



Decision

Decision on the project proposal regarding incremental capacity

Our reference : ACM/UIT/510638
Case number : ACM/17/031359
Date :

Decision of the Netherlands Authority for Consumers and Markets approving the information as referred to in Article 25 (1) of NC-CAM and the project proposal as referred to in Article 28 (1) of NC-CAM for Gasunie Transport Services B.V.

1 Introduction and procedure

1. On 6 April 2017, the European network code on capacity allocation mechanisms in gas transmission systems (hereinafter: NC-CAM)¹ entered into force. This network code includes rules relating to the incremental-capacity process, among other things.
2. The incremental-capacity process requires adjacent transmission system operators (hereinafter: TSOs) to cooperate in at least every odd-numbered year in the assessments of market demand for incremental capacity. If such assessments show that there is market demand, an incremental-capacity project will be started. The TSOs prepare a project proposal. After approval of this proposal by the national regulatory authorities (hereinafter: NRAs), the incremental capacity is offered in the next annual-capacity auction. After the auction, an economic test is conducted. The incremental capacity must be provided if the result of the economic test referred to in Article 22 NC-CAM is positive. This is the case if the investment costs are sufficiently covered by bookings of incremental capacity by network users in the annual-capacity auction.
3. In the spring of 2017, Gasunie Transport Services B.V. (hereinafter: GTS) having regard to Article 26, first paragraph, of NC-CAM, assessed the market demand for incremental capacity. GTS drew up a report on the basis of Article 26 (2) of the NC-CAM and, in cooperation with the neighbouring German TSOs, decided to start an incremental-capacity project on the border of the TTF market area and the Gaspool market area. From 19 October 2017 to 19 December 2017, GTS consulted the draft project proposal.
4. The Netherlands Authority for Consumers and Markets (hereinafter: ACM) determined the f-factor on 30 August 2018. The f-factor is a parameter in the economic test that determines that part of the costs of the investment that does not have to be covered by market demand but is reimbursed through an increase in the allowed revenue.
5. On 18 February 2019, ACM received the proposal for the incremental-capacity project (hereinafter: the project proposal). This decision relates to the approval of the project proposal as referred to in Article 28, first paragraph, of NC-CAM.
6. ACM considers the receipt of the project proposal also to be the receipt of the information that the TSO is required to send, pursuant to Article 25 (1) of NC-CAM. This decision therefore also concerns the approval of the information regarding each offer level as referred to in Article 25, first paragraph, of NC-CAM.
7. On 20 February 2019, ACM notified the Bundesnetzagentur (hereinafter: BNetzA) of the receipt of the project proposal and its completeness.

¹ 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

8. ACM has been in regular contact with BNetzA for the preparation of this decision. ACM has taken into account any views of BNetzA when drafting this decision.
9. On 29 March 2019, ACM received a change to the project proposal by GTS. This change relates to the parameters defined in Article 22, first paragraph, NC-CAM.

2 Legal framework

10. Article 25 of NC-CAM says:
 1. *For a given incremental capacity project, the transmission system operator(s) shall submit to the relevant national regulatory authority(-ies) for approval the following information for each offer level:*
 - a) *the reference prices estimated for the time horizon of the initial offer of incremental capacity that are used for the calculation of the parameter set out in Article 22(1)(a) and 24(2)(a), respectively in case separate or a single economic test is applied;*
 - b) *the parameters set out in Article 22(1)(b) to (c) and 24(2)(b) to (c), respectively in case separate or a single economic test is applied;*
 - c) *if applicable, the range of the level for the mandatory minimum premium referred to in Article 33(4) of Regulation (EU) 2017/460 for each offer level and interconnection point applied in the first auction and possibly in subsequent auctions in which the incremental capacity is offered as defined in Article 33(3) of Regulation (EU) 2017/460.*
 2. *Following the approval by the relevant national regulatory authority(-ies), the information set out in paragraph 1 shall be published by the involved transmission system operator(s) as set out in Article 28(3).*
11. Article 28, first and second paragraph, of NC-CAM says:
 1. *Following the consultation and finalisation of the design phase for an incremental capacity project in accordance with Article 27, the involved transmission system operators shall submit the project proposal for an incremental capacity project to the relevant national regulatory authorities for coordinated approvals. The project proposal shall also be published by the involved transmission system operators in one or more official languages of the Member State and to the extent possible in English and shall include at least the following information:*
 - a) *all offer levels, reflecting the range of expected demand for incremental capacity at the relevant interconnection points as a result of the processes provided for in paragraph 3 of Article 27 and Article 26;*
 - b) *the general rules and conditions that a network user must accept to participate and access capacity in the binding capacity allocation phase of the incremental capacity process, including any collaterals to be provided by network users and how possible*

delays in the provision of capacity or the event of a disruption to the project are dealt with contractually;

- c) timelines of the incremental capacity project, including any changes since the consultation described in paragraph 3 of Article 27, and measures to prevent delays and minimise the impact of delays;*
 - d) the parameters defined in Article 22(1);*
 - e) whether an exceptionally extended time horizon for contracting capacity for an additional period of up to 5 years beyond the allocation of up to 15 years after the start of the operational use may be required, in accordance with Article 30;*
 - f) where applicable, the proposed alternative allocation mechanism including its justification pursuant to Article 30(2) as well as the conditions approved by the transmission system operator for the binding phase pursuant to Article 30(3);*
 - g) where a fixed price approach is followed for the incremental capacity project, the elements described in Article 24(b) of Regulation (EU) 2017/460.*
- 2. Within 6 months of receipt of the complete project proposal by the last of the relevant regulatory authorities, those national regulatory authorities shall publish coordinated decisions on the project proposal defined in paragraph 1 in one or more official languages of the Member State and to the extent possible in English. The decisions shall include justifications. National regulatory authorities shall inform each other of the receipt of the project proposal and its completeness in order to determine the start of the 6 months period.*

When preparing the national regulatory authority's decision, each national regulatory authority shall consider the views of the other national regulatory authorities involved. In any case national regulatory authorities shall take into account any detrimental effects on competition or the effective functioning of the internal gas market associated with the incremental capacity projects concerned.

If a relevant national regulatory authority objects to the submitted project proposal, it shall inform the other involved national regulatory authorities as soon as possible. In such a situation, all the national regulatory authorities involved shall take all reasonable steps to work together and reach a common agreement.

Where the relevant national regulatory authorities cannot reach an agreement on the proposed alternative allocation mechanism within the 6 months period referred to in the first subparagraph, the Agency shall decide on the alternative allocation mechanism to be implemented, following the process set out in Article 8(1) of Regulation (EC) No 713/2009.

Basis of competence ACM

12. The tasks with which ACM is charged are laid down by law. These tasks are laid down in Section 1a, first paragraph, in the Dutch Gas Act. Translated it says:

“The Netherlands Authority for Consumers and Markets is charged with the tasks assigned to it for the implementation of the provisions under or pursuant to this Act, Regulation 713/2009, Regulation 715/2009, Regulation 1227/2011 and Regulation 994/2010. The Netherlands Authority for Consumers and Markets is also responsible for monitoring compliance with the provisions of or pursuant to this Act, Regulation 713/2009, Regulation 715/2009, Regulation 1227/2011 and Regulation 994/2010, with the exception of Article 8, unless it concerns investments referred to in Article 8, second paragraph, under f to i, and with the exception of Articles 8a, 35a and 54 to 57. ”

13. NC-CAM is a regulation that was adopted pursuant to Regulation 715/2009, as a result of which ACM is also charged with tasks arising from NC-CAM pursuant to Section 1a, first paragraph, of the Gas Act.
14. It follows from NC-CAM that the project proposal and certain information regarding each offer level must be submitted to the NRA for approval.
15. Article 39, first paragraph, of Directive 2009/73/EC of the European Parliament and of the Council (hereinafter: the Directive) says:
“Each Member State shall designate a single national regulatory authority at national level”
16. Section 1a, second paragraph, of the Gas Act says that ACM is designated as the NRA as referred to in Article 39, first paragraph, of the Directive. Translated it says:
“The Netherlands Authority for Consumers and Markets is the regulatory authority, as referred to in Article 39 (1) of the Directive and in Regulation 715/2009 and is the competent authority as referred to in Regulation 715/2009.”

3 Assessment

17. ACM assesses whether the project proposal contains the information that it must at least contain in accordance with Article 28 (1) of NC-CAM, and whether this information is in accordance with NC-CAM. In addition, ACM assesses whether the information for each offer level prescribed in Article 25 of NC-CAM is consistent with NC-CAM.
18. For the elements on which ACM tests the project proposal, ACM refers to Article 28, first paragraph and Article 25, first paragraph of NC-CAM.
19. In its project proposal, GTS states that no extended time horizon for contracting capacity is required, that it does not use an alternative allocation mechanism, and that it will not use a fixed-price approach. GTS also stated in the project proposal that no minimum auction premium will be applied. ACM notes that there is indeed no question of these elements or that their application is not necessary.

20. The assessment of the other elements is described below.

3.1 Offer levels

21. GTS has included offer levels in the project proposal. Together with the neighbouring German TSOs, GTS proposes setting up a new interconnection point at Emden to meet demand. In connection with technical measures to be taken by the relevant German TSOs, GTS proposes two offer levels for this point: offer level I of 7,300,000 kWh/h/y, and offer level II of 11,900,000 kWh/h/y. In its project proposal, GTS states that it would have been sufficient for the Dutch side to have only one offer level. The technical measures that GTS must take for offer level I are the same as those for offer level II. However, because this is not the case on the German side, GTS follows the division into two offer levels. ACM endorses the choice of two offer levels. Offer level II does justice to the submitted demand indication. And when relevant, offer level I makes it possible to link up with a smaller demand for capacity and thus a lower investment on the German side. ACM therefore considers the proposed offer levels to be in line with NC-CAM.

3.2 Additional conditions

22. GTS included the general terms and conditions in Annex I to the project proposal. These must be accepted by a network user to participate in and access capacity during the binding capacity allocation phase of the incremental-capacity process. The conditions include the contractual method to be used in the event of any delays. It has been determined, for example, that if the contracted incremental capacity is not available on time, the obligations of the buyer will be suspended accordingly. These conditions apply in addition to the so-called GTS Transmission Service Conditions (TSC) and the conditions set by ACM on the basis of Section 12f of the Gas Act. The conditions set by ACM include, among other things, provisions on the securities to be provided by network users. ACM believes that these additional conditions are reasonable, transparent and non-discriminatory and considers them to be in line with NC-CAM.

3.3 Timelines of the incremental capacity project

23. GTS included the timeline for the incremental-capacity project in its project proposal. This concerns a planning of the milestones from the auctioning of the incremental capacity up to the moment that the capacity can be used. GTS also provides a description of the measures to prevent delays and minimise the impact of delays as much as possible. ACM considers GTS to be as best capable to make a realistic timeline. According to ACM, the planning and risk mitigation measures are reasonable. ACM therefore sees no objections to approve the time schedules on the basis of NC-CAM.

3.4 Parameters of the economic test

24. GTS included in the project proposal the parameters for the economic test as referred to in Article 22 (1) of NC-CAM. It concerns the following parameters:
- a. the present value of binding commitments of network users for contracting capacity;
 - b. the present value of the estimated increase in the allowed revenue;
 - c. the f-factor.

Ad a: Present value of binding commitments

25. According to the GTS project proposal, the present value of the binding commitments of network users is approximately EUR 130 million for supply level I and approximately EUR 210 million for supply level II. For the calculation of these present values, GTS has used the reference price as proposed by GTS in its tariff proposal for 2020. GTS has explained that it uses in the calculation this reference price as the estimated reference prices for the 15-year booking period. In addition, GTS has assumed in the calculation that the incremental capacity offered for each offer level is fully booked. GTS explains in the project proposal that it has not taken into account a possible auction premium and that there is no mandatory minimum premium.
26. ACM considers the estimated reference prices that GTS uses to determine this parameter to be representative for the project proposal. ACM agrees that the reference prices based on the tariffs for 2019 are not sufficiently representative in this case. In its tariff proposal for 2020, GTS has based itself on the applicable tariff structure, which, due to the implementation of the NC-TAR, differs considerably from the tariff structure applicable before 1 January 2019. The tariff from the tariff proposal therefore forms a better indication of future reference prices. ACM notes that, by using the proposed 2020 reference price for the 15-year booking period, no account is taken of influences that could cause the reference price to rise or fall, such as inflation and the efficiency discount. With this, GTS somewhat abstracts from reality. In view of the large difference between the expected present value of the binding commitments and the expected increase in allowed revenue, and the fact that GTS also applies the abstraction in the calculation of the expected increase in allowed revenue, ACM is of the opinion that this method of calculation can be approved.
27. Incidentally, GTS states in the project proposal that the economic test that GTS carries out after the auction will show what the actual present values are. GTS has explained that it will use the reference price for 2020 (including any auction premium) set by ACM for the economic test, as the estimated reference prices for the 15-year booking period.
28. In addition, ACM considers the assumption that the capacity offered to be fully booked is justified in light of market demand on which the offer levels are based. ACM therefore concludes that this parameter is in line with NC-CAM.

Ad b: Estimated increase in the allowed revenue

29. GTS indicates that the estimated increase in allowed revenue is approximately EUR 0.6 million. GTS has given ACM insight into the model with which this expected increase is calculated. GTS calculates the expected increase in allowed revenue by estimating the capital costs and operational costs, adjusted to a present value by applying the WACC. GTS uses the WACC, depreciation periods and estimates for operational costs as set by ACM (amended) for the 2017-2021 regulatory period. As with the present value of the binding commitments, GTS does not take inflation into account when calculating this parameter. As explained above, ACM can follow this assumption, given the large difference between the two parameters and the fact that the abstraction is applied symmetrically. ACM therefore considers this parameter to be in accordance with NC-CAM.

Ad c: f-factor

30. GTS included the f-factor in the project proposal. This parameter corresponds to the f-factor determined by ACM in its f-factor decision.² ACM therefore considers this f-factor to be in line with NC-CAM.

² Decision with reference: ACM/UIT/499025.

4 Decision

31. On the basis of Article 25, first paragraph, of NC-CAM, the Netherlands Authority for Consumers and Markets approves the information regarding each offer level.

32. On the basis of Article 28, first paragraph, of NC-CAM, the Netherlands Authority for Consumers and Markets approves the project proposal, insofar as it concerns the following elements:
 - the offer levels;
 - the general rules and conditions applicable on the booking of incremental capacity;
 - the timelines of the incremental capacity project and measures to prevent delays and minimise the impact of delays;
 - the parameters of the economic test.

The Hague, the Netherlands,
Date:

The Netherlands Authority for Consumers and Markets
On its behalf:

Henk Don
Member of the Board

*Anyone whose interest is directly affected by this decision can file an objection, supported with reasons, against this decision with the Legal Department of the Netherlands Authority for Consumers and Markets **within six weeks** after the publication date of this decision. Please send the objection to the following address: P.O. Box 16326, 2500 BH, The Hague, the Netherlands. In your notice of objection, you may request the Netherlands Authority for Consumers and Markets to agree to filing an appeal with the Dutch Trade and Industry Appeals Tribunal directly.*