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GAS CONNECT AUSTRIA GmbH
Geschäftsführung
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Registered letter

O F F I C I A L D E C I S I O N

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 Regulation (EU) 2017/459 establishing a network code on capacity allocation mechanisms in gas transmission systems and repealing Regulation (EU) No 984/2013, OJ L 72, 17.3.2017, p. 1, in conjunction with section 7 para. 1 and section 21 para. 1 *Energie-Control-Gesetz* (E-Control Act), Federal Law Gazette (FLG) I no 110/2010 as amended by the federal act in FLG I no 108/2017, hands down the following

I. Decision

The submission of GAS CONNECT AUSTRIA GmbH of 9 April 2018 for approval of the project proposal for the physical interconnection point Mosonmagyaróvár (s. annex 1) is approved.

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II. Grounds:

II.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 Hungarian transmission system operator FGSZ Zrt (FGSZ) jointly conducted a market demand assessment according to Article 26 of Regulation (EU) 2017/459 (CAM NC) between 6 April 2017 and 1 June 2017. 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 FGSZ and GCA of 27 July 2017 found demand for capacity at the border between the eastern market area in Austria and the Hungarian market area that could not be covered with existing capacities. More specifically, this referred to demand on the Austrian side of the Mosonmagyaróvár entry point and on the Hungarian side of the Mosonmagyaróvár exit point (i.e. for transports from Hungary to Austria).

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

In addition, between 6 September 2017 and 3 October 2017, Austrian Gas Grid Management AG (AGGM) consulted the Austrian coordinated network development plan CNDP 2018-2027 at national level. In Austria, the incremental capacity projects had the numbers GCA 2015/05 and GCA 2017/01.

As provided for in Article 27(3) CAM NC, FGSZ and GCA conducted a joint public consultation on the draft project proposal between 19 October 2017 and 19 November 2017. Four market participants responded to the consultation. They demanded a right to terminate up to a specified deadline any contracts for this incremental capacity so as to be able to synchronise their transport portfolios with other relevant projects in the region. In response, the TSOs closely cooperated with the national regulatory authorities and developed the following rule for a right of withdrawal: system users that receive incremental capacity have the right to withdraw from their capacity contracts without having to give reasons until 24 April 2019.

On 9 April 2018, GCA submitted the coordinated project proposal to E-Control for approval under Article 28(1) CAM NC.

Originally, the project had been intended to deliver additional capacity under the RO-HU-AT project; the TSOs GCA and FGSZ and the regulatory authorities had thus already been involved in intensive discussions and coordination activities for several years even before GCA submitted it to E-Control.

As provided in Article 28(2) CAM NC, on 11 April 2018 E-Control informed the Hungarian regulatory authority that we received the GCA submission, with a view to coordinating decisions. Also on 11 April 2018, GCA submitted the joint TSO proposal that had been agreed in cooperation with the regulatory authorities to the Hungarian regulatory authority and to FGSZ for information.

During a working meeting between the regulatory authorities on 12 April 2018, the Hungarian regulatory authority informed that they had also received the project proposal from FGSZ and signalled that they were leaning towards rejecting it. The regulatory authorities discussed the situation in detail. The Austrian regulatory authority underlined the results of the market demand assessment pursuant to Article 26 CAM NC and the importance of the project to complete PCI corridor 6.24 in Annex VII of Commission Delegated Regulation (EU) 2018/540 amending Regulation (EU) No 347/2013 as regards the Union list of projects of common interest (cf. also chapter II.3.c). In light of this, E-Control indicated that we were going to approve GCA's application of 9 April 2018. The Hungarian regulatory authority announced that they would double-check the facts.

On 20 April 2018, E-Control sent an English-language draft of the present decision to the Hungarian regulatory authority, so as to arrive at a coordinated decision in accordance with Article 28(1) CAM NC. This communication emphasised that timing was of the essence given that the decisions needed to be published by 2 May 2018 under Article 28(3) CAM NC, and asked for a reply regarding the next steps by 25 April 2018. The Hungarian regulatory authority replied within this timeframe, on 25 April 2018. In their response, they rejected the submission in Hungary on the grounds that they considered the project proposal to entail significant investment needs in Hungary and therefore to negatively impact wholesale and consumer prices in Hungary and the region. Further, they did not consider it very likely that the project would actually be realised in addition to the HU-SK-AT project, which they believed would cover the identified demand at lower investment cost.

II.2. Legal basis

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 paragraph 3 of Article 27 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 paragraph 3 of Article 27, 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 the 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 approved 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 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 CAM NC.

II.3. Legal assessment

The project proposal submitted by GCA on 9 April 2018 fulfils the approval criteria listed in Article 28(1) CAM NC.

II.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 FGSZ. 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 paragraph 3 of Article 27 and the market demand assessment in Article 26.

Offer level 1 (on page 4 of the German-language submission of 9 April 2018) includes 5,740,470 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 6,378,300 kWh/h¹ that was determined in line with Article 26 CAM NC.

¹ cf. Demand assessment report for incremental capacity between Austria (Market Area East) and Hungary (<https://www.gasconnect.at/fileadmin/Fachabteilungen/ST/DE/MDAR-HU-AT-27Jul2017.pdf>)

Offer level 2 (on page 4 of the German-language submission of 9 April 2018) includes 10,007,100 kWh/h of incremental capacity. Considering the amount to be set aside CAM NC for short-term marketing under Article 8(8) CAM NC, offer level 1 corresponds to the demand of 11,115,307 kWh/h² that was determined in line with Article 26 CAM NC.

We would also like to point to a condition included in the official decision of 19 January 2018 (V KNEP G 01/17), namely to optimise the technical and economic efficiency of the measures planned in the projects GCA 2015/05 (Entry Mosonmagyaróvár) and GCA 2017/01 (Entry Mosonmagyaróvár Plus) and thereby to reduce the project costs before the final investment decision is taken.

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

The submission does not apply for approval of general terms and conditions. This is because GCA had already submitted its *Allgemeine Bedingungen des Netzzugangs zu Fernleitungen der GAS CONNECT AUSTRIA GmbH* (General terms and conditions for transmission network access of GAS CONNECT AUSTRIA GmbH) of 23 September 2013 for approval to E-Control. In line with section 32 *Gaswirtschaftsgesetz* (Natural Gas Act) 2011, FLG I no 107/2011, in conjunction with point 2.2.4 of Annex I of Regulation (EU) No. 715/2009 on conditions for access to the natural gas transmission networks, OJ L 211 of 14.08.2009, p. 36, and with section 7 para. 1 E-Control Act, the regulatory authority approved these general terms and conditions in an official decision issued on 27 September 2013.

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 the following additions to its general terms and conditions in connection with the project proposal, in line with Article 28(1)(b) CAM NC and Article 27(3)(e) CAM NC: GCA shall grant system users that receive incremental capacity the right to withdraw from their capacity contracts without having to give reasons until 24 April 2019. Such withdrawal becomes effective if an original notification of withdrawal, stamped and signed by the system user, reaches GCA by 15.59 hrs CE(S)T on 24 April 2019. System users must pay a one-off charge to the amount of 0.033% of the original amount payable under the capacity contract and transfer it to an account stated by GCA within 15 days from the date of the invoice. This withdrawal charge replaces any and all payment obligations of the system user from the capacity contract. The capacity contract is considered to be terminated.

This right to withdrawal is introduced to account for the fact that system users had underlined that the demand they expressed in line with Article 26 CAM NC depended on the booking situation at other interconnection points.³

GCA's publication under Article 28(3)(b) CAM NC shall include its general terms and conditions and the additional withdrawal rules, reflecting the modalities from their 9 April 2018 submission.

² cf. Demand assessment report for incremental capacity between Austria (Market Area East) and Hungary (<https://www.gasconnect.at/fileadmin/Fachabteilungen/ST/DE/MDAR-HU-AT-27Jul2017.pdf>)

³ cf. page 5 of the Demand assessment report for incremental capacity between Austria (Market Area East) and Hungary (<https://www.gasconnect.at/fileadmin/Fachabteilungen/ST/DE/MDAR-HU-AT-27Jul2017.pdf>)

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

The market demand assessment pursuant to Article 26 CAM NC for the Mosonmagyaróvár interconnection point revealed additional capacity demand for the gas years 2022/23-2036/37 (offer level 1) and 2019/20-2036/37 (offer level 2).

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 FGSZ consulted the draft project proposal in accordance with Article 27(3) CAM NC between 19 October 2017 and 19 November 2017, the timeline indicated for both offer levels referred to the gas years 2022/23-2036/37. While the 9 April 2018 submission confirms this same timeline for GCA, it also states that there will be a two-year delay on the FGSZ side (cf. page 5, point B in the German-language submission). In order to comply with Article 19 CAM NC, GCA will adjust the timeline for its capacity so that the incremental capacity stated in point II.3.a can be offered as bundled 15-year capacity at the earliest time possible, i.e. from 1 October 2024.

The regulatory authority is not aware of the grounds for the two-year delay on the Hungarian side, but does not consider them relevant to the present decision. Even so, the regulatory authority regrets that FGSZ unilaterally changed the timeline at such an advanced stage of the incremental capacity process. Such changes can lessen a project's chances for a positive economic test under Article 22 CAM NC and reduce the likelihood of the projects of PCI corridor 6.24 ("Cluster phased capacity increase on the Bulgaria — Romania — Hungary — Austria bidirectional transmission corridor (currently known as ROHUAT/BRUA)") being realised in a coordinated way.

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

The values for the economic test parameters defined in Article 22(1) CAM NC as proposed in the submission are approved.

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 values for the economic test parameters proposed in the submission correspond to the values approved by E-Control in its official decision of 22 February 2018 (V MET G 05/17).

The reference price used for the calculation corresponds to the rate set in section 3 para. 2 item 5 of the *Gas-Systemnutzungsentgelte-Verordnung* (Gas System Charges Ordinance) 2013 as last amended. The mandatory minimum premium used for the calculation corresponds to the amount set in section 3 para. 4 item 2 (for offer level 1) and item 4 (for offer level 2) of the 2nd 2018 amendment of the Gas System Charges Ordinance 2013.

For the project to be realised, the corresponding FGSZ project on the other side of the interconnection point must achieve a positive economic test outcome under Article 22(3) CAM NC as well.

The project costs on the Hungarian side, i.e. also the parameters under Article 22(3) CAM NC, have displayed an unfortunate development. Even though this is not material for the present decision, as with the case of the delay mentioned under point II.3.c, the regulatory authority would like to point this out. The RO-HU-AT rulebook in its most recent edition and the joint draft project proposal by GCA and FGSZ under Article 27(3) CAM NC do not offer reasonable grounds for the amount of the investment cost for the submitted project proposal, and in particular for its increase over time. Most system users also heavily criticised this development on the FGSZ side in their reactions to GCA and FGSZ's consultation of the joint project proposal under Article 27(3) CAM NC. Even so, the Hungarian regulatory authority did not in scrutinise the values proposed by FGSZ its negative decision or consider adjusting them.

II.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 contracting 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.

II.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.

II.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.3.h. Consideration of the legal statement of the Hungarian regulatory authority

The Hungarian regulatory authority handed down a negative decision for FGSZ's submission. They did not, however, make any substantive comments about the approval of GCA's submission in Austria. E-Control therefore makes reference to the position of the Hungarian regulatory authority issued in response to FGSZ's submission in Hungary.

E-Control fully agrees that network development should be done efficiently. In this context, the Hungarian regulatory authority points to the more cost-efficient HU-SK-AT project, but leaves aside a number of crucial aspects. First, delays in the coordination between the TSOs and national regulatory authorities have made it impossible so far to set the timeline for the offer of incremental capacity on HU-SK-AT, and we do not expect this issue to be solved soon. Depending on the investment decisions for production projects in the Black Sea, this could

jeopardise realisation of the PCI corridor 6.24 and the diversification of gas sourcing in the region. Considering the possibility for system users to withdraw from capacity contracts that is introduced under the submitted project proposal, this risk could be averted without negatively impacting the commercial viability of any incremental capacity that might eventually be offered on HU-SK-AT.

Instead of creating administrative barriers for the market to work, it would be left to the discretion of system users to choose the project better suited to their needs. The arguments brought by the Hungarian regulatory authority also leave aside the fact that the technical setup of the HU-SK-AT project, if realised, would only be able to accommodate offer level 1, even though the market demand assessment under Article 26 CAM NC showed that there is sufficient demand for offer level 2. The submitted project proposal is the only option that addresses this kind of demand for incremental capacity. In light of the above, and following the comprehensive preparations for offering incremental capacity at the Mosonmagyaróvár interconnection point, E-Control believes that this offer should be made available as quickly as possible, in line with the present plans.

The negative decision of the Hungarian regulatory authority does not address the contents of the project proposal under Article 28(1) CAM NC in any way or provide corresponding reasoning. Neither does the Hungarian regulatory authority express any immediate objection to E-Control approving GCA's submission. Also, the GCA submission complies with the legal requirements and provides sufficient reasoning. E-Control therefore considers that there are no reasons upon which we should reject GCA's submission.

III. 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 delivered. 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.

IV. Fees and charges

A charge of EUR 14.30 pursuant to section 14(6)(1) Fees and Charges Act 1957, FLG no 267/1957 as last amended and a charge for four enclosures of EUR 63.10 overall pursuant to section 14(5)(1) Fees and Charges Act apply for this official decision. The total sum of **EUR 77.40** 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, 27. April 2018

Executive Board

Wolfgang Urbantschitsch
Executive Director

Andreas Eigenbauer
Executive Director

Annex 1: GCA submission

This official decision is addressed to:

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