PRESIDENT
ENERGY REGULATORY OFFICE
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Warsaw, 18 March 2022

Communiqué [1]
of the President of Energy Regulatory Office
No. 11/2022
concerning
multipliers, seasonal factors and discounts, referred to in Article 28(1)(a) to (c) of the Tariff Code, to be taken into account in the calculation of tariffs for gaseous fuels transmission services
for the period from 1 January 2023 to 31 December 2023.

1. Introduction

Pursuant to Article 23(2)(11a) of the Energy Law Act, the scope of activity of the President of Energy Regulatory Office[2] (hereinafter referred to as "ERO") includes (...) the performance of duties of the regulatory authority arising from regulations adopted under Articles 8 and 23 of Regulation 715/2009[3], including Commission Regulation (EU) 2017/460 of 16 March 2017 establishing a network code on harmonised transmission tariff structures for gas (OJ L 72 of 17.03.2017 p. 29), hereinafter referred to as "the Tariff Code".

According to Article 1 of the Tariff Code, it sets out the rules on harmonised transmission tariff structures for gas, including rules on the application of a reference price methodology, the associated consultation and publication requirements as well as the calculation of reserve prices for standard capacity products.

In line with Article 28(1) and (2) of the Tariff Code, the President of ERO is obliged to run consultations with the regulatory authorities of all directly connected EU Member States and with relevant stakeholders, on the following issues:

  a) the level of multipliers,

  b) the level of seasonal factors and their calculation as laid down in Article 15 of the Tariff Code,

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c) the levels of discounts specified in Articles 9(2) and 16 of the Tariff Code, that is discounts at the entry points from the LNG terminal and the discounts used to calculate the reserve prices for standard capacity products for interruptible capacity[4, 5],

regarding the transmission network owned by Operator Gazociągów Przesyłowych GAZ-SYSTEM S.A., hereinafter referred to as "the Operator" or "TSO", and the network owned by System Gazociągów Tranzytowych EuRoPol GAZ S.A., hereinafter referred to as "EuRoPol GAZ", to which the Operator acts as the gas transmission system operator, under the decision of 17 November 2010, ref. no. DPE-4720-4(8)/2010/6154/BT.

Pursuant to Article 28(2) of the Tariff Code the above consultations shall be run every tariff period. Whereas tariff period, according to the definition set out in Article 3(23) of the Tariff Code, means the time period during which a particular level of reference price is applicable, which minimum duration is one year and maximum duration is the duration of the regulatory period. As tariffs for gaseous fuel transmission services are approved for a period of 12 months, this consultation shall be held each year.

After completion of the consultation, in accordance with Article 41(6)(a) of Directive 2009/73/EC, the national regulatory authority shall take and publish a reasoned decision regarding the aspects referred to in points (a) to (c) above, taking into account the views of the regulatory authorities of the directly connected Member States.

Fourth consultation[6] on the level of multipliers, the level of seasonal factors, the levels of discounts at entry points from the LNG terminal and discounts applied to calculate the reserve prices for standard capacity products for interruptible capacity for 2023 was carried out from 1 September to 31 October 2021 and regarded the transmission network owned by the Operator and the transmission network owned by EuRoPol GAZ. In the course of the consultation an opinion was received from the Danish NRA[7] expressing the lack of reservations to the consulted aspects and the opinions of: PGNiG S.A., Polish Chamber of Chemical Industry and Economic Association of Polish Power Plants.

Provisions of the Communiqué, accounting for the findings of the above consultation, will be applied in the calculation of 2023 tariffs.

Regardless of the above, it is worth adding that with regard to the reference price methodologies, including the elements set out in Article 26 of the Tariff Code, the separate decisions under Article 27(4) of this act will be issued for the period starting in 2023, for the Operator's own transmission network and for the transmission network owned by EuRoPol GAZ.

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[4] Pursuant to the definition in Article 3(4) 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 (OJ L 72/1 of 17.03.2017), hereinafter referred to as „the NC CAM regulation", standard capacity product means a certain amount of transport capacity over a given period of time, at a specified interconnection point.

[5] Pursuant to the definition in Article 2(1)(3) of Regulation 715/2009 capacity means the maximum flow, expressed in normal cubic meters per time unit or in energy unit per time unit, to which the network user is entitled in accordance with the provisions of the transport contract. However according to Article 10 of the NC CAM regulation the capacity offered shall be expressed in kWh/h or kWh/d.

[6] https://www.ure.gov.pl/pl/biznes/taryfy-zalozenia/mnozniki-wspolczynniki-3/9723,Rynek-gazu-konsultacje-dotyczace-rabatow-mnoznikow-i-wspolczynnikow-sezonowych-d.html

[7] Forsyningstilsynet – Danish Utility Regulator.

2. Multipliers, seasonal factors and discounts referred to in article 28(1)(a) to (c) of the Tariff Code, for the gas transmission tariff for the Operator's own transmission network for the period from 1 January 2023 to 31 December 2023

2.1. Multipliers referred to in Article 28(1)(a) of the Tariff Code.

The values of multipliers for the tariff for the Operator's own transmission network for standard capacity products for 2023 are presented in Table 1.

Table 1. *The values of multipliers for standard capacity products – the tariff for the Operator's own transmission network for 2023.*

Gas transmission service	Within-day	Daily	Monthly	Quarterly
Multiplier	2,20	2,20	1,45	1,27

The above multipliers fall within the allowable ranges specified in the Tariff Code and will be applied both at interconnection points with EU Member States, interconnection points with third countries[8] and at internal points of the gas transmission system (for E-gas[9] and L-gas[10]), including entry/exit points from/to underground gas storage facilities (UGSF).

In Article 13(1) of the Tariff Code, the allowable values of multipliers have been specified for the following capacity products:

- quarterly and monthly standard capacity products - not less than 1 and not more than 1,5;

- daily and within-day standard capacity products - not less than 1 and not more than 3 (in duly justified cases, the level of multiplier may be less than 1, but higher than 0, or higher than 3).

The calculated multiplier values are intended to incentivize gas system users to prioritize booking long-term capacity products (yearly and longer) that contribute to generating right signals with respect to directions of transmission system development. At the same time, they are to provide market participants with the possibility of using the transmission system in a flexible way, by adjusting booked capacity over the year due to using short-term products (quarterly, monthly, daily and within-day). The level of multipliers is also intended to reflect a possible risk of lost profits, from sales of products shorter than one year, in tariffs for short-term capacity products.

Considering the need to ensure a balance between facilitating short-term gas trading on the one hand and ensuring long-term signals for efficient investment in the transmission system on the other, the same values of multipliers as in 2022 were adopted, i.e. from the higher half of the recommended ranges, referred to in Article 13(1) of the Tariff Code.

It should also be pointed to ACER's recommendation no. 01/2021 of 19 July 2021 on setting the level of the multipliers used for the calculation of gas transmission tariffs applied to non-yearly capacity products[11], in which ACER abandon the reduction of the maximum level of multipliers for daily and within-day standard capacity products from 1 April 2023 r. to the value of 1,5 – pursuant to the provisions of Article 13(3) of the Tariff Code. At the same time ACER stated that the current differences between interconnection points (IPs) justify the existing level of flexibility as set out

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[8] Referred to in Article 2(1) of the Tariff Code, i.e. with Belarus and Ukraine.

[9] E – high methane natural gas – E group.

[10] L – low methane natural gas – L group, subgroup L_w.

[11] https://extranet.acer.europa.eu//Official_documents/Acts_of_the_Agency/Recommendations/ ACER%20Recommendation%2001-2021%20on%20Multipliers.pdf

in Article 13(1)(b) of the Tariff Code and rather advocates for a case-by case approach. In point 1 of the above document ACER recommended that Regulatory Authorities should substantiate their decisions regarding daily and within-day multipliers that lie above the upper threshold of Article 13(1)(b) of the Tariff Code, i.e. 3. Whereas in point 2 of the recommendation, ACER underlined the role of mutual consultation of regulatory authorities of all directly connected Member States to better coordinate their decisions regarding multipliers and seasonal factors at joint cross-border IPs, in order to avoid setting contradictory incentives on each side of a same IP.

Due to the fact that the multipliers and seasonal factors adopted for 2023 fall within the ranges stipulated in Article 13(1) and (2) of the Tariff Code the above recommendation does not substantially affect this Communiqué.

2.2. Seasonal factors referred to in Article 28(1)(b) and Article 15 of the Tariff Code.

Pursuant to Article 15(1) of the Tariff Code, seasonal factors will be applied in the calculation of reserve prices of short-term capacity products for 2023, along with multipliers. In line with the definition in Article 3(21) of the Tariff Code seasonal factor means the factor reflecting the variation of demand within the year which may be applied in combination with the relevant multiplier.

The application of seasonal factors aims at fostering efficient use of the transmission system by allowing higher reserve prices in periods with high utilisation rates and lower reserve prices in low-utilisation periods of this system. The differentiation of reserve prices should incentivise transmission system users to shift gas flows away from high system utilisation rates, thus contributing to curbing investment expenses for its development.

The methodology of seasonal factors calculation is laid down in Article 15 of the Tariff Code and is based on forecasted flows. The seasonal factors calculation has been performed drew on forecasted gas volumes to be delivered to exit points of E-gas and L-gas transmission systems (excluding gas volumes to be sent to exit points to UGSF), estimated based on average flow values over the period 2018-2020. The adoption of tree-year average flows aimed at levelling off the seasonal factors values thereby curbing the influence of flow data from the year that could not be representative.

In case of quarterly capacity products, the option referred to in Article 15(5)(a)(i) of the Tariff Code was adopted (arithmetic mean of individual seasonal factors applied over a period of three months).

Detailed calculations of seasonal factors are presented in annexes 1-3 to the consultation document[12].

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[12] https://www.ure.gov.pl/pl/biznes/taryfy-zalozenia/mnozniki-wspolczynniki-3/9723,Rynek-gazu-konsultacje-dotyczace-rabatow-mnoznikow-i-wspolczynnikow-sezonowych-d.html

The levels of seasonal factors for the Operator's own network for 2023 for particular types of capacity products are presented in Table 2.

Table 2. *Seasonal factors – the tariff for the Operator's own network.*

Month \ Gas transmission service	Within-day	Daily	Monthly	Quarterly
January	1,17	1,17	1,17	
February	1,11	1,11	1,11	1,13
March	1,12	1,12	1,12	
April	0,96	0,96	0,96	
May	0,91	0,91	0,91	0,90
June	0,84	0,84	0,84	
July	0,87	0,87	0,87	
August	0,87	0,87	0,87	0,87
September	0,87	0,87	0,87	
October	0,99	0,99	0,99	
November	1,07	1,07	1,07	1,07
December	1,14	1,14	1,14	

The arithmetic average of the products of the relevant seasonal factor and the multiplier, calculated in accordance with Article 13(2) of the Tariff Code, falls within the allowable ranges specified in Article 13(1) of the Tariff Code.

The Operator includes in the tariff correction coefficients being the product of the multiplier and the seasonal factor, rounded to two decimal places.

Multipliers and seasonal factors shall not change in case of secondary trading in capacity products.

The adopted multipliers and seasonal factors ensure that the existing balance between the use of short and long-term capacity products by the transmission system users, which positively affects transmission tariffs for all entities using the Polish transmission system and also gives signals for effective investment in this system, will be maintained. The level of seasonal factors was adopted taking into account the need to ensure the economic and efficient use of transmission infrastructure throughout the year and to better reflect costs by transmission tariffs.

The assumption behind the adopted multiplier values and seasonal factors is to incentivize long-term capacity contracts that secure financial liquidity of the Operator throughout the year. This is due to the specificity of the transmission system operator's activity, in which the transmission of gaseous fuel intensifies during the so-called heating season, whereas the costs of transmission, network maintenance are borne by the Operator throughout the year.

2.3. Application of multipliers and seasonal factors.

The calculated multipliers and seasonal factors will be applied at interconnection points with EU Member States, interconnection points with third countries and at internal points of the gas transmission system (for E-gas and L-gas), including entry/exit points from/to UGSF, for settlements of services provided on a short-term basis.

The payment for short-term gas transmission service will be calculated according to the following formula, except as provided for in section 2.6. and 2.7.:

$$Op = Mn * Ws * Ss * Mu * T/100$$

where:

Op – the payment for short-term gas transmission service (quarterly, monthly, daily or within-day) in [PLN],

Mn – a multiplier,

Ws – a seasonal factor,

Ss – a transmission charge, respectively for entry/exit [gr[13]/kWh/h per h or gr/kWh/day per day],

Mu – a contractual capacity [kWh/h or kWh/day],

T – a number of hours or days in which the short-term service has been provided [h or day].

2.4. The level of discounts at the entry point to the transmission system from LNG facility - Article 28(1)(c) and Article 9(2) of the Tariff Code.

The level of discount on capacity tariffs at the entry point to the Operator's own transmission system from LNG facility in the period from 1 January 2023 to 31 December 2023 shall be 100%. In accordance with Article 9(2) of the Tariff Code, a discount may be applied at entry points from the LNG facility (...) to capacity-based transmission tariffs to enhance security of supply. It should be underlined that the Polish natural gas market is medium-sized with a high degree of dependence on supplies from one direction. Until 2017, the main source of imported gas, despite the development of interconnections on the western and southern borders, was the eastern direction. Domestic production of natural gas in 2020 accounted for approximately 19%[14] of the national natural gas supply balance. As a consequence, the high level of the Polish market dependence on gas supplies from one direction had a significant impact on the level of gas prices. The physical diversification of gas supply, of which the LNG terminal is a component, should contribute to lowering gas prices in Poland.

The LNG Terminal as an alternative source of supplies is to support the processes of competition development on the gas market. The launch of the LNG Terminal in Świnoujście created the conditions for entering the Polish gas market by entities operating on the global LNG market. Increased competition on the gas suppliers side aim at improving the negotiating position of gas trading companies in Poland.

In connection with the above, in case of the entry point to the transmission system from the LNG terminal in Świnoujście, from the start of regasification, that is since June 2016, a discount of 100% has been applied. This solution was introduced mainly for the sake of key importance of the LNG terminal for:

- increasing the security of gas supplies to Poland through the diversification of directions of supplies and ensuring access to the global gas market - fully independent of perturbations on the local and regional market,

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[13] gr=0,01 PLN.
[14] The President of ERO Activity Report 2020, p. 185.

- competition development on the domestic gas market through the possibility of obtaining gas by domestic suppliers from a new source.

2.5. The level of discounts used to calculate the reserve prices for standard capacity products for interruptible capacity (excluding virtual backhaul capacity) - Article 28(1)(c) and Article 16 of the Tariff Code.

In 2023 for all interconnection points of TSO's own transmission system with EU countries and with third countries, as well as for internal entry/exit points, the *ex-ante* methodology referred to in Article 16(1)-(3) of the Tariff Code will be applied in settlements of standard capacity products for interruptible capacity[15] (as in 2022).

The reserve prices for standard capacity products for interruptible capacity shall be calculated by multiplying the reserve prices for the respective standard capacity products for firm capacity by the difference between 100 % and the level of an *ex-ante* discount.

In 2023 for interruptible capacity, including conditionally firm interruptible capacity, but except for virtual backhaul capacity, the following level of *ex-ante* discount will be applied:

- **6%** for annual, quarterly, monthly, daily and within-day standard capacity products for E-gas, offered at interconnection points with EU countries and with third countries,
- **2%** for annual, quarterly, monthly, daily and within-day standard capacity products for E-gas and L-gas, offered at internal entry/exit points[16].

The probability of transmission service interruption was estimated based on data concerning capacity bookings in the period from 1 July 2020 to 30 June 2021, with the usage of the TSO technical staff's expertise. For interconnection points the probability of interruption was estimated based on daily products and for internal points based on the analysis of yearly, quarterly and monthly capacity products.

The adjustment factor A was adopted at level 1 for all standard capacity products for interruptible capacity. The calculated probability of transmission service interruption sufficiently reflect the estimated economic value of a given type of standard capacity products for interruptible capacity and therefore no additional increase in the *ex-ante* discount, resulting from the application of an A-factor higher than 1, is justified.

The *ex-ante* discount was calculated in accordance with the methodology set out in Article 16(2)-(3) of the Tariff Code, using the following formula:

$$Di_{ex\text{-}ante} = A \times Pro \times 100\ \%$$

where:

$Di_{ex\text{-}ante}$ - the level of an *ex-ante* discount,

A - the adjustment factor which is set or approved in accordance with Article 41(6)(a) of Directive 2009/73/EC pursuant to Article 28, applied to reflect the estimated economic value of the type of standard capacity product for interruptible capacity, calculated for each, some or all interconnection points, which shall be no less than 1,

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[15] Interruptible capacity is the transmission capacity that may be interrupted by the TSO up to 100% of booked interruptible capacity.

[16] Including UGSF for which in case of interruptible capacity booking, a 2% and 80% discount cumulation occurs.

Pro - the probability of interruption which is set or approved in accordance with Article 41(6)(a) of Directive 2009/73/EC pursuant to Article 28, and which refers to the type of standard capacity product for interruptible capacity.

The Pro factor was calculated for given entry/exit points of the transmission system per type of standard capacity product for interruptible capacity offered, in accordance with the following formula, on the basis of forecasted information related to the components of this formula:

$$\mathbf{Pro} = \frac{\mathbf{N \times D_{int.}}}{\mathbf{D}} \; \mathbf{x} \; \frac{\mathbf{CAP_{av.int.}}}{\mathbf{CAP}}$$

where:

N - the expectation of the number of interruptions over D,

$D_{int.}$ - the average duration of the expected interruptions expressed in hours,

D - the total duration of the respective type of standard capacity product for interruptible capacity expressed in hours,

$CAP_{av.int.}$ - the expected average amount of interrupted capacity for each interruption where such amount is related to the respective type of standard capacity product for interruptible capacity,

CAP - the total amount of interruptible capacity for the respective type of standard capacity product for interruptible capacity.

2.6. Application of *ex-ante* discount for a short-term interruptible capacity, including conditionally firm interruptible capacity, but except for virtual backhaul capacity.

The payment for short-term interruptible and short-term conditionally firm interruptible gas transmission service will be calculated according to the following formula, except as provided for in section 2.7.:

$$\mathbf{Op = (100\% – Di_{ex\text{-}ante})* Mn * Ws * Ss * Mu * T/100}$$

where:

Op – the payment for short-term interruptible, including short-term conditionally firm interruptible gas transmission service (quarterly, monthly, daily or within-day) in [zł], but except for virtual backhaul capacity,

$Di_{ex\text{-}ante}$ - the level of an *ex-ante* discount,

Mn – a multiplier,

Ws – a seasonal factor,

Ss – a transmission charge, respectively for entry/exit [gr/kWh/h per h or gr/kWh/day per day],

Mu – a contractual capacity [kWh/h or kWh/day],

T – a number of hours in which the short-term service was provided [h or day].

The application of an *ex-ante* discount excludes the possibility of applying an additional discount in the event of interruption occurrence.

2.7. Virtual backhaul capacity.

Virtual backhaul transmission service is defined in § 2(24) of Tariff Regulation[17] as a service rendered by an energy enterprise dealing with gaseous fuels transmission, whereby gaseous fuels are contractually transported in the opposite direction to their physical flow in physical entry points to transmission network or physical exit points from this network.

In case of virtual backhaul transmission service (long- and short-term), pursuant to § 14 of Tariff Regulation, a 0,2 factor is applied to reserve prices, which means granting a 80% discount on that prices. Due to the above, for settlements of these services an *ex-ante* discount, referred to in point 2.5., is not applied. However, in conjunction to Article 16 of the Tariff Code, this factor (and therefore the 80% discount) can only be applied to interruptible capacity products.

For calculation of the reserve price for short-term virtual backhaul transmission service the multipliers and seasonal factors, referred to in points 2.1. and 2.2. of this document, shall be applied.

The payment for short-term virtual backhaul transmission service is calculated according to the following formula:

$$Op = 0,2 * Mn * Ws * Ss * Mu * T/100$$

where:

Op – the payment for a short-term virtual backhaul gas transmission service (quarterly, monthly, daily or within-day) in [zł],

Mn – a multiplier,

Ws – a seasonal factor,

Ss – a transmission charge, respectively for entry/exit [gr/kWh/h per h or gr/kWh/day per day],

Mu – a contractual capacity [kWh/h or kWh/day],

T – a number of hours in which the short-term service was provided [h or day].

3. Multipliers, seasonal factors and discounts referred to in Article 28(1)(a) to (c) of the Tariff Code for the gas transmission tariff for the transmission network owned by EuRoPol GAZ for the period from 1 January 2023 to 31 December 2023

3.1. Multipliers referred to in Article 28(1)(a) of the Tariff Code.

The values of multipliers for the tariff for gas transmission services for the transmission network owned by EuRoPol GAZ for short-term standard capacity products for 2023 is shown in Table 3.

Table 3. *Multipliers for standard capacity products – the tariff for EuRoPol GAZ's transmission network for 2023.*

Gas transmission service	Within-day	Daily	Monthly	Quarterly
Multiplier	1,95	1,95	1,30	1,10

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[17] The regulation of the Minister of Energy of 15 March 2018 on detailed terms for structuring and calculation of tariffs and settlements in trade in gaseous fuels (Journal of Laws of 2021, Item 280).

The above mentioned multipliers shall be applied at all entry and exit points to/from the gas transmission system owned by EuRoPol GAZ for settlements of services provided on a short-term basis. The above multipliers fall within the allowable ranges stipulated in Article 13(1) of the Tariff Code.

Considering the provisions of Article 13(2) of the Tariff Code, no seasonal factors referred to in Article 15 of the Tariff Code are set for the tariff for EuRoPol GAZ's transmission network.

3.2. Application of multipliers.

The payment for a short-term gas transmission service will be calculated according to the following formula:

$$Op = Mn * Ss * Mu * T/100$$

where:

Op – the payment for a short-term gas transmission service (quarterly, monthly, daily or within-day) in [PLN],

Mn – a multiplier,

Ss – a transmission charge, respectively for entry/exit [gr/kWh/h per h or gr/kWh/day per day],

Mu – a contractual capacity [kWh/h or kWh/day],

T – a number of hours or days in which the short-term service has been provided [h or day].

3.3. The level of discounts used to calculate the reserve prices for standard capacity products for interruptible capacity (excluding virtual backhaul capacity) - Article 28(1)(c) and Article 16 of the Tariff Code.

In 2023 for all interconnection points of the network own by EuRoPol GAZ, accepting the proposal of the TSO, *ex-ante* methodology referred to in Article 16(1)-(3) of the Tariff Code will be applied in settlements of standard capacity products for interruptible capacity[18]. That means the application of the similar methodology as for TSO's own transmission system. This approach should ensure greater transparency of interruptible capacity products settlements and due to the application of similar methodologies in both transmission systems – will simplify the use of these services. It should be emphasized that pursuant to Article 14(1)(b) of regulation 715/2009, transmission system operators provide both firm and interruptible third party access services, and the price for interruptible capacity shall reflects the probability of interruptions.

The reserve prices for standard capacity products for interruptible capacity shall be calculated by multiplying the reserve prices for the respective standard capacity products for firm capacity by the difference between 100 % and the level of an *ex-ante* discount.

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[18] Interruptible capacity is the transmission capacity that may be interrupted by the TSO up to 100% of booked interruptible capacity.

In 2023 a **10%** *ex-ante* discount will be applied for annual, quarterly, monthly, daily and within-day standard capacity products for interruptible capacity offered at interconnection points of the network own by EuRoPol GAZ with EU countries[19] and with third countries.

The assessment of the probability of interruption for respective types of transmission system points was carried out with the usage of the TSO technical staff's expertise, due to the lack of interruption of standard capacity products for interruptible capacity during analysed period. The probability of transmission service interruption was estimated based on data concerning capacity bookings in the period from 1 July 2020 to 30 June 2021, using a dynamic methodology (D-2). This methodology is based on the actual flows recorded and their comparison with the interruptible capacity to be offered and then setting the level of capacity that could be interrupted.

In 2020, there was a significant increase in the use of short-term capacity products (daily and within-day) caused by the expiry of one out of two legacy contracts on 17 May that year, resulting in an increase in the probability of interruption of the gas fuel transmission service, calculated using the dynamic methodology.

The adjustment factor A was adopted at level 1 for all standard capacity products for interruptible capacity. The calculated probability of transmission service interruption sufficiently reflect the estimated economic value of a given type of standard capacity products for interruptible capacity and therefore no additional increase in the *ex-ante* discount, resulting from the application of an A-factor higher than 1, is justified.

The *ex-ante* discount was calculated in accordance with the methodology set out in Article 16(2)-(3) of the Tariff Code, using the following formula:

$$\mathbf{Di_{ex\text{-}ante} = A \times Pro \times 100\ \%}$$

where:

$Di_{ex\text{-}ante}$ - the level of an *ex-ante* discount*,*

A - the adjustment factor which is set or approved in accordance with Article 41(6)(a) of Directive 2009/73/EC pursuant to Article 28, applied to reflect the estimated economic value of the type of standard capacity product for interruptible capacity, calculated for each, some or all interconnection points, which shall be no less than 1,

Pro - the probability of interruption which is set or approved in accordance with Article 41(6)(a) of Directive 2009/73/EC pursuant to Article 28, and which refers to the type of standard capacity product for interruptible capacity.

The Pro factor was calculated for given entry/exit points of the transmission system per type of standard capacity product for interruptible capacity offered, in accordance with the following formula, on the basis of forecasted information related to the components of this formula:

$$\mathbf{Pro = \frac{N \times D_{int.}}{D} \times \frac{CAP_{av.int.}}{CAP}}$$

where:

N - the expectation of the number of interruptions over D,

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[19] Including the PWP interconnection point.

$D_{int.}$ - the average duration of the expected interruptions expressed in hours,

D - the total duration of the respective type of standard capacity product for interruptible capacity expressed in hours,

$CAP_{av.\ int.}$ - the expected average amount of interrupted capacity for each interruption where such amount is related to the respective type of standard capacity product for interruptible capacity,

CAP - the total amount of interruptible capacity for the respective type of standard capacity product for interruptible capacity.

3.4. Application of *ex-ante* discount for a short-term interruptible capacity, except for virtual backhaul capacity.

The payment for short-term interruptible gas transmission service will be calculated according to the following formula, except as provided for in section 3.5.:

$$Op = (100\% - Di_{ex\text{-}ante})* Mn * Mu * T/100$$

where:

Op – the payment for a short-term interruptible gas transmission service (quarterly, monthly, daily or within-day) in [zł], except for virtual backhaul capacity,

$Di_{ex\text{-}ante}$ - the level of an *ex-ante* discount,

Mn – a multiplier,

Ss – a transmission charge, respectively for entry/exit [gr/kWh/h per h or gr/kWh/day per day],

Mu – a contractual capacity [kWh/h or kWh/day],

T – a number of hours in which the short-term service was provided [h or day].

The application of an *ex-ante* discount excludes the possibility of applying an additional discount in the event of interruption occurrence.

3.5. Virtual backhaul capacity.

In case of virtual backhaul transmission service, pursuant to § 14 of Tariff Regulation, a 0,2 factor is applied to reserve prices (a 80% discount). Nevertheless, in conjunction with Article 16 of the Tariff Code, this factor (and therefore the 80% discount) can only be applied to interruptible capacity products.

For calculation of the reserve price for short-term virtual backhaul transmission service the multipliers, referred to in point 3.1. of this document, are applied.

The payment for short-term virtual backhaul transmission service is calculated according to the following formula:

$$Op = 0,2 * Mn * Ss * Mu * T/100$$

where:

Op – the payment for a short-term virtual backhaul gas transmission service (quarterly, monthly, daily or within-day) in [zł],

Mn – a multiplier,

Ss – a transmission charge, respectively for entry/exit [gr/kWh/h per h or gr/kWh/day per day],

Mu – a contractual capacity [kWh/h or kWh/day],

T – a number of hours in which the short-term service was provided [h or day].

The application of an discount pursuant to § 14 of Tariff Regulation excludes the possibility of applying *an ex-ante* discount, referred to in section 3.3.

4. Comments from transmission system users received during the consultation process[20]

The comments received in response to consultation regarded to:

A. The System User indicated that pursuant to section 5.5. of the Consultation document, the gas transmission services provided on the basis of virtual reverse flow at the Mallnow point will be settled with a discount only if they are provided on the interruptible basis.

In connection with the above, he postulated the introduction of a discount in the Mallnow-reverse point, under Article 9(2) of the Tariff Code, dedicated to infrastructure developed to end the isolation of Member State. This point has a capacity of 5 billion m³ per year and was built to connect the Polish transmission system with the German gas market and other Western European countries. Therefore, in User's opinion, the Mallnow-reverse point was built in order to end the isolation of Member State – the Republic of Poland – within the EU gas market. Hence, it is justified to introduce a discount at the Mallnow-reverse point that allows to reduce the cost of gas imports to Poland. User indicated that currently the Operator charges the full amount of transmission fees (i.e. without a 0,2 factor foreseen for the provision of virtual reverse flow services) both in the primary direction and for the virtual reverse flow, increasing the costs of using the infrastructure, despite the fact that physically part of the of deliveries is realized on the pipeline section: Kondratki - Interconnection Point (PWP). This approach results in an increase in the cost of gas imports to Poland for all participants of the gas market in Poland. In connection with the above, the System User suggested the introduction of a discount for the Mallnow-reverse point pursuant to Article 9(2) of the Tariff Code, according to which it is possible to apply a discount to infrastructure developed in order to end the isolation of Member States.

B. Two System Users indicated that according to section 4.6.5. and 5.5 of the Consultation Document, in case of virtual reverse flow services, pursuant to § 14 of Tariff Regulation, a factor of 0,2 is applied to reserve prices, which means that a 80%discount is applied in this case. However, in conjunction with Article 16 of the Tariff Code, this factor (and therefore the 80% discount) can only be applied to interruptible capacity products. Subsequently, the Users suggested an amendment, according to which the factor of 0,2 (and therefore a 80% discount) could be applied to both firm and interruptible capacity products.

They also emphasized that the rules for the structuring of tariffs for gaseous fuels, the calculation of prices and rates of charges and settlements in force in Poland, result from the

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[20] After the consultation was completed, the President of the ERO, in a letter of 21 January 2022, requested the Operator to present its position on the comments submitted within the consultation. The Operator's position was received on 7 February 2022.

provisions of the regulation of the Minister of Energy of 15 March 2018 on detailed terms for structuring and calculation of tariffs and settlements in trade in gaseous fuels (Journal of Laws of 2021, Item 280) issued on the basis of Article 46(1) and (2) of the Act of 10 April 1997 - Energy Law. The provisions of this regulation do not distinguish between the virtual reverse flow (virtual reverse) settlement methodology, depending on a firm or interruptible manner of providing these services. In § 14 of this regulation the rule was adopted, according to which in case of virtual backhaul transmission service provision, the fixed fee rates for these services are the product of the fixed fee rates set out in the tariff, referred to in § 12, and the coefficient equal to 0,2.

The Users pointed out that the provisions of the regulation set a factor (0,2) differentiating the way of calculating the tariff for the provision of virtual reverse flow services in comparison with physical gas transmission services, due to the fact that virtual services do not generate costs for the Operator in the amount corresponding to the costs of physical gas transmission. The Tariff Code and the NC CAM regulation divide services according to the criterion - services provided on a firm and interruptible basis. NC CAM does not differentiate between gas transmission services provided by the operator on the reverse physical and virtual basis. The division between services on the basis of NC CAM was made in principle according to the criterion of the firmness of the offered product, as evidenced in particular by Article 32(1) and (3) of NC CAM.

The NC CAM regulations do not prohibit the operator from providing the virtual reverse flow service on a firm basis, on the contrary, in the first place they require offering the service on a firm basis, prior to the interruptible service. Similarly, the Tariff Code does not differentiate between the gas transmission services provided by the operator on a reverse physical and virtual basis. On the basis of the Tariff Code, the division between services offered by transmission system operators, as in the case of NC CAM, is generally based on the criterion of the firmness of the capacity product offered. In particular, Article 14 and 15 relate to the reserve price setting for firm capacity products, whereas Article 16 deals with the reserve price setting for interruptible capacity products.

In connection with the above, the User indicated that the Tariff Code does not distinguish between virtual services and physical services, and in particular does not indicate that the virtual reverse transmission service could be provided only on an interruptible basis.

Moreover, it should be assumed that the provisions of Article 16 of Tariff Code, in fact, only relate to discounts for interruptible services compared to firm services, but they do not constitute an obstacle to the introduction in national legislation of factors differentiating the method of calculating the charge for the provision of virtual transmission services compared to physical gas transmission services. In such a situation, in the opinion of the User, the factor 0,2 specified in §14 of Tariff Regulation should apply to the virtual reverse flow service offered on an interruptible and firm basis. It is a coefficient independent of (or in other words - parallel to) the discount for interruptible services specified in Article 16 of the Tariff Code.

C. Two Users referred to the *ex-ante* discount foreseen in the Consultation Document used to calculate the reserve prices for standard interruptible capacity products, both with regard to

the Operator's own network and the network belonging to EuRoPol GAZ, and indicated that the preferred option would be application of an *ex-post* discount.

From the point of view of the gas customer, the consulted solution seems unfair, because he has to pay in advance for a service that may not be performed by the Operator, even in 100%.

The discount of 2% (intra-system points of TSO's own system) or 6% (interconnection points of TSO's own system) or the proposed 10% (in the future SGT tariff) are disproportionately low in relation to the risk of interruptions. It is also difficult to rely on historical data and the use of the expert knowledge of the Operator's technical staff, when in the light of dynamic market, regulatory and business changes, the degree of interruptions of gas supplies in the near future may look completely different.

Therefore, the Transmission System Users postulated to return to the methodology used in the past and to apply *ex-post* approach.

D. Two Users pointed out that, in accordance with the Consultation Document, discounts are provided for at the entry point to the transmission system from the LNG installation (100%) and at the entry/exit points from/to UGSF (80%), which are jointly and severally financed by other transmission network users. According to the User, the discounts should also apply to entry points to the national transmission system through which bio-methane will be supplied to the network. In connection with the change of the EU climate policy and with the work carried out by the Ministry of Climate and Environment on signing the sectoral agreement for the development of the biogas and bio-methane sector, it is necessary to signal in order to consider and take into account the 100% discount on entry points for this new sector in the future. The idea is to accelerate the development of this market and, consequently, to increase the security of gas supplies, which is in line with the assumptions of the EU Commission Regulation 2017/460. Article 9(2) offers the possibility of applying discounts to entry and exit points developed in order to end the isolation of Member States with regard to their transmission systems, with the aim of ensuring greater security of supply

With regard to the comments made, I state the following:

Ad A.

Pursuant to Article 9(2) of the Tariff Code, a discount may be applied to respective capacity-based transmission tariffs, at entry points from LNG installation and at the entry points from and exit points to the infrastructure developed with the purpose of ending the isolation of Member States in respect of their gas transmission systems for the purposes of increasing security of supply.

Referring to this provision, the System User suggested introducing a discount at the Mallnow-entry point to the transmission system owned by EuRoPol GAZ.

Nevertheless, in accordance with Article 9(2) of the Tariff Code, there are no grounds to conclude that this provision applies to the Polish gas transmission system. Poland is not the EU Member State whose gas transmission system is isolated (or was at the time of the Tariff Code entry into force) within the meaning of the said provision.

Regardless of the above, it is also worth noting that in recent years the Operator has implemented a number of activities aimed at diversifying the directions and sources of natural gas supplies, striving to become fully independent from the historically dominant supplier. At the same time,

the works carried out in the field of interconnections expansion, significantly improve integration with the transmission systems of other Member States.

In connection with the argument raised by the System User that in this context there is an unjustified increase in the costs of using the infrastructure by charging transmission tariff in full both for the primary direction and reverse transmission, in a situation where the physical flow is carried out mainly on the section of Kondratki-entry/PWP-exit, it should be pointed out that this argument is incorrect.

It is crucial that the user buys and receives from the Operator a firm transmission service that has been bound to the specific tariff. Therefore, for the charge incurred, the user acquires a firm service, and thus the Operator is obliged to provide the service on a firm basis, regardless of the network configuration resulting from the other users bookings.

Regardless of the above, it is also worth noting that taking account of the operating conditions of the gas pipeline owned by EuRoPol GAZ in recent months, terms such as "primary direction" and "reverse flow direction" are becoming less clear. On the other hand, the quality of the service provided by the Operator at the Mallnow point remained unaffected.

Ad B.

Rules for harmonized transmission tariff structures for gas, including rules for the application of the reference price methodology, related consultation and publication requirements, and rules for the calculation of the reserve prices for standard capacity products, after the entry into force of the Tariff Code, are stipulated comprehensively by the provisions of this act.

In particular, the provisions of this Code comprehensively regulate the issue of discounts for services provided on a firm and interruptible basis. In this situation, national regulations, including those resulting from tariff regulation for gaseous fuels, may be applicable to the extent that they are not inconsistent with the Tariff Code.

Regarding the comments of the market participants on the application of the discount for virtual reverse transmission services, the provisions of Article 16 of the Tariff Code, which contains the rules for setting the reserve prices of standard products for interruptible capacity, are crucial. Pursuant to Article 16(1) of the Tariff Code, these prices are calculated by multiplying the reserve prices of the given standard firm capacity products, calculated in the manner specified in Article 14 or 15, by the difference between 100% and the *ex-ante* discount level calculated in the manner specified in paragraph 2 and 3. As a result of these provisions, the discount applied to the interruptible service shall reflect the probability of the service interruption. Consequently, the Tariff Code excludes the possibility of applying a discount (e.g. in the form of a 0,2 factor) in cases where the Operator offers and provides a given service on a firm basis. This is only possible for interruptible services.

It should also be emphasized that in accordance with the provisions of the NC CAM Regulation, the Operator cannot offer interruptible capacity instead of firm capacity, if the latter is available. In particular, at bi-directional points there is an obligation for the Operator to offer firm capacity in both directions. According to Article 32(2) of NC CAM, transmission system operators offer daily capacity product for interruptible capacity in both directions at interconnection points where the respective standard capacity product for firm capacity was sold out day-ahead or was not offered. At unidirectional interconnection points where firm capacity is offered only in one

direction, transmission system operators shall offer at least a daily product for interruptible capacity in the other direction.

In accordance with the Tariff Code, virtual reverse flow does not therefore constitute a separate category of transmission services (including a separate capacity product), but an interruptible service provided at interconnection points where firm capacity is offered only in one direction or there are no firm services available.

At unidirectional points, the use of capacity in the opposite direction to the physical flow can only be of a contractual nature and depends on whether the appropriate amount of gaseous fuel is transported in the primary direction.

It follows from the above that the application of an *ex-ante* discount for virtual reverse flow services (provided on an interruptible basis) in the amount of 80%, referred to in § 14 of Tariff Regulation, in a situation where the Operator offers and performs a given service on a firm basis, is not allowable.

Ad C.

Referring to the proposal of the transmission system Users to restore the *ex-post* approach, it should be noted that the analysis of the provisions of Article 16 of the Tariff Code shows that the preferred methodology of setting the reserve prices for standard products for interruptible capacity is the *ex-ante* discount methodology. This approach also results from the provision of Article 14(1)(b) of Regulation 715/2009, according to which transmission system operators provide both firm and interruptible third party access services, and the price for interruptible capacity shall reflects the probability of interruptions.

Accordingly, reserve prices for standard interruptible capacity products in 2023 will be determined in accordance with the principles set out in point 2.5. and 3.3. of this Communiqué by multiplying the reserve prices of the given standard firm capacity products by the difference between 100% and the *ex-ante* discount. This discount results from the probability of transmission service interruption that was estimated based on data concerning capacity bookings in the period from 1 July 2020 to 30 June 2021.

An alternative solution, provided in Article 16(4) of the Tariff Code, is the application of an *ex-post* methodology, where a network user is compensated only when the actual interruption occurred. The *ex-post* compensation is paid for each day on which an interruption occurred and is equal to three times the reserve price for daily standard capacity products for firm capacity. However, the *ex-post* discount may only be applied at interconnection points where there was no interruption of capacity due to physical congestion in the preceding gas year.

Therefore, the President of the ERO approved the Operator's request to continue in 2023 the *ex-ante* discount approach, applied in 2021 and 2022, for Operator's own transmission network and its introduction for the network owned by EuRoPol GAZ. The unified approach for both transmission systems should be beneficial for system users and ensure greater transparency of settlements.

Ad D.

Work is currently underway to develop concepts for the legal framework enabling the production and sale of biomethane, as well as procedures and technical parameters that will have to be met

by biomethane producing installations connected to the transmission network. On the other hand, the analysis of the applications for connection held by the Operator shows that the first volumes of biogas will appear in the transmission network after 2025. Accordingly, the issue of setting possible discounts for entry points from biomethane installations will be the subject of a further consultation.

5. Consideration of aspects referred to in Article 28 (3) of the Tariff Code

Pursuant to the provisions of Article 28(3) of the Tariff Code, the President of ERO, when taking a decision on the issues listed in section 1 of this provision, shall take into account the responses received during the consultation and the following aspects:

(a) with regard to the multipliers:

- the balance between facilitating short-term gas trading and providing long-term signals for efficient investment in the transmission system,
- the impact on revenues from transmission services and their recovery,
- the need to avoid cross-subsidisation between network users and to increase cost reflectivity of reserve prices,
- situations of physical and contractual congestion,
- the impact on cross-border flows,

(b) with regard to seasonal factors:

- the impact on facilitating the economic and efficient use of the infrastructure,
- the need to improve the cost-reflectivity of reserve prices.

The analysis of these issues has been presented in the consultation paper.

In addition, it should be noted that Article 13(1) of the Tariff Code sets out limits of multipliers values for the following capacity products:

- quarterly and monthly standard capacity products - not less than 1 and not more than 1,5;
- daily and within-day standard capacity products - not less than 1 and not more than 3 (in justified cases the multiplier value may be less than 1 but more than 0 and more than 3).

The multiplier values established in this Communiqué, both for the Operator's own network and for the network of EuRoPol GAZ, fall within the allowable limits set out in the Tariff Code and will be applied both at interconnection points and internal transmission system points. Also the arithmetic average of the products of the seasonal factor and the relevant multiplier determined for the Operator's own network, calculated in accordance with Article 13(2) of the Tariff Code, falls within the permissible ranges specified in Article 13(1) thereof.

The multiplier level allows the Operator to maintain an appropriate proportion between long-term products ensuring the stability of its revenue, and thus the possibility to carry out investments, and short-term products that enable network users to optimize their purchase portfolios.

Since the multipliers and seasonal factors applied to short-term products are set at the same level for all entry and exit points, each network user incurs the same charge for short-term products

regardless of gas transmission routes. Given the above, multipliers or seasonal factors have no impact on the level of cross-subsidisation between network users or on cross-border flows. In addition, seasonal factors are set at a level reflecting transmission system gas outflows depending on the market profile of demand for gaseous fuel and will not have a negative impact on the efficient use of the transmission infrastructure.

Due to the fact that capacity for short-term services is included in the tariff calculation, the adopted level of multipliers and seasonal factors will not affect the allowed revenue recovery. In the event of under- or over-recovery of transmission service revenue, the regulatory account mechanism referred to in Article19 and 20 of the Tariff Code will be applied.

Rafał Gawin
President of Energy Regulatory Office

/electronically signed/