation at the Reintal interconnection point is granted for both offer levels subject to positive economic tests in line with Article 22 CAM NC, and under the following conditions:
 - a) the basis (costs) for the calculation of the present value under Article 22(1)(b) CAM NC before discounting is
 - for offer level 1: 131,392,512 EUR
 - for offer level 2: 265,654,545 EUR

- b) the discounted present value of the estimated costs under Article 22(1)(b) CAM NC, at a 4.982% discount rate, is
 - for offer level 1: 93,271,375 EUR
 - for offer level 2: 188,579,733 EURand
 - c) the calculated present value of the estimated revenue under Article 22(1)(a) CAM NC, at a 0.8 f-factor, is
 - for offer level 1: 74,560,176 EUR
 - for offer level 2: 150,894,273 EUR
3. The “Czech-Austrian IP Reintal Addendum to the Frame Capacity Contract”, which concerns the participation of network users in the binding capacity allocation phase under Article 29 CAM NC as part of the incremental capacity process at the Reintal interconnection point for the years from 2022 to 2028, is approved.

Grounds

I.1 Proceedings

The proceedings are based on an incremental capacity process. In the framework of this incremental capacity process, GAS CONNECT AUSTRIA GmbH (GCA) and the adjacent Czech transmission system operator NET4GAS s.r.o. (NET4GAS) jointly conducted a market demand assessment according to Article 26 CAM NC between 1 July 2019 and 26 August 2019. The market demand assessment was conducted so as to assess system user demand for incremental capacity at a border of the entry/exit system and to determine whether the design phase for an incremental capacity project should be opened.

The demand assessment report by NET4GAS and GCA of 21 October 2019 found demand for capacity at the border between the eastern market area in Austria and the Czech market area; more specifically, there was demand for capacity on both sides of the relevant point Reintal. The identified need for incremental capacity from the Czech Republic into the eastern market area in Austria was 1,277,397.26 kWh/h/y for the gas years from 2020/2021 to 2034/2035. In response to this interest revealed by the market demand assessment under Article 26(13) CAM NC, GCA and NET4GAS decided to initiate an incremental capacity project.

In line with Article 27(2) CAM NC, a technical study was conducted in order to design the incremental capacity project and coordinate offer levels based on technical feasibility and the market demand assessment report.

In addition, between 27 October 2020 and 16 November 2020, Austrian Gas Grid Management AG (AGGM) consulted the Austrian coordinated network development plan (CNDP) 2021-2030 at national level. In Austria, the incremental capacity projects subject to this official decision had the numbers GCA 2015/01a and GCA 2020/01.

The design phase, conducted together with NET4GAS in line with Article 27 CAM NC, yielded the following two coordinated offer levels as part of the project proposal:

- (1) offer level 1 (CZATi small), with a capacity of 2,114,910 kWh/h; and
- (2) offer level 2 (CZATi large), with a capacity of 7,553,250 kWh/h.

Pursuant to Article 27(3) CAM NC, the two transmission system operators publicly consulted the draft project proposal from 14 January 2020 until 14 February 2020. One market participant responded to this consultation, submitting that the f-factor should be 1.

On 5 November 2020, the project promoters (NET4GAS and GCA) submitted their project proposals for incremental capacity between Austria and the Czech Republic in line with Article 28(1) CAM NC to the Czech regulatory authority (ERU) and to E-Control. At the same time, GCA applied for inclusion of the costs resulting from this project in the allowed cost under section 68(2) Gas Act 2011. The official parties listed in this section had the opportunity to use their right to be heard between 21 December 2020 and 18 January 2021, as part of the proceedings V MET G 03/20. Following this, GCA withdrew the applications pursuant to section 68(2) Gas Act 2011 and Article 28 CAM NC via letter dated 16 February 2021, without giving detailed reasons.

Given this withdrawal, the authority conducted the procedure to set the budgeted costs and projected amounts on its own initiative (cf. V MET G 01/21/2). The budgeted costs and projected amounts were laid down in an official decision on 26 April 2021.

The procedure under Article 28 CAM NC could not be concluded within the six-month deadline foreseen therein, which is why the ERU and E-Control jointly applied for an extension of the deadline by another six months with ACER, in line with Article 6(10) Regulation (EU) 2019/942 establishing a European Union Agency for the Cooperation of Energy Regulators (ACER Regulation), OJ L 158/22, 14.06.2019. ACER granted this application in decision 09/2021 of 23 July 2021, extending the deadline to 5 November 2021.

On 28 May 2021, GCA submitted a new application with the project proposal for incremental capacity at the Reintal interconnection point under Article 28(1) CAM NC.

On 30 June 2021, NET4GAS submitted a revised application with the project proposal for incremental capacity at the Reintal interconnection point under Article 30(1) CAM NC to ERU.

On 9 September 2021, a written exchange between ERU and E-Control confirmed that the two project proposals were complete and that their contents corresponded, and that therefore, the regulators envisaged handing down approvals by 5 November 2021 at the latest.

I.2 Legal assessment

a) Incremental capacity process

Pursuant to Article 28 CAM NC, following the consultation and finalisation of the design phase for an incremental capacity project in accordance with Article 27, the involved transmission system operators must submit the project proposal for an incremental capacity project to the relevant national regulatory authorities for coordinated approvals. The regulatory authorities must arrive at coordinated decisions and must consider the views of the other national regulatory authorities involved.

The project proposal must also be published by the involved transmission system operators in one or more official languages of the member state and to the extent possible in English and must include at least the following information:

- (a) all offer levels, reflecting the range of expected demand for incremental capacity at the relevant interconnection points as a result of the processes provided for in Article 27(3) and Article 26;
- (b) 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;
- (c) timelines of the incremental capacity project, including any changes since the consultation described in Article 27(3), and measures to prevent delays and minimise the impact of delays;
- (d) the parameters defined in Article 22(1);
- (e) whether an exceptionally extended time horizon for contracting capacity for an additional period of up to 5 years beyond the allocation of up to 15 years after the start of operational use may be required, in accordance with Article 30;
- (f) where applicable, the proposed alternative allocation mechanism including its justification pursuant to Article 30(2) as well as the conditions specified by the transmission system operator for the binding phase pursuant to Article 30(3);
- (g) where a fixed price approach is followed for the incremental capacity project, the elements described in Article 24(b) of Commission Regulation (EU) 2017/460.

E-Control is established as the Austrian regulatory authority for electricity and gas, by virtue of section 2 para. 1 E-Control Act. Pursuant to section 7 para. 1 in conjunction with section 21 para. 1 E-Control Act, the E-Control Executive Board is responsible for carrying out the tasks entrusted to the regulatory authority by Union law, and more specifically by the CAM NC.

b) Approval procedure of the general terms and conditions for transmission system operators

Pursuant to section 32 Gas Act 2011, the regulatory authority is competent for the approval of and changes to the general terms and conditions for transmission system operators (GTC TSO). To the extent necessary to comply with the Gas Act 2011, approval may be granted subject to additional stipulations and conditions, and the GTC TSO must be amended as requested by the regulatory authority. The approved general terms and conditions must be published in German and English on the internet.

In accordance with section 32 para. 2 Gas Act 2011, the GTC TSO must be non-discriminatory and may not contain any abusive practices or unjustified restrictions nor jeopardise security of supply or quality of service.

They must, in particular, be formulated

- to ensure that the tasks incumbent upon the transmission system operator are performed;
- to make for an objective link between the obligations of the system users and the services provided by the transmission system operator;
- to assign the mutual obligations in a balanced manner that reflects causation;
- to contain specifications on the technical requirements for connection to the system at the system connection point and for all measures to prevent negative effects on the system of the transmission system operator or other facilities;
- to contain regulations on the allocation of costs based on cost causation;
- to be clear and logical;
- to contain definitions of terms which are not generally understood;
- to be consistent with existing law.

Section 32 para. 3 Gas Act 2011 foresees that the GTC TSO must contain at least

- the rights and obligations of the contracting parties;
- the technical minimum requirements for network access;
- the quality requirements for the injection and transport of gas;
- the points available for injection and withdrawal of gas;
- the various services to be provided by the transmission system operator relating to system access, and the quality levels offered for these services;
- the procedure and modalities for network access applications;
- effective provisions on the criteria and manner in which unused committed system capacity must be made available to third parties;
- the data to be supplied by system users;
- the obligation of system users to submit nominations, respecting the deadlines laid down in the market rules, to indicate the utilisation of their booked capacity;

- a time period of no more than ten days following receipt within which the transmission system operator has to respond to applications for network access, including the communication and cooperation with other transmission system operators;
- the contract term, conditions for extension and termination of services and the contractual relationship;
- any compensation and refund arrangements which apply if contracted service quality levels are not met, as well as information on dispute settlement mechanisms provided by law;
- the principles underlying clearing and settlement;
- the type and form of billing;
- capacity booking fees;
- the procedure to be followed for reporting technical problems and failures and their repair.

These GTC TSO form the basis for the TSOs' contracts with system users.

I.3 Legal assessment of the incremental capacity process at the Reintal interconnection point

The project proposal submitted by GCA on 28 May 2021 fulfils the approval criteria listed in Article 28(1) CAM NC.

I.3.a. Offer level (Article 28(1)(a) CAM NC)

GCA has applied for marketing capacities based on the offer levels 1 and 2 that are referenced in the project proposal and are coordinated with the adjacent transmission system operator NET4GAS. This is approved.

The two offer levels are auctioned in parallel. Allocation of the capacity depends on the economic test pursuant to Article 22. If both offer levels have a positive economic test outcome, as defined in Article 22(2)(a) CAM NC, then Article 22(3) CAM NC applies and the larger offer level 2 must be realised.

Pursuant to Article 28(1)(a) CAM NC, the offer levels must reflect the range of expected demand for incremental capacity as a result of the consultation processes provided for in Article 27(3) and the market demand assessment in Article 26.

Offer level 1 (on page 3 of the German-language submission of 28 May 2021) includes 2,114,910 kWh/h of incremental capacity. Considering the amount to be set aside for short-term marketing under Article 8(8) CAM NC, offer level 1 corresponds to the demand of 1,277,397 kWh/h that was determined in line with Article 26 CAM NC.

Offer level 2 (on page 3 of the German-language submission of 28 May 2021) includes 7,553,250 kWh/h of incremental capacity. This goes beyond the demand that was determined in line with Article 26 CAM NC.

I.3.b. General rules and conditions (Article 28(1)(b) CAM NC)

GCA submitted its GTC TSO of 23 September 2013 for approval to E-Control, and E-Control approved these GTC TSO by official decision dated 27 September 2013, in line with section 32 Gas Act 2011, FLG I no 107/2011, in conjunction with point 2.2.4 of Annex I Regulation (EU) No. 715/2009 on conditions for access to the natural gas transmission networks, OJ L 211/36, 14.08.2009, and with section 7 para. 1 E-Control Act. These general terms and conditions extend to GCA's project proposal and to the incremental capacity to be offered on this basis.

However, GCA has submitted for approval additions to its general terms and conditions in connection with the project proposal, in line with Article 28(1)(b) and Article 27(3)(e) CAM NC. These additions are the subject matter of the "Czech-Austrian IP Reintal Addendum to the Frame Capacity Contract" that is enclosed with the project proposal. Network users that wish to participate in the binding capacity allocation phase under Article 29 CAM NC and to access capacity in the incremental capacity process must sign this addendum in addition to the frame capacity contract. It provides an extraordinary right for GCA to withdraw from binding capacity bookings at the Reintal interconnection point during a specified period of time.

The withdrawal right on the Austrian side of the interconnection point is necessary because the general terms and conditions of the Czech transmission system operator, NET4GAS, contain a right to withdrawal that becomes applicable if any permits necessary for planning and construction should still be incomplete on 30 April 2026, or if land-use agreements should be missing. In these cases, NET4GAS can unilaterally cancel its capacity contracts. The addendum to the frame capacity contract mirrors this arrangement, so that the corresponding capacity contracts on the Austrian side can then be cancelled as well.

The authority considers this addition to be adequate, given that upholding a capacity contract in Austria while the corresponding capacity (or rather, the expansion) by NET4GAS is cancelled would not make sense. The authority thus finds that the additional GTC are non-discriminatory, do not contain any abusive practices or unjustified restrictions, and they do not jeopardise security of supply or quality of service, i.e. they are in line with section 32 paras 2 and 3 Gas Act 2011.

I.3.c. Timeline (Article 28(1)(c) CAM NC)

The market demand assessment pursuant to Article 26 CAM NC for the Reintal interconnection point revealed additional capacity demand for the gas years 2020/2021 to 2034/35. GCA therefore conducted technical studies to determine the technical feasibility and the investments

necessary for the coordinated offer level together with the adjacent transmission system operator.

When GCA and NET4GAS consulted the draft project proposal in accordance with Article 27(3) CAM NC between 14 January 2020 and 14 February 2020, the timeline indicated for both offer levels referred to the gas years 2025/26 to 2039/40.

Further coordination between GCA and NET4GAS led to the final project proposal referring to the gas years 2028/29 to 2042/43 for both offer levels. This changed timeline resulted from a revision of the project implementation plan on the Czech side by NET4GAS, which itself followed a review of the planning assumptions and the expected repercussions of a variety of implementation risks.

I.3.d. Economic test (Article 28(1)(d) CAM NC)

Pursuant to Article 8(1) and (2) in conjunction with Article 17(20) and Article 22(3) CAM NC, capacity allocation at interconnection points where incremental capacity is offered depends on a positive economic test outcome.

The authority adjusts the values which GCA proposes for the economic test parameters defined in Article 22(1) CAM NC based on the planned costs and forecast quantities in official decision V MET G 01/21/2, and based on the values found in section 3 para. 4 items 4 and 5 and section 3 para 4a *Gas-Systemnutzungsentgelte-Verordnung* (Gas System Charges Ordinance) 2013, FLG II no 309/2012, as amended by the ordinance in FLG II no 437/2021. The adjusted values are as follows:

reference price in accordance with Gas System Charges Ordinance 2013 as last amended:

- offer level 1 for the flow direction from the Czech Republic into Austria: 0.85 EUR/kWh/h/y
- offer level 2 for the flow direction from the Czech Republic into Austria: 0.85 EUR/kWh/h/y
- offer level 1 for the flow direction from Austria into the Czech Republic: 1.23 EUR/kWh/h/y
- offer level 2 for the flow direction from Austria into the Czech Republic: 1.23 EUR/kWh/h/y

mandatory minimum premium in accordance with Gas System Charges Ordinance 2013 as last amended:

- offer level 1 for the flow direction from the Czech Republic into Austria: 5.01 EUR/kWh/h/y

- offer level 2 for the flow direction from the Czech Republic into Austria: 4.48 EUR/kWh/h/y
- offer level 1 for the flow direction from Austria into the Czech Republic: 0 EUR/kWh/h/y
- offer level 2 for the flow direction from Austria into the Czech Republic: 0 EUR/kWh/h/y

forecast quantity of contracted incremental capacity pursuant to the official decision in the proceedings for finding project planned costs and forecast quantities (V MET G 01/21/2 of 26 April 2021):

- project-specific forecast quantity for offer level 1 in the flow direction from the Czech Republic into Austria: 1,194,924 kWh/h/y
- project-specific forecast quantity for offer level 2 in the flow direction from the Czech Republic into Austria: 2,658,744 kWh/h/y
- project-specific quantity for offer level 1 in the flow direction from Austria into the Czech Republic: 0 kWh/h/y
- project-specific quantity for offer level 2 in the flow direction from Austria into the Czech Republic: 0 kWh/h/y

The basis (costs) for the calculations under Article 22(1)(b) CAM NC are thus as follows:

estimated increase of the approved target revenue for 15 years starting with the year of commissioning (in EUR); these are the total costs over a period of 15 years from start of operation, as laid down in the official decision in the proceedings for finding project planned costs and forecast quantities (V MET G 01/21/2 of 26 April 2021):

- offer level 1: 131,392,512 EUR
- offer level 2: 265,654,545 EUR

discount rate: 4.982%

The results of the present value calculation are thus as follows:

present value of the estimated revenue in line with Article 22(1)(a) CAM NC:

- offer level 1: 74,560,176 EUR
- offer level 2: 150,894,273 EUR

present value of the estimated costs in line with Article 22(1)(b) CAM NC:

- offer level 1: 93,271,375 EUR
- offer level 2: 188,579,733 EUR

f-factor pursuant to the Gas System Charges Ordinance 2013 as last amended, to be stated pursuant to Article 22(1)(c) CAM NC:

- offer level 1: 0.8
- offer level 2: 0.8

I.3.e. Extended time horizon for contracting capacity (Article 28(1)(e) CAM NC)

Given that the project does not involve more than two entry-exit systems, Article 30 CAM NC is not applicable. Therefore, the submission does not apply for an extended time horizon for marketing capacity under Article 28(1)(e) CAM NC. Also, the market demand assessment pursuant to Article 26 CAM NC and the consultation pursuant to Article 27(3) CAM NC indicate that an ascending clock auction is an appropriate capacity allocation mechanism for the incremental capacity.

I.3.f. Alternative allocation mechanism (Article 28(1)(f) CAM NC)

Given that the project does not involve more than two entry-exit systems, Article 30 CAM NC is not applicable. Therefore, the submission does not propose an alternative allocation mechanism under Article 28(1)(f) CAM NC. Also, the market demand assessment pursuant to Article 26 CAM NC and the consultation pursuant to Article 27(3) CAM NC indicate that an ascending clock auction is an appropriate capacity allocation mechanism for the incremental capacity.

I.3.g. Fixed price approach (Article 28(1)(g) CAM NC)

The Austrian regulatory framework does not provide for a fixed price approach as described in Article 28(1)(g) CAM NC, which is why the submission does not propose such an approach.

II. Legal recourse

Appeals against this official decision can be brought before the *Bundesverwaltungsgericht* (federal administrative court) in accordance with section 7 *Verwaltungsgerichtsverfahrensgesetz* (Proceedings of Administrative Courts Act). Any appeals must reach E-Control within four weeks of this official decision being served. They must contain the reference number of the official decision, reference the relevant authority, detail the reasons for which the appellant deems the decision to be unlawful, and lay out the remedy sought. Appeals are subject to payment of a EUR 30.- charge under section 14(6)(5)(1)(b) *Gebührengesetz* (Fees and Duties Act) 1957, FLG no 267/1957, as last amended, in conjunction with section 2 *BuLVwG-Eingabengebührverordnung* (Ordinance on Fees and Duties for Submissions to the Federal and Provincial Administrative Courts), FLG II no 387/2014, as last amended. This charge must be paid into the account of the Inland Revenue Office for Fees, Transfer Taxes and Gambling in line with section 1 para. 3 Ordinance on Fees and Duties for Submissions to the Federal and Provincial Administrative Courts, stating the purpose of the transfer.

III. Fees and charges

A charge of EUR 42.90 pursuant to section 14(6)(1) Fees and Charges Act 1957, FLG no 267/1957, as last amended, and a charge for enclosures of EUR 23.40 overall pursuant to section 14(5)(1) Fees and Charges Act apply for this official decision. The total sum of **EUR 66.30** must be paid into the following account:

Account holder: Energie-Control Austria

Bank: **ERSTE BANK**

BIC: GIBAATWWXXX

IBAN: AT57 2011 1403 1846 4201

(cf. section 3 para. 2 Fees and Charges Act 1957, as last amended)

Energie-Control Austria für die Regulierung der Elektrizitäts- und Erdgaswirtschaft
(E-Control)

Vienna, 04.11.2021

Executive Board

Wolfgang Urbantschitsch
Executive Director

electronic signature

Alfons Haber
Executive Director

electronic signature

Appendix 1: GCA submission

Appendix 2: Czech-Austrian IP Reintal Addendum to the Frame Capacity Contract