



Ruling Chamber 9

Case reference: BK9-22/001

Decision

In the administrative proceedings pursuant to

section 29(1) of the Energy Industry Act (EnWG) in conjunction with section 56(1) sentence 1 para 2, sentence 2 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 the approval of a project application for incremental gas transport capacity
respect to concerning the border between the Belgium-Luxembourg (BeLux) market area
(ZTP) and the German market area Trading Hub Europe (THE)

vis-à-vis Fluxys TENP GmbH, Elisabethstraße 5, 40217 Düsseldorf,
legally represented by its management board,

- applicant 1 -

vis-à-vis GASCADE Gastransport GmbH, Kölnische Straße 108-112, 34119 Kassel,
legally represented by its management board,

- applicant 2 -

vis-à-vis Open Grid Europe GmbH, Kallenbergstr. 5, 45141 Essen,
legally represented by its management board,

- applicant 3 -

vis-à-vis Thyssengas GmbH, Emil-Moog-Platz 13, 44137 Dortmund,
legally represented by its management board,

- applicant 4 -

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

represented by Vice Chair acting as Chair Dr Ulrike Schimmel

Vice Chair Dr Björn Heuser

and Vice Chair Roland Naas

ruled on 15 March 2023:

- 1.) the project application of the applicants of 2 September 2022 in the version of 30 January 2023 (annex to this decision) for an incremental gas transport capacity project concerning the border between the BeLux market area (ZTP) and the German market area Trading Hub Europe (THE) is approved with the following amendments:
 - a) the present value of the estimated increase in the allowed or target revenue of the transmission system operators is set at €476,676,259;
 - b) the f-factor is set at $f = 0.88$;
 - c) the mandatory minimum premium is set at €1.36/(kWh/h)/a;
 - d) the present value of binding commitments of network users is set at €476,676,259.

In other respects, the application is rejected.

- 2.) The right to order payment of costs is reserved.

Rationale

I.

- 1 The proceedings concern the approval of a project application for incremental gas transport capacity within the meaning of Article 3(11) of Commission Regulation (EU) 2017/459 of 16 March 2017 establishing a network code on capacity allocation mechanisms in gas transmission systems and repealing Regulation (EU) No 984/2013. The project application concerns the Belgian-German border and envisages the creation of incremental firm entry capacity on the German side.
- 2 The BeLux market area ZTP is connected to the German market area THE via the virtual interconnection point (VIP) THE-ZTP. The following capacity is currently technically available flowing from ZTP to THE. Fluxys Belgium NV (hereinafter referred to as Fluxys B) can market 22,600,000 kWh/h of firm, freely allocable exit capacity annually. The applicants can offer a total of 11,305,234 kWh/h of firm, freely allocable entry capacity (FZK) at the above-mentioned VIP. The applicants' joint capacity is marketed on their behalf exclusively by applicant 3, OGE (see **table 1**).

TSO	Capacity type (flow direction, capacity product)	Technical capacity
Fluxys B	Exit capacity (FZK)	22,600,000 kWh/h
OGE (applicant 3)	Entry capacity (FZK)	11,305,234 kWh/h

Table 1: Current technical capacity

(1) Non-binding market demand indications

- 3 From 5 July 2021 to 30 August 2021, the Vereinigung der Fernleitungsnetzbetreiber Gas e.V. (association of gas transmission system operators; FNB Gas), on behalf of the German transmission system operators (TSOs), gave all network users the opportunity 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. Fluxys B did likewise.
- 4 Within the context of this non-binding market survey, the applicants received the following demand indications for the Belgian-German market area border relevant here:

Entry capacity border ZTP - THE	Gas years	Annual amount	Capacity product	Allocation restriction
THE	2023/2024 to 2026/2027	4,200,000 kWh/h	FZK	(none)
THE	2027/2028 to 2043/44	16,800,000 kWh/h	FZK	(none)

Table 2: Market demand indications received

- 5 The non-binding market demand survey was only directed at the entry side of the applicants. However, the Belgian side of the ZTP-THE market area border currently has enough free technical capacity available to meet market demand on the exit side as well.

(2) Market demand assessment

- 6 The applicants announced the initiation of a project on the German side of the ZTP-THE market area border in the market demand assessment report published on 25 October 2021.

https://www.fnb-gas-capacity.de/fileadmin/files/MDAR_Zyklus_2021-2023/2021_10_25_MDAR_BeLux-THE_non_binding_demand_indication_EN.pdf

Link as at 10 March 2023

- 7 The joint analysis of Fluxys B, Creos Luxembourg S.A. and the applicants related to the above-mentioned VIP THE-ZTP and was based on the flow direction from the BeLux to the German market area for which the non-binding market demand indications had been received. The analysis was carried out separately for each side of the border because, according to the applicants, the technical and commercial parameters could be significantly different on the two sides of the market area border. The analysis on the German side showed the technical capacity (based on the Gas Network Development Plan (NDP) 2020-2030), the booked firm capacity, the final confirmed quantities (uses) pursuant to Article 3(8) of Regulation (EC) No 312/2014 (balancing network code) and the non-binding market demand indications received on an hourly basis. According to the result of the analysis, neither technical studies nor an incremental capacity project are necessary with respect to exit from Belgium (ZTP), as sufficient exit capacity is available there. With respect to entry to Germany (THE), however, technical studies and the initiation of an incremental capacity project are necessary to meet market demand.

(3) Design phase and consultation

- 8 Following the market assessment, the applicants conducted technical studies to test technical feasibility and to design an expansion plan to meet market demand. They described how the network expansion could take place efficiently taking account of economic aspects and those to do with the topology of the system. They made the results available in a draft project proposal for consultation from 18 January to 18 April 2022. Fluxys B did not take part in the producing and consulting of the draft project proposal since it was not initiating an incremental capacity project.

https://www.fnb-gas-capacity.de/fileadmin/files/Konsultation/2022-01-18_Konsultationsdokument_THE-BE_en_FINAL.pdf

Link as at 10 March 2023

- 9 In their draft, the applicants showed all the additionally necessary expansion measures to meet the non-binding market demand. The basis of the expansion measures shown was the infrastructure included in the Gas NDP 2020-2030 (published on 26 May 2021). In addition to this infrastructure, another compressor unit with a drive capacity of approximately 13 MW would be needed at the existing compressor station in Würselen and another compressor unit with a drive

capacity of approximately 16 MW would be needed at the existing compressor station in Reckrod. A new GPRM facility would also be required at Reckrod with a capacity of approximately 1,050,000 Nm³/h.

- 10 The applicants estimate the investment costs at about €146mn in the draft project proposal. The new compressor units would also incur annual operating costs, in particular for procuring compressor energy, of about €13.8mn. Additional drive energy costs for additional use of existing compressors are assumed to cost about €14.3mn a year.
- 11 The applicants expect that the requested capacity could only be provided from gas year 2030/2031 onwards, mostly because of the time needed to plan and implement the necessary expansion measures. The existing capacity was given in the draft project proposal as 550,200 kWh/h, which is different to the figure given in the project application. Correspondingly, the offer level was different to the non-binding market demand, as shown:

Existing capacity/ offer level				
From	To	Free existing capacity (FZK, firm)	Incremental capacity	Offer level taking account of a reserve quota of 20%
1 October 2030	1 October 2044	550,200 kWh/h	16,249,800 kWh/h	13,440,000 kWh/h

Table 3: Existing capacity/offer level according to consulted project proposal of 18 January 2022

- 12 One response was received during the consultation period. It expressed a desire for the demand report and the investment planning to be adjusted given the significant changes in the framework conditions since the beginning of the current incremental capacity process. It also argued in favour of the bundled capacity between the ZTP and THE market areas being increased as quickly as possible. The applicants declined to adjust the demand report and the investment planning based on it on the grounds that no new non-binding demand indications had been submitted. They also pointed to the ongoing network development planning of the TSOs, in which the current framework conditions are taken into account.

(4) Final project application

- 13 The applicants submitted their project application to the ruling chamber for approval in writing on 2 September 2022. They submitted an updated project application in writing on 30 January 2023.
- 14 In comparison to the draft project proposal that was the subject of the consultation, the existing capacity has increased to 11,305,234 kWh/h as a result of recalculations and relocating of existing capacity. Consequently, the incremental capacity has reduced to 5,494,766 kWh/h, but this has not changed the necessary dimensions of the network expansion measures.

- 15 The project application made by the applicants contains in particular the following information:
1. Presentation of the planned offer of bundled capacity products for the transport from the BeLux market area ZTP to the German market area THE with regard to the existing/incremental capacity on the German side:

Existing capacity/ offer level				
From	To	Free existing capacity (FZK, firm)	Incremental capacity	Offer level taking account of a reserve quota of 20%
1 October 2030	1 October 2045	11,305,234 kWh/h	5,494,766 kWh/h	13,440,000 kWh/h

Table 4: Existing capacity/offer level according to project application of 30 January 2023

2. Supplementary rules and conditions relating to the project
 3. A timeline for implementation
 4. The following information and parameters for the economic test
 - a. within the meaning of 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 €562,748,950.
 - b. within the meaning of Article 25(1)(a) of Regulation (EU) 2017/459: the **estimated reference price** of €6.03/(kWh/h)/a for an FZK product.
 - c. within the meaning of Article 22(1)(c) of Regulation (EU) 2017/459: the **f-factor** of 0.76.
 - d. within the meaning of Article 22(1)(a) of Regulation (EU) 2017/459: a **mandatory minimum premium** of €1.42/(kWh/h)/a.
 - e. within the meaning of Article 22(1)(a) of Regulation (EU) 2017/459: the **present value of binding commitments of network users** used as a basis for calculation for contracting capacity. The calculation tool included as an annex to the project application gives a present value of €562,748,950 in conjunction with the incremental capacity included in the offer level.
- 16 For further details, reference is made to the project application (annex to this decision), in particular with regard to the additional network expansion needed and the approaches taken to the f-factor.

(5) Completeness check, requests for additional information

- 17 The ruling chamber first checked the project application of 2 September 2022 for completeness. The applicants provided further documentation about how they had derived the assumed compressor energy costs in a letter of 20 September 2022. Following a request from the ruling chamber on 26 October 2022, the applicants sent the missing documents about their calculation of the investment costs in a letter of 2 November 2022. The ruling chamber informed the applicants in writing on 3 November 2022 that the application was complete.

18 In a letter of 25 November 2022, the ruling chamber asked the applicants to provide further explanations or corrections to the application with regard to the timeline, the depreciation periods and capacity estimates in the economic test, the cost estimates for the compressor energy and the estimated reference price. The applicants did so in a letter of 16 December 2022. They also submitted an updated project application as part of this letter.

19 On 19 January 2023, the ruling chamber asked the applicants to provide further explanations or corrections to the application with regard to the adjusted existing capacity, the offer level, the marketing period, the derivation of the investment costs and the f-factor, and the capacity estimates in the economic test. The applicants did so in a letter of 30 January 2023. They also submitted another updated project application as part of this letter.

(6) Coordination and participation

20 The ruling chamber opened proceedings on 13 September 2022 and published the start of proceedings on the Bundesnetzagentur website. On the same day, the ruling chamber informed the regulatory authorities of the federal states of Hesse and North Rhine-Westphalia, in which the applicants have their headquarters, about the proceedings.

21 The Bundesnetzagentur and the Belgian regulatory authority CREG communicated and coordinated matters throughout the process. CREG was informed on 23 September 2023 that the application had been received. A joint call was held on 30 September 2022 to discuss the next steps and the coordination process.

22 The start of proceedings was published in the Official Gazette on 19 October 2022.

23 The ruling chamber wrote to CREG on 3 November 2022 to inform it that the ruling chamber had received a complete project application from the applicants on 2 November 2022.

24 On 9 February 2023, the Bundesnetzagentur wrote to CREG with a table of the offer level for bundled marketing of incremental capacity for the purpose of coordination. CREG confirmed the offer level for the Belgian side to the Bundesnetzagentur in a letter of 14 February 2023.

25 The ruling chamber gave the applicants the opportunity to submit comments in a letter dated 23 February 2023. In addition, the ruling chamber gave the regulatory authorities of the federal states of Hesse and North Rhine-Westphalia and the Bundeskartellamt the opportunity to state their views on 23 February 2023.

26 The applicants wrote on 2 March 2023 that they saw no need to submit written comments.

27 The regulatory authorities of the federal states of Hesse and North Rhine-Westphalia and the Bundeskartellamt did not take the opportunity to respond.

28 For further details, reference is made to the content of the file.

II.

29 The applicants' project application for an incremental gas transport capacity project has been approved but only with amended parameters for the economic test (operative part 1). To this extent, the formal and material requirements for approval have been met. The project application could not be approved with the parameters from the original application.

1. Legal basis

30 The approval of the project application, including the amendments in operative part 1, is based on section 29(1) EnWG and section 56(1) sentence 1 para 2, sentence 2 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. Pursuant to section 56 EnWG, the Bundesnetzagentur is active in the enforcement of the above-mentioned European Regulations. Pursuant to Article 28(1) and (2) and Article 25 of Regulation (EU) 2017/459, the national regulatory authority decides in coordination with the regulatory authority of the neighbouring Member State whether to approve the project application submitted, including the information on the economic test.

2. Formal requirements for approval

31 The formal requirements for approval have been met.

2.1. Competence

32 The Bundesnetzagentur is the competent regulatory authority to decide on the approval pursuant to Article 28(2) of Regulation (EU) 2017/459 and section 56(1) sentence 1 para 2 EnWG. The ruling chamber has competence as per section 59(1) sentence 1 EnWG.

2.2. Application

33 The application was submitted in due form. The project application contains all the information required under Article 28(1) sentence 2 of Regulation (EU) 2017/459 or this information has been provided fully upon subsequent request by the ruling chamber (see rationale (5) *Completeness check, requests for additional information*).

2.3. Deadline for applications

34 The application was submitted in a timely manner. Article 28 of Regulation (EU) 2017/459 does not specify a deadline for submitting the project proposal for approval.

2.4. Hearing

35 Before the decision was issued, pursuant to section 56(1) sentence 3 in conjunction with section 67(1) EnWG, the applicants were given an opportunity to comment from 23 February 2023 to 6 March 2023.

2.5. Coordination with the Belgian regulatory authority

36 Pursuant to Article 28(2) of Regulation (EU) 2017/459, the Bundesnetzagentur discussed the matter both before and during the proceedings with CREG and coordinated the present approval decision with it.

37 The ruling chamber informed CREG on 3 November 2022 that a complete project application had been received.

38 The ruling chamber and CREG discussed their joint approach to the necessary coordination, including in a conversation of 30 September 2022, and subsequently agreed to conduct the coordination by email. On 9 February 2023, the ruling chamber wrote to CREG with a table of the offer level to be coordinated in these proceedings, initiating the formal coordination process. CREG confirmed the offer level in a letter of 14 February 2023.

2.6. Involvement of other authorities

39 The Bundesnetzagentur involved other authorities to the extent prescribed by law.

40 Pursuant to section 56(1) sentence 3 in conjunction with sections 55(1) and 58(1) sentence 2 EnWG, the Bundeskartellamt and the regulatory authorities of the federal states of Hesse and North Rhine-Westphalia, in which the applicants have their headquarters, were informed of the start of the proceedings and given the opportunity to comment.

3. Substantive requirements for approval

41 The project application was approved in accordance with Article 28(2) of Regulation (EU) 2017/459 with the changes set out in operative part 1(a) to (d). The substantive requirements for approval have been met.

42 The decision was made following appraisal of the aspects of the project application set out in Article 28 of Regulation (EU) 2017/459:

1. 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**);
2. Article 28(1)(b) of Regulation (EU) 2017/459: the supplementary rules and conditions related to the project (see **3.2**);
3. 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 of delays (see **3.3**);
4. Article 28(1)(d) of Regulation (EU) 2017/459: the parameters of the economic test defined in Article 22(1) of Regulation (EU) 2017/459 (see **3.4**);

5. 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**);
 6. Article 28(1)(f) of Regulation (EU) 2017/459: where necessary, a proposed alternative allocation mechanism including its justification (see **3.6**);
 7. 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**).
 8. Article 28(3) in conjunction with Article 11(4) of Regulation (EU) 2017/459: the marketing time in the annual yearly capacity auction (see **3.8**).
- 43 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 **3.9**).

3.1. Offer level

- 44 It was possible to approve the project application as regards the offer level pursuant to Article 28(2) of Regulation (EU) 2017/459. The offer level submitted pursuant to Article 28(1)(a) of Regulation (EU) 2017/459 has been determined in accordance with regulatory requirements and reflects the range of expected demand for incremental capacity.
- 45 "Offer level" means the sum of the available existing capacity and the incremental capacity from a possible network expansion for an interconnection point (Article 3 point 5 of Regulation (EU) 2017/459). TSOs can develop various expansion scenarios with varying amounts of incremental capacity within one project. Pursuant to the allocation method laid down in Article 8(2) sentences 2 and 4, Article 17(20) in conjunction with Article 22(3), Article 29(1) and (2) of Regulation (EU) 2017/459, auctions for existing capacity and the offer level are held at the same time. Following the conclusion of the auctions, each offer level is subjected to an economic test in which the present values of binding commitments of network users are compared with the present values of the estimated increase in the allowed revenue (costs of the expansion plan). Capacity may only be allocated in accordance with the auction result for the offer level if the outcome of the economic test is positive on both sides of the interconnection point. If not, the auction of this offer level is not legally binding, which means that capacity allocation and the corresponding network expansion must not take place (Article 22(3) sentence 3 of Regulation (EU) 2017/459). The only offer level submitted with a single expansion variant met these requirements.

3.1.1 Offer level: determining the bundled capacity products to be offered

- 46 The offer level submitted corresponds to legal requirements. The applicants have determined the bundled capacity products to be offered in accordance with Article 29(1) of Regulation (EU) 2017/459, which are to be offered in full bundled with the capacity of Fluxys B. The offer level is based on the provisions of Article 11(6) of Regulation (EU) 2017/459, pursuant to which:

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

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)(b);
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)(a);
- 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;
- S 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).

- 47 The project application only contains one offer level. On the German side, the expansion plan of the offer level would lead to 5,494,766 kWh/h of new, freely allocable entry capacity in all gas years ("E" within the meaning of Article 11(6) of Regulation (EU) 2017/459). On the Belgian side, there are plans for corresponding amounts of firm exit capacity allowing bundled marketing.
- 48 In the decision adjusting capacity rules in the gas sector (decision of 14 August 2015, BK7-15-001), the Bundesnetzagentur's Ruling Chamber 7 determined the share of incremental capacity to be set aside on the German sides of all interconnection points in accordance with Article 8(9) of Regulation (EU) 2017/459 to be 20%. In analogous application of Article 8(7)(a) of Regulation (EU) 2017/459, one half of this capacity must 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. In accordance with Article 8(7)(b) of Regulation (EU) 2017/459, the other half must be offered no earlier than the annual quarterly capacity auction. The planned start of operational use for the gas year 2030/2031 means that no capacity is affected by Article 8(7)(a) of Regulation (EU) 2017/459 in the annual auction on 3 July 2023, so the share to be set aside effectively remains at 20%.

	Art 11(6) CAM NC A	Art 11(6) CAM NC B	Art 11(6) CAM NC C	Art 11(6) CAM NC D	Art 11(6) CAM NC E	Art 11(6) CAM NC F
	technical capacity	capacity set aside	marketed capacity	additional capacity	incremental capacity	incremental capacity set aside
GY 2030-2031	11,305,234 kWh/h	2,261,047 kWh/h	0 kWh/h	0 kWh/h	5,494,766 kWh/h	1,098,953 kWh/h
GY 2031-2032	11,305,234 kWh/h	2,261,047 kWh/h	0 kWh/h	0 kWh/h	5,494,766 kWh/h	1,098,953 kWh/h
GY 2032-2033	11,305,234 kWh/h	2,261,047 kWh/h	0 kWh/h	0 kWh/h	5,494,766 kWh/h	1,098,953 kWh/h
GY 2033-2034	11,305,234 kWh/h	2,261,047 kWh/h	0 kWh/h	0 kWh/h	5,494,766 kWh/h	1,098,953 kWh/h
GY 2034-2035	11,305,234 kWh/h	2,261,047 kWh/h	0 kWh/h	0 kWh/h	5,494,766 kWh/h	1,098,953 kWh/h
GY 2035-2036	11,305,234 kWh/h	2,261,047 kWh/h	0 kWh/h	0 kWh/h	5,494,766 kWh/h	1,098,953 kWh/h
GY 2036-2037	11,305,234 kWh/h	2,261,047 kWh/h	0 kWh/h	0 kWh/h	5,494,766 kWh/h	1,098,953 kWh/h
GY 2037-2038	11,305,234 kWh/h	2,261,047 kWh/h	0 kWh/h	0 kWh/h	5,494,766 kWh/h	1,098,953 kWh/h
GY 2038-2039	11,305,234 kWh/h	2,261,047 kWh/h	0 kWh/h	0 kWh/h	5,494,766 kWh/h	1,098,953 kWh/h
GY 2039-2040	11,305,234 kWh/h	2,261,047 kWh/h	0 kWh/h	0 kWh/h	5,494,766 kWh/h	1,098,953 kWh/h
GY 2040-2041	11,305,234 kWh/h	2,261,047 kWh/h	0 kWh/h	0 kWh/h	5,494,766 kWh/h	1,098,953 kWh/h
GY 41-2042	11,305,234 kWh/h	2,261,047 kWh/h	0 kWh/h	0 kWh/h	5,494,766 kWh/h	1,098,953 kWh/h
GY 2042-2043	11,305,234 kWh/h	2,261,047 kWh/h	0 kWh/h	0 kWh/h	5,494,766 kWh/h	1,098,953 kWh/h
GY 2043-2044	11,305,234 kWh/h	2,261,047 kWh/h	0 kWh/h	0 kWh/h	5,494,766 kWh/h	1,098,953 kWh/h
GY 2044-2045	11,305,234 kWh/h	2,261,047 kWh/h	0 kWh/h	0 kWh/h	5,494,766 kWh/h	1,098,953 kWh/h

Table 5: Determination of the offer levels

49 This offer level of 13,440,000 kWh/h (existing capacity including incremental capacity less capacity to be set aside) has been established in due consideration of the permitted marketing period. Pursuant to Article 11(3) sentence 1 of Regulation (EU) 2017/459, when offering incremental capacity, the offer levels for yearly capacity may cover a maximum of 15 years after the start of operational use. The timeline of the project application envisages gas year 2030/2031 for commissioning. Consequently, the bundled capacity products may be offered for the period up to and including the 2044/2045 gas year.

3.1.2 Offer level – reflecting market demand

50 The offer level adequately reflects the range of expected demand for incremental capacity.

51 In accordance with Article 28(1)(a) of Regulation (EU) 2017/459, the offer levels coordinated in a project application 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. Technical feasibility forms a barrier.

52 The capacity amounts shown in **table 5** fulfil these requirements, with market demand reflected to the extent legally required in this case. The non-binding demand indicated, shown in **Table 2**, can be fully met. The applicants have also explained that, owing to the extensive expansion necessary, it will not be possible to provide all the capacity until gas year 2030/2031, rather than in 2027/2028 as requested.

3.2. Supplementary rules and conditions

53 In accordance with Article 28(2) of Regulation (EU) 2017/459, the approval was also granted with regard to the planned use of project-specific "Supplementary rules and conditions for incremental capacity" (SRC), which are compatible with regulatory requirements.

54 According to Article 28(1)(b) of Regulation (EU) 2017/459, the applicants must include with the project application 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 [...]*".

55 The benchmark here is essentially the appropriateness and non-discrimination of the network access conditions, see for example section 21(1) EnWG. Specific appropriateness criteria are to be found in recital 11 and Articles 19 and 28 of Regulation (EU) 2017/459. These set out that the interests of applicants, the interests of network users demanding network expansion and ultimately the interests of network users as a whole and "captive" customers must be balanced.

56 In line with the aim of the provision, the ruling chamber limited its assessment to the SRCs, ie to deviations from and additions to the usual, general rules and conditions. Otherwise, the project would be a coincidental reason to examine all network access conditions. Therefore, those rules and conditions that must be accepted as a matter of course for the standard offer of existing capacity are not considered; this refers in particular to Annex 1 of the *Cooperation agreement between the operators of gas supply networks in Germany*.

57 The ruling chamber considers sections 3 and 4 SRC to be relevant. They are compatible with regulatory requirements and seem to be appropriate in line with the standards mentioned above. Both section 3 and section 4 SRC strengthen the binding effect of the transport contracts. They thus serve not only the interests of the network operator but also the aim stated in recital 11 of Regulation (EU) 2017/459, that steps should be taken to avoid captive customers being exposed to the economic risks of the project. This risk exists in principle because the participants in the capacity allocation phase decide on the implementation of the project, and thus the investments of the TSO, with their bookings. If payment obligations were to occur later, captive customers would have to bear the costs of expansion by paying higher network charges. Sections 3 and 4 SRC thus provide a link to the protection of other network users: by placing bookings, shippers

oblige the TSO to expand the network, but in return the shippers also bear the economic risks of implementing the project. Cases that are the fault of the TSO form the limit for the assumption of risk (for delays, see section 4 para 3 sentence 4 SRC).

- 58 Section 3 para 3 SRC relates to the exceptional right of termination in the event of increases in the specific capacity tariff. According to section 3 para 3 SRC in conjunction with Annex I SRC, restricting the provision of section 25 GRC (Annex 1 of the Cooperation agreement), it is only possible to terminate for performance periods in which the specific capacity tariff exceeds the designated maximum tariff. This provision seems appropriate. It benefits captive customers by preventing tariffs that exceed the limit temporarily from leading to a cessation of payment obligations for periods that are actually unaffected.
- 59 Section 4 paras 3 to 5 SRC mention other deviations: they contain provisions on the legal consequences of delays or disruptions to the project, as set out in Article 28(1)(b) of Regulation (EU) 2017/459. Pursuant to these, network users commit to any future bookings if delays occur in the provision of capacity that are not the fault of the TSO. In addition, section 4 para 4 SRC rules out that arrangements for the offer of capacity at upstream or downstream network points affect the rights and obligations arising from the transport contract relevant here. The other sides of interconnection points at which bundled marketing will take place in accordance with Article 19(1) and (2) of Regulation (EU) 2017/459 are also regarded as being up/downstream.
- 60 Ultimately, any booking obligations in accordance with section 4 para 3 SRC may not lead to the inappropriate hoarding of capacity in a way that restricts the market (section 16(3) and (4) GasNZV). Although the shipper may have an obligation regarding bookings that are not necessary, a booking from a third party also allows this obligation to lapse (section 4 para 3 sentence 5 SRC). It is therefore not necessary to actually and finally acquire transport rights. Secondary trading is still an option, too.
- 61 Ultimately, section 4 para 4 SRC does not prevent approval either. Insofar as, in accordance with it, the arrangements for the offer of capacity at upstream or downstream network points should not affect the relevant transport contract, this is compatible with the principle of the entry-exit system. The clause is accompanied by an exemption to section 8 point 6 of Annex 1 of the Cooperation agreement, pursuant to which for bundled products, terminating one transport contract leads to the termination of the other transport contract. This does not pose an obstacle to approval either. It is true that the knock-on effect for bundled products would regularly permit TSOs full re-marketing, which could maximise the offer of bundled products (Article 19(1) of Regulation (EU) 2017/459). Nevertheless, in the cases of section 4 para 4 SRC, this knock-on effect for the whole bundled product is not necessary as, owing to the delay in capacity provision on the other side of the interconnection point, it would not be possible to re-market a full bundled product anyway.

3.3. Project timeline

- 62 The timeline submitted has been approved. It envisages that the technical measures will go into operation in 2030, with the aim of creating full availability for the start of the gas year 2030/2031.
- 63 In accordance with Article 28(1) sentence 2(c) of 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.
- 64 The planning and construction time of the necessary investments to provide capacity at the VIP THE-ZTP is estimated to last from after the successful auction/positive economic test in July 2023 until the planned commissioning, probably in 2030. This time scale for the planning and implementation of the measure 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 NDP.
- 65 The applicants have selected the confirmation of the measures in the Gas NDP 2024-2034 as the starting time of the technical measures. The ruling chamber does not agree with this approach, since the network expansion measures shown in the project proposal are not explicitly approved. Taking account of the existing network infrastructure, the expansion measures serve in particular to derive plausible network expansion costs, which, along with the compressor energy costs, are largely needed to determine the present value of the estimated increase in the allowed or target revenue of the transmission system operators. Only this parameter is the subject of this approval. Nevertheless, after careful consideration of all the applicants' explanations on the default values for the construction of infrastructure used, the marketing time starting in the gas year 2030/2031 seems appropriate.

3.4. Information and parameters for the economic test

- 66 Pursuant to Article 25(1) and Article 28(1)(d) and (2) of Regulation (EU) 2017/459, the parameters for the present values, estimated reference price, f-factor and mandatory minimum premium submitted with the project application are to be approved by the regulatory authority. The values are used in the economic test, which is carried out within two business days of the closing of the bidding round by the Bundesnetzagentur in accordance with Article 11(10) of Regulation (EU) 2017/459 (see Decision of 19 July 2017, BK9-17/609). An economic test is carried out for the offer level applied for (Article 22(3) sentence 1 of Regulation (EU) 2017/459).
- 67 In accordance with Article 22(3) sentence 1 of Regulation (EU) 2017/459, a project will only be implemented if the economic test of an offer level leads to a positive outcome on both sides of the interconnection point. Pursuant to Article 22(2)(a) of Regulation (EU) 2017/459, the outcome of the test is positive if the present value of binding commitments of network users for contracting capacity (to put it simply, the additional revenues within the auctions for incremental capacity) is

at least equal to the share of the present value of the estimated increase in the allowed or target revenue of the transmission system operators defined by the f-factor.

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

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.

68 The Bundesnetzagentur provides a tool, with explanations, on its website (in German) for the calculation:

<https://www.bundesnetzagentur.de> → Beschlusskammern → Beschlusskammer 9 → Gasnetzbetreiber → Netzentgeltbildung → Verfahren zur Schaffung neuer Kapazitäten gemäß Art. 28 NC CAM

69 The aim of the economic test is to ensure the economic viability of the project and it therefore requires that those network users demanding incremental capacity assume the corresponding financial risks associated with their demand (see recital 11 of Regulation (EU) 2017/459). It therefore seems appropriate to leave the financial risks of the existing network infrastructure that are independent of the incremental capacity and its use with network users in general. Even if (some of) the existing network infrastructure can be used for the incremental capacity here, reducing the need for network expansion, its depreciation or the rates of return for its remaining book values, in particular, would not be used in the economic test.

70 However, it therefore also follows that, within the economic test, only the present value of the estimated increase in the allowed (target) revenue of the transmission system operators is refinanced from the revenue from bookings by network users of capacity from the offer level. There is no cost attribution of existing infrastructure, even if some of it is used to provide the incremental

capacity (reducing the need for network expansion). This aspect is to be given due consideration below in the approval of the individual parameters for the economic test, especially the f-factor.

3.4.1 Present value of the estimated increase in the allowed revenue

- 71 The present value of the estimated increase in the allowed revenue, which the applicants applied for in the amount of €562,748,950, has been approved in the amount of €476,676,259 in operative part 1(a).
- 72 In accordance with Article 22(1)(b) and Article 28(2) of Regulation (EU) 2017/459, the present value applied for 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 is to be approved. The ruling chamber merely checks whether the present value requested by the applicants is plausible. Should this not be the case, the ruling chamber sets a different present value to the one applied for in accordance with Article 25(1) of Regulation (EU) 2017/459.
- 73 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 offer level in the amount of €476,676,259 has been calculated appropriately and plausibly. The calculation of the present value, based in particular on the investment costs and the compressor energy costs, can be understood with the help of the economic viability tool.

3.4.1.1 Calculation of the investment amount

- 74 In their project application, the applicants calculated an investment amount of €161,937,604 for the expansion measures they had identified, based on the planned costs in the Gas NDP 2020-2030. This amount includes inflation of 1% a year over a period of 10 years. This period is the difference between the year of planned start of operation (2030) and the year the planned cost estimates relate to (2020). The investment amount not adjusted for inflation is €146,600,000. The network needs to be upgraded with additional compressor units at the Würselen (13 MW) and Reckrod (16 MW) stations, according to the applicants. The construction of a new GPRM facility (1,050,000 Nm³/h) at the Reckrod site is also necessary. With regard to this, the applicants wrote on 30 January 2023 that no preheating is necessary for the operation of the new GPRM facility. It is therefore plausible that the applicants use the planned cost estimate without preheating costs in their calculation of the investment costs.
- 75 The ruling chamber considers it appropriate to draw on the Gas NDP planned costs. These costs may be regarded as realistic to estimate the investment amount based on experience of implementing measures of this type and a similar size as part of the Gas NDP. Nevertheless, the ruling chamber considers that the best estimate currently available of the planned cost estimates should always be used. Therefore, the ruling chamber considers that the planned cost estimates

of the Gas NDP 2022-2032, which the TSOs have now consulted on, should be used and not those of the Gas NDP 2020-2030.

- 76 The ruling chamber also takes a critical view of the applicants' inclusion of inflation with the planned cost estimates up to the year of commissioning. It is questionable in principle whether it would be appropriate to include an inflation rate on the cost side and not on the revenue side. Then there is the question of the appropriate rate of inflation for costs and revenue. What is more, the inflation period should probably not be used for all parts of the installation up to the year of commissioning but only up to the year in which the parts are included as assets. Strictly speaking, it is not only the costs of the parts of the installation but also other costs, especially the compressor energy costs, that would also be subject to inflation. Having considered an appropriate approach to both the costs and the revenue side, the ruling chamber judges it more appropriate not to adjust for inflation at all; see also the explanations in the explanatory document to the economic viability tool.
- 77 Taking account of the planned cost estimates of the Gas NDP 2022-2032 without inflation, the resulting investment amount is €155,010,000. The ruling chamber took this sum into account in place of the amount used by the applicants of €161,937,604. It maintained the proportions in percentage terms across the times of inclusion in assets.

3.4.1.2 Compressor energy costs estimate

- 78 The applicants estimated annual compressor energy costs of €33,710,135 in the project application. To calculate the compressor energy costs incurred by the use of the incremental capacity, the applicants used a transport path. They analysed which additional use of existing or new compressors would be needed for the additional transports along this transport route. The applicants first calculated the additional transport volumes on the basis of past load profiles of the LNG terminals in Zeebrügge and Dunkirk. These volumes showed a need for additional compressor capacity. On the basis of power factors, typical compression ratios and calculated power consumption of the compressor stations, the additional volumes of compressor energy were appropriately calculated and multiplied by the usual forecasts for energy and CO₂ prices (including energy tax). The usual surcharges and electricity network tariffs were also included in the compressor energy costs for electrical compressor stations. There are no objections to this basic approach to the calculation of compressor energy costs, including the higher usage of existing compressor installations for additional transports on the basis of the incremental capacity. However, the annual costs calculated on the basis of the information provided by the applicants on 30 January 2023 about the compressor energy costs are €33,710,608. The ruling chamber included these annual costs in the economic viability tool.

79 Owing to the reduced booking assumptions in the calculation of the f-factor (see section 3.4.3), the ruling chamber only applied the full compressor energy costs up to the gas year 2043/2044 and 80% of them for gas year 2044/2045.

3.4.1.3 Calculation of the present value

80 The calculation of the present value of the estimated increase in the allowed revenue can be understood with the help of the economic viability tool. The capital and operating costs incurred each year are calculated on the basis of the investments entered. The annual capital costs are made up of the imputed depreciation, return on capital employed and imputed trade tax. The annual operating costs incurred are calculated using the operating cost flat rates based on the acquisition/production costs. The calculation of these costs is based on the methodology for determining capital and operating costs from investment measures in accordance with section 23 of the Incentive Regulation Ordinance (ARegV), set out in the Determinations issued by Ruling Chamber 4, BK4-12-656 and BK4-12-656A01. The amendments to the currently valid ARegV and the current determinations of Ruling Chamber 4 on operating cost flat rates were also taken into account in the calculation of the operating costs (natural gas compressors: BK4-19-075; GPRM stations: BK4-19-076; installations under construction: BK4-20-084). Compressor energy costs were also applied to the calculation of the operating costs. The present value results from the discounted annual costs incurred. The year under consideration for the calculation of the present value is the year of the binding capacity request, 2023.

81 Further details on the calculation of the capital and operating costs and the determination of the present value may be found on the Bundesnetzagentur website (in German) (<https://www.bundesnetzagentur.de> → Beschlusskammern → Beschlusskammer 9 → Gasnetzbetreiber → Netzentgeltbildung → Verfahren zur Schaffung neuer Kapazitäten gemäß Art. 28 NC CAM).

3.4.2 Estimated reference price

82 The estimated reference price of €6.03/(kWh/h)/a requested by the applicants has been approved.

83 Pursuant to Article 25(1)(a) and Article 28(2) of Regulation (EU) 2017/459, the reference price estimated for the time horizon of the initial offer of incremental capacity is to be approved. The ruling chamber merely checks whether the estimated reference price submitted by the applicants is plausible. Should this not be the case, the ruling chamber sets a different estimated reference price to the one applied for in accordance with Article 25(1) of Regulation (EU) 2017/459.

84 The estimated reference price has been calculated appropriately and plausibly in the amount approved. The reference price corresponds to the last tariff calculated for the calendar year 2023 on the basis of the determination BK9-19/610 (REGENT 2021) and BK9-22/615 (REGENT-recalculation 2023).

3.4.3 f-factor

- 85 The f-factor of $f = 0.76$ requested by the applicants has been set at $f = 0.88$ in operative part 1(b).
- 86 Pursuant to Article 22(1)(c) and Article 28(2) of Regulation (EU) 2017/459, the f-factor applied for is to be approved. The ruling chamber checks whether the f-factor applied for by the applicants has been calculated plausibly. Should this not be the case, the ruling chamber sets a different f-factor to the one applied for in accordance with Article 23(1) of Regulation (EU) 2017/459.
- 87 The f-factor of $f = 0.88$ has been calculated appropriately and plausibly. In particular, the circumstances to be taken into consideration pursuant to Article 23(1)(a) to (d) of Regulation (EU) 2017/459 were appropriately weighed up.

Calculation of the f-factor

- 88 The f-factor takes account of the circumstances mentioned in Article 23(1)(a) to (d) of Regulation (EU) 2017/459, which are saved in the economic viability tool. The f-factor is the share of the present value of the estimated increase in the allowed revenue that has to be covered by the revenue from binding bookings. The level of the f-factor is a ratio of the revenue resulting from the binding bookings of incremental capacity to the total revenue from incremental capacity forecast for the process (including revenue from appropriately derived, forecast bookings apart from the binding bookings). This approach ensures that the binding bookings cover the share of the present value of the increase in allowed revenue that is not covered by forecast revenue outside the auction of binding bookings. This avoids an inappropriate burden on other network users.
- 89 For the calculation of the f-factor, the ruling chamber considers it appropriate to take the approach of determining the revenue from binding bookings based on the marketing of all the capacity included in the offer level (taking account of a reserve quota of 20%). The f-factor calculated in this way means that shippers requesting incremental capacity and wishing to have the network expanded for this purpose also have to bear a correspondingly high share of the present value of the increase in allowed revenue so that the economic test is positive. If this approach were not taken, the f-factor calculated would be much lower – in extreme cases, almost zero. The increase in the allowed revenue would not be borne by the shippers wanting the additional network expansion but rather passed on to the other network users. Consequently, all risks from the non-occurrence of forecast bookings within the capacity set aside and after the binding booking period of 15 years would be borne by all network users. This would be in clear contradiction of recital 11 of Regulation (EU) 2017/459, according to which those network users demanding incremental capacity must assume the risks associated with their demand.

Booking assumptions, reduction of the f-factor

- 90 Pursuant to Article 23(1)(a) of Regulation (EU) 2017/459, the f-factor can be reduced due to the justified booking assumptions for incremental capacity set aside. The amount of bookings

assumed by the applicants following the auction of incremental capacity in the offer level is not convincing.

- 91 The applicants assume that bookings amounting to 100% of the incremental capacity will be made from the gas year 2030/2031 up to and including gas year 2049/2050. They justify the booking assumptions by stating that non-binding market demand indications were made for a booking period of 20 years. The starting point of the non-binding market demand survey was the gas year 2023/2024. The incremental capacity can only be offered significantly later, for the gas year 2030/2031, because of the network expansion measures necessary. As a result of the delay between the demand for and offer of capacity, the applicants have assumed full bookings for 20 years from the start of the marketing period.
- 92 However, it is not clear to the ruling chamber that the assumption of full bookings used by the applicants up to and including gas year 2049/2050 is likely enough to be taken into consideration in the economic test. No comments were made on this issue when the applicants consulted on the project proposal. The market participants that submitted their non-binding market demand indications to the applicants did not comment on it either.
- 93 In response to an enquiry, the applicants provided no plausible explanation as to why the periods in the original non-binding market demand survey, 4,200,000 kWh/h of capacity for the gas years 2023/2024 to 2026/2027 and 16,800,000 kWh/h for the gas years 2027/2028 to 2043/2044 (transport request), would automatically be pushed back because the necessary network expansion would take time. Moreover, the non-binding capacity demand indication for the gas years 2023/2024 to 2026/2027 can already be met fully by existing capacity, as can over 65% of that for the gas years 2027/2028 to 2043/2044. It therefore seems more likely that the non-binding market demand will largely be met from the marketing of existing capacity and only the remaining amount of capacity will possibly be booked in the incremental capacity auctions as needed.
- 94 The ruling chamber considers it plausible that the period of the non-binding market demand up to gas year 2043/2044 will be fully booked, but not beyond that. For the gas year 2044/2045, the ruling chamber considers only a booking in the amount of offered capacity probable, since it is only because of this booking that the result of the economic test can be positive.

No positive externalities, no further reduction in the f-factor

- 95 It cannot be assumed that there are positive externalities leading to a further reduction in the f-factor.
- 96 Pursuant to Article 23(1)(b) of Regulation (EU) 2017/459, positive externalities caused by the incremental capacity project on the market and/or the transmission system can lead to an additional reduction in the f-factor.

97 The applicants are not aware of positive externalities caused by the incremental capacity project at the Belgian-German market area border, nor did the market participants mention positive externalities during the applicants' consultation of the project proposal.

3.4.4 Mandatory minimum premium

98 The mandatory minimum premium of €1.42/(kWh/h)/a applied for by the applicants has been approved in the amount of €1.36/(kWh/h)/a in operative part 1(c).

99 Pursuant to Article 25(1)(c) and Article 28(2) of Regulation (EU) 2017/459, the mandatory minimum premium, or its range, first offered for the offer level of the incremental capacity is to be approved. The ruling chamber merely checks whether the mandatory minimum premium, or its range, submitted by the applicants is plausible. Should this not be the case, the ruling chamber sets a different mandatory minimum premium or range to the one applied for in accordance with Article 25(1) of Regulation (EU) 2017/459.

100 The mandatory minimum premium has been calculated appropriately and plausibly in the respective amount. The calculation of the mandatory minimum premium can be understood with the help of the economic viability tool. If the present value of binding commitments of network users exclusively based on the estimated reference price is too low for the economic test to be positive, a mandatory minimum premium is required. Only the addition of a mandatory minimum premium enables the booking of all capacity offered in the offer level to achieve the necessary present value of binding commitments of network users – at least provided there are no auction premiums in the auction of the offer level caused by (partial) excess demand. Whether there will be (partial) excess demand and thus auction premiums cannot be firmly ascertained before the auction, so this aspect cannot be assumed with certainty. In this project application, there is a need for a mandatory minimum premium to be imposed in the marketing of the incremental capacity, otherwise the result of the economic test could not be positive.

101 The reduction of the mandatory minimum premium results from the fact that the ruling chamber approved a lower present value of the estimated increase in the allowed revenue than had been applied for, whereby the effect is more than compensated for by the higher approved f-factor.

3.4.5 Present value of binding commitments of network users

102 The present value of binding commitments of network users for contracting capacity, which the applicants applied for in the amount of €562,748,950, has been approved in the amount of €476,676,259 in operative part 1(d).

103 In accordance with Article 22(1)(a) and Article 28(2) of Regulation (EU) 2017/459, the present value of binding commitments of network users for contracting capacity is to be approved. The ruling chamber merely checks whether the present value of binding commitments of network users requested by the applicants is plausible. Should this not be the case, the ruling chamber sets a

different present value to the one applied for in accordance with Article 25(1) of Regulation (EU) 2017/459.

- 104 The present value of binding commitments of network users has been calculated appropriately and plausibly in the amount approved. The calculation of the present value can be understood with the help of the economic viability tool. The reduction of the present value results from the lower approved present value of the estimated increase in the allowed revenue.

3.5. Extension of the marketing period

- 105 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

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

3.7. Fixed price

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

3.8. Marketing time

- 108 The marketing time of the incremental capacity is 3 July 2023, see Article 11(4) of Regulation (EU) 2017/459.

- 109 Pursuant to Article 28(3) of Regulation (EU) 2017/459, upon the publication of the decision of the relevant national regulatory authority and no later than two months before the offer of incremental capacity in the annual yearly capacity auction, the transmission system operators must publish jointly a notice including the information pursuant to Article 28(1) of Regulation (EU) 2017/459 and a template of the contract related to the capacity offered. Moreover, pursuant to Article 28(2) of Regulation (EU) 2017/459, within six months of receipt of the complete project application by the last of the relevant regulatory authorities, the relevant national regulatory authority must publish a decision on the project application.

- 110 A complete project application was available on 2 November 2022 (see rationale (5) *Completeness check, requests for additional information*). On that date, the six-month period for the relevant national regulatory authority to publish its decision in accordance with Article 28(2) sentence 1 of Regulation (EU) 2017/459 began. This period therefore ends on 2 May 2023. There is a period of more than two months between the marketing time mentioned above and the latest date for the publication of the decision.

3.9. Consideration requirements

- 111 The ruling chamber made due and proper use of its assessment and decision-making leeway during the positive approval decision.
- 112 Its discretion was to be exercised in line with the purpose of empowerment (section 40 of the Administrative Procedure Act, VwVfG). These purposes include in particular the consideration requirements. In accordance with the second subparagraph of Article 28(2) of Regulation (EU) 2017/459, these were the views of the Belgian regulatory authority, any effects of the project on competition and the effective functioning of the internal gas market as well as, in accordance with recital 11 of Regulation (EU) 2017/459, any economic risks to captive customers from the investment.
- 113 The ruling chamber is convinced that the project application is not associated with negative effects for competition and the gas market. In particular, no negative effects for existing infrastructure are to be feared if the project application is implemented. The interests of captive customers are fully protected by the economic test.

4. Related decisions (operative part 2)

- 114 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 should be filed with the Bundesnetzagentur für Elektrizität, Gas, Telekommunikation, Post und Eisenbahnen, Tulpenfeld 4, 53113 Bonn. It is sufficient if the appeal 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. The one-month period begins with the filing of the appeal; this deadline 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 does not have suspensory effect (section 76(1) EnWG).

Bonn, 15 March 2023

Vice Chair acting as Chair

Vice Chair

Vice Chair

Dr Ulrike Schimmel

Dr Björn Heuser

Roland Naas