



DECISION

In the administrative procedure pursuant to

section 29(1) of the Energy Industry Act (EnWG) in conjunction with section 56(1) first sentence para 2, second sentence EnWG in conjunction with Article 6(11) and Article 7(3) of Regulation (EC) No 715/2009 in conjunction with Article 25(1) and Article 28(1) and (2) of Regulation (EU) 2017/459

with respect to

the approval of a project proposal for an incremental gas transport capacity project concerning the interconnection point between the GASPOOL market area and Poland

vis-à-vis ONTRAS Gastransport GmbH, Maximilianallee 4, 04129 Leipzig, legally represented by its management board,

- applicant -

Ruling Chamber 9 of the Bundesnetzagentur für Elektrizität, Gas, Telekommunikation, Post und Eisenbahnen, Tulpenfeld 4, 53113 Bonn,

represented by

the Chair	Helmut Fuß
the Vice Chair	Anne Zeidler and
the Vice Chair	Dr. Ulrike Schimmel

decided on 17 April 2019:

- 1.) The project proposal (Annex 1 to this decision) for a project for an incremental gas transport capacity project relating to the GCP GAZ-SYSTEM/ONTRAS interconnection point as part of the "2017-2019 Incremental Cycle", including the economic test parameters, is approved.
- 2.) The approval shall cease to have effect (condition subsequent), in the event that by 30 April 2019 neither
 - a.) a contractual arrangement has been reached between the applicant and GAZ-SYSTEM S.A. on which single booking platform is to be used to offer capacity on both sides of the GCP GAZ-SYSTEM/ONTRAS interconnection point in the annual auction of 1 July 2019, nor
 - b.) a decision of the Agency for the Cooperation of Energy Regulators has been rendered as to which booking platform is to be used during the period of the aforementioned annual auction at the aforementioned interconnection point.
- 3.) The costs are reserved.

Rationale

I.

The procedure relates to the approval of a project proposal for incremental gas transport capacity pursuant to 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. It relates exclusively to the border between the German GASPOOL market area and the Polish E-Gas Transmission System market area, but not to the border between GASPOOL and the Polish ISO management system for the Yamal.

The relevant market areas are connected here via the "GCP GAZ-SYSTEM/ONTRAS" virtual interconnection point (the "GCP interconnection point"). Since 1 April 2016, the three physical interconnection points at Kamminke, Lasów and Gubin have been grouped together under the GCP interconnection point as one virtual network interconnection point. The capacities of all three points are marketed – independent of the technical management – as capacities from a single point. The German side of this virtual point, as well as the physical points, are operated by the applicant; the Polish side is operated by GAZ-SYSTEM S.A. ("GAZ-SYSTEM").

The current technical circumstances are as follows: In the flow direction from GASPOOL to Poland, both transmission system operators can offer a firm, freely allocable entry/exit capacity (technically available capacity; in tables: "TAC") of 2,029,300 kWh/h/a. In the opposite flow direction, there is a discrepancy between the applicant's technically available entry capacity (3,624 kWh/h/a) on the one side and the GAZ-SYSTEM technically available exit capacity (1,118,624 kWh/h on a daily basis and 561,124 kWh/h/a) on the other side.

Transmission system operator	Capacity type (flow direction)	TAC (kWh/h/a)
ONTRAS (applicant)	Exit capacity (FZK*; GASPOOL → Poland)	2,029,300
GAZ-SYSTEM	Entry capacity (FZK; GASPOOL → Poland)	2,029,300
ONTRAS (applicant)	Entry capacity (FZK; Poland → GASPOOL)	3,624
GAZ-SYSTEM	Exit capacity (FZK; Poland → GASPOOL)	561,124 (1,118,624 on a daily basis) (only 3,624 usable)
Data according to internet publications as at 11 April 2019 at: ONTRAS: https://transparency.entsog.eu GAZ-SYSTEM: https://swi.GAZ-SYSTEM.pl/swi/public/#!/ksp/available/capacity?lang=en *FZK: firm, freely allocable capacity		

Table 1: Current technically available capacity

As the two gas transmission system operators have not been able to agree on a sole capacity booking platform over several years of negotiations, corresponding entry or exit capacity from both sides have been marketed separately ("unbundled") up to now at the GCP interconnection point.

(1) Non-binding market demand indications

From 6 April 2017 to 1 June 2017, Vereinigung der Fernleitungsnetzbetreiber e.V. (association of transmission system operators; hereinafter: "FNB-Gas") gave all network users the opportunity, on behalf of the German transmission system operators, to submit non-binding capacity demand indications for the German market area borders. The aim of this was to analyse whether the capacity needs indicated by network users for a market area border could be covered by the existing transmission system infrastructure or whether additional gas transport capacity would need to be created for this purpose. The Polish transmission system operator GAZ-SYSTEM took a similar approach.

Within the context of this non-binding market survey, the applicant and GAZ-SYSTEM received demand indications for the GCP interconnection point to raise the technically available firm capacity in the direction of flow from Poland to GASPOOL to 2,029,300 kWh/h/a, so that this corresponded to the reverse flow capacity. Consequently, an additional 2,025,676 kWh/h/a entry capacity was requested from the applicant and an additional 910,676 kWh/h/a exit capacity was requested from GAZ-SYSTEM.

Transmission system operator	Capacity type (flow direction)	Current TAC (kWh/h/a)	Capacity demand indications in kWh/h/a (additional requirement)
ONTRAS (applicant)	Exit capacity (GASPOOL → Poland)	2,029,300	No demand indication or less than/equal to TAC
GAZ-SYSTEM	Entry capacity (GASPOOL → Poland)	2,029,300	No demand indication or less than/equal to TAC
ONTRAS (applicant)	Entry capacity (Poland → GASPOOL)	3,624	2,029,300 (+ 2,025,676)
GAZ-SYSTEM	Exit capacity (Poland → GASPOOL)	561,124 (only 3,624 usable)	2,029,300 (+ 1,468,176)
Data according to internet publications as at 11 April 2019 at: ONTRAS: https://transparency.entsog.eu GAZ-SYSTEM: https://swi.GAZ-SYSTEM.pl/swi/public/#!/ksp/available/capacity?lang=en			

Table 2: Demand indications

The reason for the difference between the non-binding capacity demand indications received is that capacities currently offered on the Polish and German sides of the GAZ-SYSTEM/ONTRAS border point are different. The capacity offered on the Polish side does not correspond to the capacity offered on the German side (the difference is caused by the Lasów station capacity on the respective side). As a result of a lack of corresponding capacity on the German side, the capacity on the Polish side cannot be booked or used by market participants.

By implementing the present incremental capacity project it is intended to enable both system operators to offer additional firm bundled capacity of 2,025,676 kWh/h. The transmission system operators have therefore made it clear that only the capacity available on both sides (firm

capacity at the Kamminke station) of 3,624 kWh/h can be regarded as existing capacity in the project proposal.

The non-binding capacity demand indications were each subject to the qualification that interest in entry/exit capacity on one side of the GCP interconnection point would only exist when the corresponding exit/entry capacity was also provided on the other side. Interest would therefore only exist in bundled products.

In a subsequent market demand assessment, the need for incremental gas transport capacities was analysed, whereby the applicant also considered future capacities from projects that are currently still in progress. The assessment was limited to the transport direction requested and the capacity product specified in the demand indication.

Additional capacity needs - given in **Table 2** above - were determined and published in a market demand assessment report of 27 July 2017. Due to the current discrepancy between the technically available capacities of the transmission system operators involved for the flow direction from Poland to GASPOOL, the applicant needs to create 2,025,676 kWh/h/a as a firm and freely allocable capacity product in order to satisfy demand, while GAZ-SYSTEM needs to create just 910,676 kWh/h/a.

Requested from Transmission system operator	Capacity	Gas year	Amount (kWh/h/a)	Capacity product
ONTRAS (applicant)	Entry Gaspool	2019/20 - 2034/35	2,025,676	Firm, freely allocable capacity (FZK)

Table 3: Specific additional capacity needs on the part of the applicant

Requested from transmission system operator	Capacity	Gas year	Amount (kWh/h/a)	Capacity product
GAZ-SYSTEM	Exit Poland	2019/20 - 2034/35	1,468,176	Firm

Table 4: Specific additional capacity needs on the part of GAZ-SYSTEM

(2) Technical studies

The applicant and GAZ-SYSTEM then conducted technical studies in order to design an expansion plan to meet market demand and to verify its technical feasibility.

The technical studies were summarised in a consultation document and published on 19 October 2017. The market received the opportunity to submit comments up to 19 December 2017. The technical study came to the conclusion that in order to meet the need given in the non-binding demand indication, expansion measures were required at the Zodel pressure security system (DÜG). It stated that gas was provided from the Polish gas system at a pressure of between 55 and 84 bar. The FGL 218.01 pipeline with a design pressure of 84 bar

was constructed on the German side in 1992, but since then it has only been operated at a maximum pressure of 55 bar. The average operating pressure over recent years has stood at 40 bar.

If, in contrast to the main direction of flow to date, there were to be a gas flow in the direction of GASPOOL at the interconnection point, then, according to the technical studies, a pressure security system (DÜG) would need to be constructed in Zodel to provide pressure protection for the downstream system of the applicant. This measure would be implemented on the basis of DVGW (German Technical and Scientific Association for Gas and Water) Worksheet G 491. In future, in the case of a gas flow from Poland in the direction of Germany, pressure protection with a minimum pressure of 55 bar would have to be provided for the FGL 218.01 pipeline by the Zodel pressure security system.

Two to three years were proposed for coordinating, planning, approving, constructing and commissioning the pressure security system. Commissioning was therefore scheduled for the third quarter of 2022 for the 2022/23 gas business year. The project study placed the estimated cost of constructing the pressure security system in Zodel at around €2.6 million, whereby it was estimated that these costs could rise or decrease by 30% during realisation of the project.

The neighbouring Polish system operator GAZ-SYSTEM also cited the expansion measures required in relation to its network area in the consultation document. In order to enable gas transport of up to 2,025,676 kWh/h from Poland in the direction of Germany, the gas transfer station in Kielczów would need to be expanded. The project study estimated that these expansion works would take 30 months at a cost of around €1 million (rough cost estimate +/- 30%). Commissioning is planned for August 2022.

According to the technical study, the incremental gas transport capacity could be offered as of 1 April 2022, irrespective of the forthcoming market area merger. The operators of neighbouring gas transmission systems would not need to be involved.

On the basis of the technical studies, the applicant and GAZ-SYSTEM determined the yearly capacity products to be offered on the basis of the project proposal.

(3) Selection of a capacity booking platform

In the interim the Agency for the Cooperation of Energy Regulators ("ACER") has carried out a selection process for a capacity booking platform for the GCP interconnection point. This was necessary because neither the applicant and GAZ-SYSTEM nor the Bundesnetzagentur and the Polish regulatory authority were able to agree on a joint booking platform. The process was intended to facilitate the offer of what are known as bundled capacity products at the annual auction on 1 July 2019. A decision taken on 16 October 2018 (file ref. 11/2018) was made in favour of the GSA capacity booking platform (<https://gasplatform.eu>), however this was annulled

by the Agency's complaints committee on 22 February 2019 and referred back (file ref. A-002-2018). The time period for a new decision ends on 14 August 2019.

(4) Project application

In a letter dated 23 October 2018, received by the Ruling Chamber on the same day, the applicant presented its project proposal with a request for approval. Due to incorrect data, a revised version of the calculation tool used in setting the parameters for the economic test was sent to the Bundesnetzagentur on 27 November 2018 and provides the basis for this application. The project proposal contained the following information:

1. A list of the planned offer of bundled yearly capacity products:

Gas year	Offer of existing capacity (FZK; kWh/h/a)	Offer level 1 (FZK; kWh/h/a)
2019/20	3,262	Period prior to planned start of operational use
2020/21	3,262	
2021/22	3,262	
2022/23	3,262	1,826,370
2023/24	3,262	1,826,370
2024/25	2,899	1,623,440
GY 2025/26	2,899	1,623,440
GY 2026/27	2,899	1,623,440
GY 2027/28	2,899	1,623,440
GY 2028/29	2,899	1,623,440
GY 2029/30	2,899	1,623,440
GY 2030/31	2,899	1,623,440
GY 2031/32	2,899	1,623,440
GY 2032/33	2,899	1,623,440
GY 2033/34	2,899	1,623,440
GY 2034/35		1,623,440
GY 2035/36		1,623,440
GY 2036/37		1,623,440
GY 2037/38		

Table 5: Planned offer of bundled yearly capacity products

2. Additional terms and conditions relating to the project;
3. A provisional timetable for implementation;
4. The following information and parameters for the economic test:
 - a. Article 25(1)(a) of Regulation (EU) 2017/459: the reference price estimated for the time horizon of the initial offer of incremental capacity that is used for calculation of the parameter set out in Article 22(1)(a) and 24(2)(a) in the amount of €3.97/kWh/h/a.

- b. Article 22(1)(a) of Regulation (EU) 2017/459: the present value of commitments of network users for contracting capacity, used as a basis for calculation, which is calculated as the discounted sum of the following parameters:
 - i. 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;
 - ii. 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.

On the basis of the calculation tool included as an annex to the project proposal, this gives a present value of €54,935,814.44. In the text version of the project proposal, the applicant states that the binding commitments of network users required to determine the present value will result from the outcome of the 2019 annual auction and thus it can make no further statements at this juncture.

- c. Article 22(1)(b) of Regulation (EU) 2017/459: 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 in the amount of €2,831,010.58.
- d. Article 22(1)(c) of Regulation (EU) 2017/459: the f-factor in the amount of 0.78.

For details of the project proposal, in particular the derivation of the f-factor, reference is made to the project proposal of 23 October 2018 as well as to the revised tables of the economic tool of 27 November 2018 (annex 1 to this decision).

(4) By letter of 23 October 2018, GAZ-SYSTEM submitted a corresponding application to the Energy Regulatory Office (the "Polish regulatory authority").

The Bundesnetzagentur and the Polish regulatory authority communicated and coordinated matters throughout the entire process. The Bundesnetzagentur informed the Saxon regulatory authority and the Bundeskartellamt of the proceedings on 31 January 2019 and gave them the opportunity to submit comments on the draft decision.

The Ruling Chamber gave the applicant the opportunity to submit comments in a letter dated 26 February 2019. The applicant made comments in a letter dated 11 March 2019. The applicant stated that it wanted to offer and market unbundled incremental capacity where no decision on the use of a joint capacity booking platform has been taken.

The Ruling Chamber once again gave the applicant the opportunity to submit comments in a letter dated 11/04/2019. The applicant made comments in a letter dated 15/04/2019. In its statement the applicant objects to the clause (condition subsequent) set out in operative part 2

and takes the view that the offer of unbundled capacity would better suit shippers who were free to take part in the annual auction. The provision of Article 29(1) of Regulation (EU) 2017/459) was to be interpreted restrictively.

For further details, please refer to the contents of the file.

II.

The project proposal (annex 1 to this decision) is hereby approved by this decision. The approval also extends to the economic test parameters.

This approval is granted under the condition subsequent of operative part 2.

1. Legal basis

The approval of the project proposal is based on section 29(1) EnWG in conjunction with section 56(1) first sentence para 2, second sentence EnWG in conjunction with Article 6(11) and Article 7(3) of Regulation (EC) No 715/2009 in conjunction with Article 25(1) and Article 28(1) and (2) of Regulation (EU) 2017/459. As set out in section 56 EnWG the Bundesnetzagentur is active in implementing these European regulations thereby applying section 29(1) EnWG accordingly. Pursuant to Article 28(1) and (2) of Regulation (EU) 2017/459, each national regulatory authority shall decide in coordination with the regulatory authorities of the neighbouring Member State whether to approve the project proposal submitted. The economic test information referred to in Article 25 of Regulation (EU) 2017/459 is also subject to approval. The secondary provision in accordance with operative provision 2 is based on section 36(2)(2) of the Administrative Procedure Act (VwVfG).

2. Formal requirements for approval

The formal requirements for approval have been met.

2.1. Competence

The Bundesnetzagentur is the competent regulatory authority pursuant to section 56(1) first sentence para 2 EnWG, the Ruling Chamber's competence is set out in section 59(1) EnWG.

2.2. Application

The application received by the Ruling Chamber on 23 October 2018 meets the information requirements set out in article 28(1) sentence 2 of Regulation (EU) 2017/459 and was submitted in good time in order to comply with the process and publication provisions of Article 28(2) and (3) of Regulation (EU) 2017/459 in view of the 1 July 2019 annual auction.

2.3. Procedural legitimate expectation

In the view of the Ruling Chamber, there are considerable doubts as to the applicant's interest in a positive decision on the matter.

Any such interest is lacking if insurmountable obstacles hinder the implementation of a proposal – irrespective of its substantive eligibility for approval. Among the reasons to be considered are also circumstances other than the subject matter of the process if they contradict the utilisation of the desired approval, thus rendering it apparently useless.

Such type of obstacle is tangible here as there is no sign of any use of a single capacity booking platform (Article 37 of Regulation (EU) 2017/459 for the GCP interconnection point at the annual auction on 1 July 2019. This is absolutely necessary, however, for the implementation of the project proposal (further details are given under 4.). Neither the applicant nor GAZ-SYSTEM S.A. are prepared to conclude their negotiations which have been going on for several years and to voluntarily change their capacity booking platform. At the same time, the Agency for the Cooperation of Energy Regulators will in all likelihood not make a timely, binding selection in accordance with Article 37(3) sentence 4 of Regulation (EU) 2017/459.

Nevertheless, the mere expectation that an obstacle will remain does not cause the procedural legitimate expectation to cease to exist. The obstacle need not be plainly impossible to remove (cf for instance BVerwG, judgment of 24 October 1980 – 4 C 3/78 -, juris margin no 16). Such certainty cannot be assumed in this case.

2.4. Hearing

Pursuant to section 56(1) third sentence in conjunction with section 67(1) and (2) EnWG the applicant and the stakeholders affected were given an opportunity to comment from 31 January 2019 until 15 February 2019 before the decision was rendered.

2.5. Coordination with the Polish regulatory authority

Pursuant to Article 28(2) of Regulation (EU) 2017/459, the Bundesnetzagentur discussed the matter both before and during the procedure with the Polish regulatory authority, and coordinated the present approval decision with it. Draft decisions translated into English were submitted to the Polish regulatory authority on 12 December 2018 and on 16 April 2019 for agreement. By letter of 26 February 2019, the Bundesnetzagentur confirmed the coordination of the German draft decision with the Polish regulatory authority. In addition, numerous discussions were held on how to proceed. Both regulatory authorities see the need for a joint booking platform. The Ruling Chamber stated its preference in this regard of granting the approval under the secondary provision in operative provision 2. The Polish regulatory authority thereupon stated its preference either of granting the project proposal unconditionally, whereby the feasibility of a joint booking platform would cease to exist, or of refraining from taking a decision on the merits and calling the Agency for the Cooperation of Energy Regulators.

2.6. Involvement of other authorities

The Ruling Chamber involved other authorities to the extent required by law.

Pursuant to section 56(1) third sentence in conjunction with sections 55(1) and 58(1) second sentence EnWG, the regulatory authority of the federal state of Saxony, where the applicant has

its headquarters, were informed of the start and completion of the procedure. This authority and the Bundeskartellamt were given an opportunity to comment on this decision.

3. Substantive requirements for approval

The project proposal has been approved in accordance with Article 28(2) of Regulation (EU) 2017/459 (operative part 1). The substantive requirements for approval have been met. The decision was made following appraisal of the aspects of the project proposal set out in Article 28(1) of Regulation (EU) 2017/459:

- Article 28(1)(a) of Regulation (EU) 2017/459: 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) of Regulation (EU) 2017/459 and in Article 26 of Regulation (EU) 2017/459 (see **3.1**);
- Article 28(1)(b) of Regulation (EU) 2017/459: the general rules and conditions related to the project (see **3.2**);
- Article 28(1)(c) of Regulation (EU) 2017/459: the timelines for the project, including any changes since the consultation, and measures to prevent delays and minimise the impact (see **3.3**);
- Article 28(1)(d) Regulation (EU) 2017/459: the parameters of the economic test defined in Article 22(1) Regulation (EU) 2017/459 (see **3.4**);
- Article 28(1)(e) of Regulation (EU) 2017/459: information as to whether it is necessary to extend the marketing period pursuant to Article 30 of Regulation (EU) 2017/459 (see **3.5**);
- Article 28(1)(f) of Regulation (EU) 2017/459: where necessary, a proposed alternative allocation mechanism including its justification (see **3.6**);
- Article 28(1)(g) of Regulation (EU) 2017/459: where a fixed price approach is followed for the incremental capacity project, the elements as described in Article 24(b) of Regulation (EU) 2017/460 (see **3.7**).

Moreover, in its decision the Ruling Chamber also took account of the objectives and purpose of the incremental capacity process and the relevant consideration requirements (see **3.8**).

3.1. Offer level (Article 28(1)(a) of Regulation (EU) 2017/459)

The project proposal is eligible for approval with regards to the offer level 1 submitted. The offer level submitted has been determined in accordance with regulatory requirements (see **3.1.1**) and reflects the range of expected demand for incremental capacity (see **3.1.2**).

An offer level consists of the available existing capacity at an interconnection point and the incremental capacity (Article 3(5) of Regulation (EU) 2017/459). This bundled capacity is offered to shipping customers as an alternative to the available existing capacity (Article 29(1) and (2) of Regulation (EU) 2017/459). In order to be able to provide transport services to this offer level,

the gas transmission system of the applicant would initially need to be expanded by means of a specific project proposal expansion measure. The offer is therefore made to shipping customers even before the necessary expansion work has begun. The project and thus the associated expansion measures will only be implemented in accordance with Article 22(3) of Regulation (EU) 2017/459 if the auction results of the offer level lead to a positive outcome of the economic test on both sides of the interconnection point. Only then will capacity corresponding to the offer level be allocated to the auctions (Article 8(2) second and fourth sentences, Article 17(20) in conjunction with Article 22(3) of Regulation (EU) 2017/459). Otherwise, only the available existing capacity will be allocated and a network expansion will not be carried out.

Whereas the offer level in accordance with Article 8(2) in conjunction with Article 28(1)(a) of Regulation (EU) 2017/459 is subject to approval, the process just described and provided for in the project proposal is based directly on the standard allocation mechanism in Regulation (EU) 2017/459. Hence it does not require any further explicit approval.

3.1.1. Offer level: determining the capacity to be offered

The determination of the coordinated offer level 1 meets legal requirements. The applicant first of all calculated its entry capacities to be offered (see **3.1.1.1**), coordinated these with the calculated GAZ-SYSTEM exit capacities to be offered (see **3.1.1.2**) and then produced the coordinated offer level for bundled capacity products (see **3.1.1.3**). The permitted marketing period has been observed in this process (see **3.1.1.4**).

3.1.1.1. Calculation of entry capacity to be offered by the applicant for offer level 1

The calculation of entry capacity to be offered that forms the basis of offer level 1 follows the guidelines given in Article 11(6) of Regulation (EU) 2017/459. Provision is also made for capacity to be set aside to the necessary extent for subsequent auctions.

In accordance with Article 11(6) of Regulation (EU) 2017/459, the capacity to be offered during the annual yearly capacity auction is determined as follows:

$$[\text{Capacity to be offered}] = A - B - C + D + E - F$$

Where:

- A is the transmission system operator's technical capacity for each of the 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).

The applicant has presented offer level 1 as follows for approval:

Gas year	Total FZK to be offered	A	B	C	D	E	F
2019/20	Period prior to planned start of operational use (Article 11(3) of Regulation (EU) 2017/459)						
2020/21							
2021/22							
2022/23	1,826,370	3,624	362	0	0	2,025,676	202,568
2023/24	1,826,370	3,624	362	0	0	2,025,676	202,568
2024/25	1,623,440	3,624	725	0	0	2,025,676	405,135
2025/26	1,623,440	3,624	725	0	0	2,025,676	405,135
2026/27	1,623,440	3,624	725	0	0	2,025,676	405,135
2027/28	1,623,440	3,624	725	0	0	2,025,676	405,135
2028/29	1,623,440	3,624	725	0	0	2,025,676	405,135
2029/30	1,623,440	3,624	725	0	0	2,025,676	405,135
2030/31	1,623,440	3,624	725	0	0	2,025,676	405,135
2031/32	1,623,440	3,624	725	0	0	2,025,676	405,135
2032/33	1,623,440	3,624	725	0	0	2,025,676	405,135
2033/34	1,623,440	3,624	725	0	0	2,025,676	405,135
2034/35	1,623,440	3,624	725	0	0	2,025,676	405,135
2035/36	1,623,440	3,624	725	0	0	2,025,676	405,135
2036/37	1,623,440	3,624	725	0	0	2,025,676	405,135
2037/38							

Table 6: Entry capacity offered by the applicant for offer level 1

The values for parameters A and C – technically available capacity and contracted capacity – tally with the figures published by the applicant on the transparency platform.

<https://transparency.entsog.eu/#/points/data?from=2017-10-01&indicators=Firm%20Technical&points=DE-TSO-0003ITP-00497entry&zoom=hour>

Link as at 10 April 2019

The values for parameter B comply with the approved share of 20% (see operative part 4 of the decision of 14 August 2015) of existing capacity to be set aside in accordance with Article 8(9) of Regulation (EU) 2017/459. Approval has been given, subject to arrangements to the contrary, for all interconnection points of German transmission system operators. Up to and including the 2023/2024 gas year, the non-bookable share results in just 10% due to Article 8(7) of Regulation (EU) 2017/459: One half of the capacity to be set aside, that is, 10% of the total existing capacity, shall be offered no earlier than in the annual yearly capacity auction held in accordance with the auction calendar during the fifth gas year preceding the start of the relevant gas year. The remaining half in the amount of 10% of the total existing capacity shall be offered no earlier than in the annual quarterly capacity auction as provided for in Article 12 of Regulation (EU) 2017/459, held in accordance with the auction calendar during the gas year preceding the start of the relevant gas year.

The values for parameter F are equal to the share of incremental capacity to be set aside. By the decision of 14 August 2015 (file reference BK7-15-001), a share of 20% for all interconnection points of German transmission system operators has also been approved. This figure is above the 10% minimum amount set out in Article 8(8) of Regulation (EU) 2017/459 and, consequently, equal shares of the existing capacity and incremental capacity are to be set aside. The rising value of parameter F as at gas year 2024/2025 and the smaller amount of capacity to be offered is based on the corresponding application of Article 8(7) of Regulation (EU) 2017/459 (see statements above on existing capacity).

3.1.1.2. Exit capacity offered by GAZ-SYSTEM

The calculation of exit capacity to be offered by GAZ-SYSTEM was confirmed by the Polish regulatory authority in the following amount:

Gas year	Total FZK to be offered	A	B	C	D	E	F
2019/20	Period prior to planned start of operational use (Article 11(3) of Regulation (EU) 2017/459)						
2020/21							
2021/22							
2022/23	1,826,370	3,624	362	0	0	2,025,676	202,568
2023/24	1,826,370	3,624	362	0	0	2,025,676	202,568
2024/25	1,623,440	3,624	725	0	0	2,025,676	405,135
2025/26	1,623,440	3,624	725	0	0	2,025,676	405,135
2026/27	1,623,440	3,624	725	0	0	2,025,676	405,135
2027/28	1,623,440	3,624	725	0	0	2,025,676	405,135
2028/29	1,623,440	3,624	725	0	0	2,025,676	405,135
2029/30	1,623,440	3,624	725	0	0	2,025,676	405,135
2030/31	1,623,440	3,624	725	0	0	2,025,676	405,135
2031/32	1,623,440	3,624	725	0	0	2,025,676	405,135
2032/33	1,623,440	3,624	725	0	0	2,025,676	405,135
2033/34	1,623,440	3,624	725	0	0	2,025,676	405,135
2034/35	1,623,440	3,624	725	0	0	2,025,676	405,135
2035/36	1,623,440	3,624	725	0	0	2,025,676	405,135
2036/37	1,623,440	3,624	725	0	0	2,025,676	405,135
2037/38							

Table 7: Exit capacity offered by GAZ-SYSTEM for offer level 1

In Table 7, column A lists only the capacity that is currently available on both sides for bundled products. Although GAZ-SYSTEM has further capacity (see Table 2), it has insisted on this presentation due to a lack of corresponding capacity on the German side. Implementation of the project would allow both system operators to offer firm capacity of an additional 2,025,676 kWh/h as a bundled product. The transmission system operators have therefore made it clear that only the capacity available on both sides (firm capacity at the Kamminke station) of 3,624 kWh/h can be regarded as existing capacity in the project proposal, even though a higher amount of technically available capacity is reported on the Polish side.

3.1.1.3. Coordinated offer levels for bundled products

The two national offer levels (unbundled) of the transmission system operators are subject to the approval of the respective regulatory authorities pursuant to Article 28 of Regulation (EU) 2017/459. The regulatory authorities have each come to the conclusion that the individually produced offer levels have been determined correctly and therefore the offer levels can be combined for coordination and agreement purposes to create a bundled and coordinated offer level.

The coordinated offer level 1 as presented fulfils the obligation on the part of the applicant to offer bundled capacity products in accordance with Article 19(1) and Article 28(1) of Regulation (EU) 2017/459.

In accordance with Article 3(12) of Regulation (EU) No 2017/459, bundled capacity is a standard capacity product offered on a firm basis that consists of corresponding entry and exit capacity at both sides of every interconnection point.

After bundling the exit and entry capacities calculated in accordance with Article 11(6) of Regulation (EU) No 2017/459, this produces the bundled capacity products shown in Table 5.

Gas year	Offer of existing capacity (FZK; kWh/h/a)	Offer level 1 (FZK; kWh/h/a)
2019/20	3,262	Period prior to planned start of operational use
2020/21	3,262	
2021/22	3,262	
2022/23	3,262	1,826,370
2023/24	3,262	1,826,370
2024/25	2,899	1,623,440
2025/26	2,899	1,623,440
2026/27	2,899	1,623,440
2027/28	2,899	1,623,440
2028/29	2,899	1,623,440
2029/30	2,899	1,623,440
2030/31	2,899	1,623,440
2031/32	2,899	1,623,440
2032/33	2,899	1,623,440
2033/34	2,899	1,623,440
2034/35		1,623,440
2035/36		1,623,440
2036/37		1,623,440
2037/38		

Table 5: Planned offer of bundled yearly capacity products

3.1.1.4. Marketing period

The coordinated offer level is established in due consideration of the maximum permitted marketing period.

In accordance with Article 11(3) sentence 1 of Regulation (EU) 2017/459, the auction process shall offer existing capacity at least for the next five gas years and for no longer than the next 15 gas years. When offering incremental capacity, the offer levels for yearly capacity may be offered for a maximum of 15 years after the start of operational use.

As a consequence, the bundled existing capacity products may be offered for the period up to and including the 2033/2034 gas year.

However, if existing capacity and incremental capacity are offered in offer level 1 as bundled capacity, in accordance with Article 29(1) of Regulation (EU) 2017/459, this may be marketed from the scheduled start of operational use for 15 years. The project proposal aims to put all the

expansion measures into service by August 2022 or the third quarter of 2022. According to this planning schedule, the incremental capacity will be available as at the 2022/2023 gas year starting on 1 October 2022. Permitted marketing will then follow up to and including the 2036/2037 gas year. This also includes the existing capacities contained in the offer level, see Article 3(5) and Article 11(3) of Regulation (EU) 2017/459.

3.1.2. Offer levels – reflecting market demand

The coordinated offer level 1 reflects the range of expected demand for incremental capacity.

In accordance with Article 28(1)(a) of Regulation (EU) 2017/459, the offer levels coordinated in a project proposal must accommodate the expected demand determined in the process provided for in Article 26 and Article 27(3) of Regulation (EU) 2017/459. This will ensure that the project enables a defined network expansion based on specific requests from network users.

The coordinated offer level 1 included in the project proposal provides for an increase in technically available capacity to 2,029,300 kWh/h at the GCP GAZ-SYSTEM/ONTRAS interconnection point in the requested flow direction. This amount meets the demand (see **Table 3**). Although the coordinated offer level 1 reports a lower amount due to the capacities to be set aside for subsequent auctions (see notes in **3.1.1.1**). The corresponding difference, however, may be booked at a later time and therefore is generally available to cover market demand. In the Ruling Chamber's view, a demand-related and efficient network expansion is ensured if the transportation capacity requested by network users is made technically available.

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

Approval could also be granted given the planned use of the project-related supplementary rules and conditions. The version submitted with the project proposal complies with the regulatory requirements.

According to Article 28(1)(b) of Regulation (EU) 2017/459, the applicant must include with the project proposal 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 Ruling Chamber limited its assessment to the "Supplementary Terms and Conditions of ONTRAS Gastransport GmbH for incremental capacity from 1 October 2022 ("EGB"). The approval does not extend to those terms and conditions that must be accepted as a matter of course for the standard offer of existing capacity, this refers in particular to those general terms and conditions based on Annex 1 of the *Cooperation agreement between the operators of gas supply networks in Germany*. The general terms and conditions of transmission system operators are not subject to a general approval requirement, instead the monitoring of common

contractual standards takes place by way of (ex-post) abuse control. The Ruling Chamber is not taking the project proposal as a reason to depart from legislative practice and to make all general terms and conditions subject to an approval decision.

The supplementary terms and conditions submitted comply with the requirements of Regulation (EU) 2017/459. Compared with the version consulted in the planning phase, clauses have been removed from section 2 EGB that made the effectiveness of the transport contracts subject to further conditions.

See the published version at:
<https://www.fnb-gas-capacity.de/en/consultation/>
Link as at 4 January 2019

In the Ruling Chamber's view, this would not have taken sufficient account of the binding allocation methodology; shipping agreements could therefore have become duly ineffective, despite a positive result from the economic test.

Section 4 EGB contains provisions for the legal consequences of delay or disruption to the project. These disadvantageous provisions, where applicable, for shipping customers cannot be objected to in light of recital 11 of Regulation (EU) 2017/459. According to this, steps should be taken to avoid captive customers being exposed to the economic risks of the project. It is therefore justified that any financial obligations entered into are only nullified under strict terms and conditions. Otherwise there would be a risk of a project being initiated by virtue of binding commitments, but this then followed by a failure to meet the payment obligations and captive customers having to bear the costs.

3.3. Timeline (Article 28(1)(c) of Regulation (EU) 2017/459)

The timeline submitted has been approved. According to this timeline the new capacity should be operational as from the 2022/2023 gas year.

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

The timeline submitted in the consultation document only covers the period up until the 2019 annual auction.

The applicant was requested to extend the timeline up to the technical implementation and start of operation of the planned project. The applicant complied with this request in the project proposal submission. The planning and construction time for the pressure security system in Zodel has been calculated as 2.5 to 3 years in total, starting from the fourth quarter of 2019 until the scheduled commissioning in the third quarter of 2022. This time scale is considered realistic based on experience of implementing measures of this type and size as part of the ongoing planning and approval procedures for the gas network development plan.

In the project proposal consultation document GAZ-SYSTEM estimated that the work on expanding the gas transfer station in Kielczów would take 2.5 years (30 months). In the project application, August 2022 was given as the date for putting the necessary measures into operation.

As a result, the newly bundled capacity at the GCP GAZ-SYSTEM/ONTRAS interconnection point could go into operation as at the planned 2022/2023 gas year if the planning, approval and construction time of the necessary measures determined stays on schedule.

3.4. Economic test (Article 25(1) and Article 28(1)(d) of Regulation (EU) 2017/459)

3.4.1 Performing the economic test

In accordance with Article 22 of Regulation (EU) 2017/459 an economic test is to be carried out for each offer level of an incremental capacity project after binding commitments of network users for contracting capacity have been obtained by the transmission system operators involved. The values to be applied for the parameters defined in Article 22(1) of Regulation (EU) 2017/459 must be approved by the regulatory authority in accordance with Article 25(1) and Article 28(1)(d) of Regulation (EU) 2017/459. The values are used in the economic test, which is carried out within two business days of the closing of the bidding round in accordance with Article 11(10) of Regulation (EU) 2017/459. For reasons of legal and investment certainty, the test will be carried out by the Bundesnetzagentur (see the Decision of 19 July 2017, file reference BK9-17/609). The purpose of the economic test is to check the project's economic viability, with the aim of ensuring efficient network expansion and, further, that all network users demanding incremental capacity assume the corresponding costs and risks associated with their demand (see recital 11 of the Regulation (EU) 2017/459).

According to Article 24(1) of Regulation (EU) 2017/459, individual economic test parameters of the transmission system operators involved for a given offer level are combined into a single economic test in order to facilitate the offer of bundled capacity products. Article 24(3) of Regulation (EU) 2017/459 states that the outcome of the single economic test application is positive where all underlying economic tests (ie both on the exit and the entry side) result in positive outcomes as set out in Article 22(2)(a) of Regulation (EU) 2017/459. In addition, Article 22(3) first sentence of Regulation (EU) 2017/459 clarifies that an incremental capacity project is 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. This is the logical consequence of the marketing of bundled products in accordance with Article 29(1) of Regulation (EU) 2017/459.

According to Article 22(2)(a) of Regulation (EU) 2017/459, the outcome of the economic test is positive if the following formula is satisfied:

$$\sum_{j=1}^T \left[\frac{1}{(1+i)^j} \times \{ (RP_j + AP_j + MP_j) \times NK_j + (AP_j + MP_j) \times \text{verf. BK}_j^{NK>0} \} \right] \geq \sum_{j=1}^H \frac{1}{(1+i)^j} \Delta EOG_j \times f$$

Where:

i	interest rate for determining the present value
j	index for the respective gas year
RP _j	reference price for the year j
AP _j	auction premium in the year of the auction for the year j
MP _j	mandatory minimum premium according to Article 33(3) of Regulation (EU) 2017/460 for the year j
NK _j	new capacity in the year j (to calculate the economic test <u>before</u> the auction, enter the new capacities that are expected to be booked depending on the offer level in the auction. <u>After the auction</u> , enter the capacities actually marketed.)
verf. BK _j ^{NK>0}	available existing capacity that has been booked together with the new capacity in the auction of the new capacities for the year j; on condition that the new capacity > 0, ie has been booked
ΔEOG _j	change in revenue cap in the year j
f	The f-factor to be set in accordance with Article 23 of Regulation (EU) 2017/459
T	maximum number of years for which the new capacity may be offered
H	maximum duration of use (depreciation period) of the investment and of the associated revenue cap increase

The calculation tool used and further details are given on the Bundesnetzagentur's website (as at 14 December 2018):

https://www.bundesnetzagentur.de/DE/Sachgebiete/ElektrizitaetundGas/Unternehmen_Institutionen/NetzentwicklungundSmartGrid/Gas/IncrementalCapacity/IncrementalCap_node.html

It follows that the economic test is positive in all cases where sufficient yearly capacity products have been contracted with binding commitment in order to cover the specified share of investment costs.

3.4.2 Economic test parameters

The following parameters for the economic test submitted with the project application have been approved. These are:

1. The reference price (RP) estimated for the time horizon of the initial offer of incremental capacity in accordance with Article 25(1)(a) in the amount of €3.97/(kWh/h)/a.

The reference price requested corresponds to the published charge for Germany for the year 2022 of €3.97/(kWh/h/a) in the draft decision of the REGENT determination (file reference BK9-18-610-NCG and BK9-18-611-GP) and thus is also considered by the Ruling Chamber to represent the best possible estimate.

2. The present value of binding commitments of network users for contracting capacity calculated in accordance with Article 22(1)(a) in the amount of €54,935,814.44.

The applicant stated in the project proposal regarding the requested present value that the binding commitments of network users needed to calculate the present value would result from the annual auction and therefore the applicant could not provide further details at this point. Consequently, the present value requested in the amount of €54,935,814.44 is taken from the applicant's details in the calculation tool of 27 November 2018. The Ruling Chamber views this present value as plausible as it was calculated using the calculation tool and taking account of the estimated future contracted capacity.

3. 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 calculated in accordance with Article 22(1)(b) in the amount of €2,831,010.58.

The applicant calculated the value using the calculation tool provided by the regulatory authority. Therefore the value does not raise any concerns.

4. The requested f-factor calculated in accordance with Article 22(1)(c) in the amount of 0.78. The Ruling Chamber checks whether the f-factor requested by the applicant is plausible. Should this not be the case, the Ruling Chamber will set the f-factor in accordance with Article 23(1) of Regulation (EU) 2017/459 and different to that in the application.

The applicant has correctly and plausibly calculated the f-factor by taking due account of the factors to be taken into account according to Article 23(1)(a) to (d). The applicant does not view the incremental capacity as having any positive effects on the project. Therefore the f-factor proposed has been directly taken from the calculation tool.

3.4.3 Result of the economic test

The Polish economic test, which has been approved by the URE, is based on the GAZ-SYSTEM project for capacity expansion at the GCP GAZ-SYSTEM/ONTRAS exit point. It is not possible to determine whether the outcome of this economic test will be positive or negative with respect to offer level 1 at the GCP GAZ-SYSTEM/ONTRAS exit point until after URE has obtained binding commitments from the network users for contracting capacity in the annual auction on 1 July 2019.

The same applies for the German side. It will first be possible to determine whether the economic test at the GCP GAZ-SYSTEM/ONTRAS entry point is positive or negative when

ONTRAS has obtained the binding commitments of network users for contracting capacity at the annual auction on 1 July 2019.

If the economic test at the GCP GAZ-SYSTEM/ONTRAS entry and exit point for offer level 1 on the Polish side and the German side has a positive outcome, the capacity for the years in which a parallel auction takes place must be allocated in terms of the yearly capacity products of offer level 1, in accordance with Article 8(1) and (2) in conjunction with Article 17(20) in conjunction with Article 22(3) of Regulation (EU) 2017/459. If the outcome on one side is negative, the yearly capacity products comprising existing capacity must be allocated in accordance with Article 8(1) and (2) in conjunction with Article 17(20) in conjunction with Article 22(3) of Regulation (EU) 2017/459.

The German transmission system operators are to provide the Bundesnetzagentur with the auction results for the binding commitments for existing and new capacity in an electronically processable format immediately following the auction. The final economic test is carried out by the Bundesnetzagentur in a detailed coordinated process with the transmission system operators in accordance with the decision of 19 July 2017, file reference BK9-17/609 INKA. The transmission system operators are informed of the outcome of the economic test in writing immediately afterwards.

3.5. Marketing period extension (Article 28(1)(e) of Regulation (EU) 2017/459)

No application was made to extend the marketing period pursuant to Article 28(1)(e) of Regulation (EU) 2017/459.

3.6. Alternative allocation mechanism (Article 28(1)(f) of Regulation (EU) 2017/459)

No application was made for an alternative allocation mechanism pursuant to Article 28(1)(f) of Regulation (EU) 2017/459.

3.7. Fixed price (Article 28(1)(g) of Regulation (EU) 2017/459)

No application was made for a fixed price approach pursuant to Article 28(1)(g) of Regulation (EU) 2017/459.

3.8. Consideration requirements (Article 28(2) subpara 2 of Regulation (EU) 2017/459)

The Ruling Chamber made due and proper use of its assessment and decision-making leeway during the approval decision. As per Article 28(2) subpara 2 of Regulation (EU) 2017/459, in its decision the Ruling Chamber took into consideration the Polish regulatory authority's viewpoint, any possible impact of the project on competition and the effective functioning of the internal gas market. According to recital 11 of Regulation (EU) 2017/459, all economic investment risks of captive customers also had to be weighed up.

There are no competitive aspects that stand in the way of the project proposal being approved. All the physical interconnection points related to the market demand are operated by the applicant on the German side. It would appear that other transmission system operators do not offer a more cost effective provision that can be taken into account.

Moreover, the Ruling Chamber does not see any risk associated with the project that would lead to any lasting or significant decline in the use of other non-depreciated gas infrastructure in the same entry-exit system, in neighbouring entry-exit systems or along the same gas transport routes (see Article 28(3)(i) of Regulation (EU) 2017/459). The incremental capacity cannot simply be used to replace existing capacity. This also applies in respect of the Mallnow interconnection point at the German-Polish border, which merely connects to the ISO system of Yamal and not to the Polish "E-Gas Transmission System".

Finally, the functioning of the internal gas market will not be adversely affected by the project. The capacity amounts being discussed are not sufficient to have any overarching significance in terms of gas economics. Even if the project were implemented, less than 10% of the entry capacity at the Mallnow interconnection point would be available for the GASPOOL market area.

4. Condition subsequent (operative part 2)

Approval could only be granted under the condition subsequent (section 36(2)(2) VwVfG) pursuant to operative part 2.

After this the approval ceases to apply, that is to say, any entitlement to as well as any obligation to pursue the project proposal where a joint capacity booking platform for the GCP interconnection point has not been selected in good time. In this way the Ruling Chamber ensures that the approval shall only have regulatory effect as long as the project proposal can be legally implemented and the transparency requirements are fulfilled. The Ruling Chamber set out the following considerations:

(1) In order to pursue the project proposal, bundled capacity marketing is required.

Pursuant to Article 29(1) of Regulation (EU) 2017/459) "[...] the involved transmission system operators shall offer the incremental capacity together with the respective available capacity in the annual yearly capacity auction as standard bundled [capacity] products [...]". The Ruling Chamber considers the initial bundled marketing according to this to be an essential requirement for the implementation of a project proposal if Regulation (EU) 2017/459) is applied to both sides of the interconnection point. This is the case with the GCP interconnection point. Contrary to the view of the application, the implementation of the project proposal on the basis of unbundled capacity products is therefore not taken into consideration. The explicit wording is contrary to the aim and purpose of the applicant's considerations. In addition, the applicant neglects the difficulties arising out of unbundled marketing for those customers who are not yet established. The Polish regulatory authority also argued against the implementation of the project proposal based on unbundled offers and stated that its decision was not applicable if there were no joint

booking platform enabling the offer of bundled capacity products. The Ruling Chamber is prevented from granting approval for unbundled marketing since this would not be coordinated.

(2) Based on the requirement of bundling, a sole booking platform for the GCP interconnection point is necessary.

A joint capacity booking platform is a requirement for offering bundled capacity products (see Article 19(2) of Regulation (EU) 2017/459). In a specific case in accordance with Article 37(2) of Regulation (EU) 2017/459 this selection may be based on a contractual agreement between the applicant and GAZ-SYSTEM S.A. or on a decision of the Agency for the Cooperation of Energy Regulators. However, a decision by the national regulatory authorities is inapplicable as the Bundesnetzagentur and the Polish regulatory authority are not able to agree on a booking platform pursuant to Article 37(3) third sentence of Regulation (EU) 2017/459. The remaining options following this are presented in (a) and (b) of operative part 2.

(3) The selection of a sole booking platform must take place in good time. In this respect the Ruling Chamber considers 30 April 2019 to be relevant.

The Ruling Chamber considers the selection of a booking platform to be in good time when the selection is early enough to be able to comply with the publication requirement according to Article 28(3) of Regulation (EU) 2017/459. Pursuant to Article 28(3) of Regulation (EU) 2017/459, the applicant and GAZ-SYSTEM S.A. must jointly publish the project information in accordance with Article 28(1) of Regulation (EU) 2017/459 and sample contracts for the capacity offered at the latest two months before the annual auction on 1 July 2019. In the Ruling Chamber's view, the network users should at the latest by this date know with certainty whether the project proposal will be included in the forthcoming annual auction or not.

The network users will in any case, irrespective of whether the project proposal is included, have another opportunity following the annual auction of 1 July 2019 to direct market demand indications to the applicant and GAZ-SYSTEM (Article 26(1) and (2) of Regulation (EU) 2017/459).

(4) The Ruling Chamber recommended the applicant publish an announcement no later than 2 May 2019 should the approval pursuant to operative part 2 cease to have effect and the project proposal is not pursued.

5. Side agreements (operative part 3)

Regarding costs, a separate notice will be issued as provided for by section 91 EnWG.

Notification of appellate remedies

Appeals against this Decision may be brought within one month of its service. Appeals must be filed with the Bundesnetzagentur für Elektrizität, Gas, Telekommunikation, Post und Eisenbahnen, Tulpenfeld 4, 53113 Bonn. It is sufficient if the complaint is received by the Higher Regional Court of Düsseldorf within the time limit specified (address: Cecilienallee 3, 40474 Düsseldorf).

The appeal must be accompanied by a written statement setting out the grounds for appeal. The written statement must be provided within one month of filing the appeal. The period begins with the lodging of the appeal and may be extended by the court of appeal's presiding judge upon request. The statement of grounds must state the extent to which the decision is being contested and its modification or revocation sought and must indicate the facts and evidence on which the appeal is based. The appeal and the grounds for appeal must be signed by a lawyer.

The appeal has no suspensory effect (section 76(1) EnWG).

Bonn, 17 April 2019

Chair

Vice-Chair

Vice-Chair

Helmut Fuß

Anne Zeidler

Dr. Ulrike Schimmel