Ref. 609-18-64-Reverse Flow Germany/Czechia, applications for exemption from the obligation to enable permanent physical bi-directional capacity at the "Deutschneudorf EUGAL" cross-border interconnection point

Decision

In the administrative proceedings

concerning: exemption from the obligation to enable permanent physical capacity to transport gas in both directions ("bi-directional capacity") on all interconnections between Member States in accordance with Article 5(4) sentence 1(b) of Regulation (EU) 2017/1938 of the European Parliament and of the Council of 25 October 2017 concerning measures to safeguard the security of gas supply and repealing Regulation (EU) No 994/2010 ("SoS Regulation")

vis-à-vis

Fluxys Deutschland GmbH,
legally represented by its management board Carlo van Eysendyck, Arno Büx and Friedrich Rosenstock,
Elisabethstraße 11, D-40217 Düsseldorf

Gasunie Deutschland Transport Services GmbH,
legally represented by its management board Jens Schumann and Paul van der Laan,
Pasteurallee 1, D-30655 Hannover

Ontras Gastransport GmbH,
legally represented by its management board Ralph Bahke and Uwe Ringel,
Maximilianallee 4, D-04129 Leipzig

Gascade Gastransport GmbH,
legally represented by its management board Dr Christoph von dem Bussche and Dr Igor Uspenskiy,
Kölnische Straße 108-112, D-34119 Kassel

hereinafter referred to as "the applicants"

the Bundesnetzagentur für Elektrizität, Gas, Telekommunikation, Post und Eisenbahnen,
Tulpenfeld 4, 53113 Bonn, legally represented by its President Jochen Homann,

on 5 February 2020

decided in accordance with section 54a(2) sentence 1 para 2 of the German Energy Industry Act (EnWG) in conjunction with Article 5(4) sentence 1 in conjunction with point 4 of Annex III to the SoS Regulation:

1. The application for exemption from the obligation to enable permanent physical bi-directional capacity at the Deutschneudorf-EUGAL cross-border interconnection point is granted. The exemption applies for the period of four years as of the date of this decision.

2. An order for payment of costs will be specified in a separate notice.
**Reasoning**

**I. Relevant facts**

The present administrative proceedings concern the application for exemption from the obligation to enable permanent physical bi-directional capacity at the Deutschneudorf-EUGAL cross-border interconnection point in accordance with Article 5(4) sentence 1 in conjunction with point 2 of Annex III to the SoS Regulation.

The applicants – transmission system operators (TSOs) Gascade Gastransport GmbH, Fluxys Deutschland GmbH, Gasunie Deutschland Transport Services GmbH and Ontras Gastransport GmbH – are co-owners of the EUGAL pipeline project, which includes the Deutschneudorf EUGAL cross-border interconnection point on the border between Germany and Czechia. Under the co-ownership agreement, Gascade Gastransport GmbH holds a 50.5% share. This TSO is the project developer and will carry out both construction and subsequent operation of the EUGAL pipeline. Fluxys Deutschland GmbH, Gasunie Deutschland Transport Services GmbH and Ontras Gastransport GmbH each have a 16.5% share in the project and the future pipeline.

Gascade Gastransport GmbH informed the Bundesnetzagentur in a letter dated 8 April 2019 that the other three EUGAL owners had given it power of attorney until the end of 2019 for the application procedure in accordance with Article 5(4) sentence 1(b) of the SoS Regulation. This power of attorney was extended until 31 December 2020 in a letter dated 9 January 2020. The Bundesnetzagentur requested a complete application from Gascade Gastransport GmbH in a letter dated 16 May 2019 and set a deadline of 28 June 2019. Gascade Gastransport GmbH was subsequently granted two extensions at its request, the first until 12 July 2019 and the second until 26 July 2019. An application was submitted to the Bundesnetzagentur on 26 July 2019.

Before submitting the application, Gascade Gastransport GmbH conducted a consultation of all transmission system operators potentially concerned on its own behalf and on behalf of the other applicants, as required under point 2 sentence 1 of Annex III to the SoS Regulation. In order to give the TSOs the opportunity to comment Gascade Gastransport GmbH announced on its website\(^1\) on 3 July 2019 that the EUGAL co-owners would submit an application for exemption from the obligation to enable permanent physical bi-directional capacity at the Deutschneudorf-EUGAL cross-border interconnection point to the Bundesnetzagentur. A press release accompanied this publication. The deadline for responses to the consultation was 10 July 2019. Having conducted the consultation, Gascade Gastransport GmbH submitted the application on 26 July 2019.

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The Polish TSO Gaz-System S.A. was the only one to take the opportunity to submit comments; the response it sent to Gascade Gastransport GmbH on 10 July 2019 was presented to the Bundesnetzagentur as an appendix to the application. In it, Gaz-System S.A. expresses opposition to the granting of the requested exemption. It points out that recital 28 of the SoS Regulation sets out that the overall objective of the Regulation should be to have a growing bi-directional capacity and keep one-directional capacity in future cross-border projects to a minimum. Moreover, the benefits to the security of gas supply of enabling permanent physical bi-directional capacity need to be seen from a broader perspective, in a spirit of solidarity and enhanced cooperation. Gaz-System S.A. thus takes the view that an evaluation of the cost-benefit analysis that takes account of the whole transportation corridor, and not just the needs of the Member States directly affected, should be conducted. It argues that the exemption would maintain the current differences in liquidity between the western European trading markets using the European Energy Exchange (EEX), on the one hand, and central and eastern Europe, on the other. Gaz-System S.A. states that a further important reason for refusing the exemption would be a general worsening of the security of gas supply for the whole region, including Poland. If the flow of gas from Russia to Germany via Poland using the Jamal pipeline were to be interrupted and a supply crisis were to occur in northern Germany, a transportation corridor using the new EUGAL interconnection could take the necessary volumes of natural gas though the interconnection of Ontras Gastransport GmbH to the system of Polish Gaz-System S.A. It also points out that, in the planning approval procedure for the EUGAL interconnection, Gascade Gastransport GmbH itself had argued to the Brandenburg state office for mining, geology and natural resources (LBGR) that the interconnection would improve the security of supply. Finally, Gaz-System S.A. takes the view that costs incurred to enable bi-directional capacity would only justify exemption if they were significantly higher than the likely benefit.

In their application, by contrast, the applicants argue that reversing at the Deutschneudorf EUGAL interconnection point would not significantly increase the security of supply in any Member State or region, and, moreover, that the investment costs would considerably outweigh the expected benefits for the security of supply.

In accordance with point 3 of Annex III to the SoS Regulation, the applicants' application for exemption was submitted to the European Commission, the Agency for the Cooperation of Energy Regulators (ACER), the Czech Ministry of Industry and Trade (MPO) and the Czech Energy Regulatory Office (ERU) by email on 5 August 2019, with a request to respond within four months.

On 10 September 2019, the Czech Ministry of Industry and Trade gave its own legal opinion as to the necessity of an application under Article 5(4) in conjunction with point 2 of Annex III to the SoS Regulation. It considers that there is no obligation to enable permanent physical bi-directional capacity at the cross-border interconnection point in question, and that therefore no exemption application is necessary. The ministry notes that various transmission lines physically
cross the border in that place. These are located so near to each other and are so closely connected to each other, both on the German and on the Czech sites, that they could be viewed as one single pipeline. This situation means that there is sufficient capacity flowing towards Germany overall, according to the ministry. The Czech TSO concerned, NET4GAS, was also informed of this legal opinion. Following initial contact, the ministry had already informed the Bundesnetzagentur of its interpretation of the SoS Regulation in writing on 18 June 2019. However, the ministry agreed to participate in a coordinated decision in accordance with point 5 of Annex III of the SoS Regulation in the event that the Bundesnetzagentur were to take a different view and conduct exemption proceedings in response to an application. No other comments were received.

For further details, reference is made to the content of the application.
II. Rationale for the decision

The applicants are granted exemption from the obligation to enable permanent physical bi-directional capacity at the Deutschneudorf-EUGAL cross-border interconnection point as requested. The exemption applies for the period of four years as of the date of this decision.

1. Formal legality of the decision

1.1 Competence
The competence of the Bundesnetzagentur for the present decision derives from section 54a(2) sentence 1 para 2 EnWG in conjunction with point 1 of Annex III to the SoS Regulation. The competence of the department for decisions relating to the expansion of bi-directional gas flows derives from section 59(1) sentence 2 para 12 EnWG.

1.2 Proceedings
Under Article 5(4) sentence 1 of the SoS Regulation, TSOs are required to enable permanent physical capacity to transport gas in both directions ("bi-directional capacity") on all interconnections between Member States. Under Article 5(4) sentence 1(b) in conjunction with point 2(b) of Annex III to the SoS Regulation, they can apply for exemption from the obligation to enable bi-directional capacity from the competent authority.

In accordance with point 3 of Annex III to the SoS Regulation, the competent authorities concerned shall without delay consult the competent authorities and, where they are not the competent authorities, the national regulatory authorities, of the Member State that could, in accordance with the risk assessment under Article 7 of the SoS Regulation, benefit from the reverse flow capacity, ACER and the European Commission on the exemption request. The Bundesnetzagentur fulfilled this requirement on 5 August 2019 by forwarding the exemption application to the European Commission, ACER, the MPO and the ERU. It was not necessary to identify or consult other Member States potentially concerned that could benefit from the additional capacity because the underlying risk assessment from 2018 found that there was no "benefit" within the meaning of the Regulation for other Member States. The Bundesnetzagentur's evaluation of various disruption scenarios from the 2018 German risk assessment showed that it was not considered necessary to include an additional injection of gas at the German-Czech border (flow direction towards Germany). The risk assessment did not show a need for additional capacity for reverse flow or a possible advantage from this, for example for Poland.

1.3 Addressees of the decision
In accordance with Article 5(4) of the SoS Regulation, the proceedings are addressed to transmission system operators. The applicants are transmission system operators within the
meaning of the legal definition of section 3 para 5 EnWG, which is also to be applied within the framework of the SoS Regulation.

2. Substantive legality of the decision
The conditions required for the granting of the exemption requested by the applicants from the obligation to enable permanent physical bi-direction capacity in accordance with Article 5(4) sentence 1(b) of the SoS Regulation are met at the Deutschneudorf-EUGAL cross-border interconnection point.

Using the cost-benefit analysis provided, the applicants have shown in an objective and comprehensible way that the reverse flow capacity would not enhance the security of gas supply of any Member State concerned and the likely investment costs would significantly outweigh the negligible benefits for the security of gas supply (see point 5 sentence 4(b) of Annex III to the SoS Regulation.

In examining whether the conditions have been met, point 5 of Annex III to the SoS Regulation sets out that the Bundesnetzagentur must take as a basis the risk assessment, the information listed in Article 5(5) of the SoS Regulation and the opinions received following the consultation in accordance with point 3 of Annex III to the SoS Regulation. The security of gas supply and the contribution to the internal gas market must also be taken into account.

2.1 Cost-benefit analysis
The necessary cost-benefit analysis was included with the application. It contains the elements required under Article 5(5) of the SoS Regulation: an assessment of market demand; projections for demand and supply; the possible economic impact on existing infrastructure; the costs of bi-directional capacity including the necessary reinforcement of the transmission system; and the benefits to the security of gas supply taking into account the possible contribution of bi-directional capacity to meeting the infrastructure standard set out in Article 5 of the SoS Regulation. The Bundesnetzagentur did not require the submission of a comprehensive feasibility study; see section 2.5 below for the reasons for this.

2.2 Assessment of market demand
In their assessment of market demand, the applicants have shown in an objective and comprehensible way that shippers do not need any additional capacity in the relevant region. In the past four years, there has not been any demand for yearly capacity from Czechia to Germany on the European gas transport capacity booking platform PRISMA, and only isolated, small bookings of capacity products with shorter durations (quarterly, monthly, daily, within-day). The relevant data may be found on the PRISMA website.²

² https://platform.prisma-capacity.eu
The applicants also drew on relevant analyses of market demand that the European TSOs had carried out as part of the "more capacity" process\(^3\) (2015) and the incremental capacity process\(^4\) (2017-2019) to assess market demand in this case. In the course of these processes, all network users had the opportunity to submit non-binding demand indications for additional capacity at the market area interconnection points. The applicants correctly point out that none of these demand analyses showed that current transport capacity at the relevant market area border was insufficient. The TSOs therefore did not submit to the Bundesnetzagentur a project proposal for the relevant market area border in the incremental capacity process for the 2017 to 2019 cycle. The same applies to the new cycle, which runs from 2019 to 2021 and started with the annual auction on 1 July 2019. Network users again had the opportunity to submit non-binding demand indications for incremental capacity at the border between the Gaspool market area and Czechia, but did not do so. Accordingly, the TSOs will not develop a project proposal for submission to the Bundesnetzagentur.

Moreover, the Bundesnetzagentur takes the view that there is sufficient unused entry capacity available from Czechia to Germany. It must first be determined whether the current available capacity is sufficient and can be used to supply Poland on a firm basis using the Mallnow cross-border interconnection point. The applicants correctly point out that at least 7 GWh/h of not booked firm, freely allocable entry capacity is available at the Brandov-Gaspool virtual interconnection point (VIP) from January 2020 to September 2021.\(^5\) A further 5.7 GWh/h is designated as dynamically allocable capacity. The Bundesnetzagentur has confirmed these figures. It will also be possible to use the additional capacity from the Stork II transmission line from the time of its commissioning (planned for 31 December 2022); according to the Projects of Common Interest (PCI) report\(^6\) and the Ten Year Network Development Plan (TYNDP)\(^7\), it will have a capacity of 6.383 GWh/h. The additional capacity from Stork II can also get to Germany from Czechia via a different route: there is enough capacity at the Waidhaus Entry VIP to allow transmission to the German market area NetConnect Germany.

### 2.3 Projections for demand and supply

The applicants can also draw on the content of the scenario framework regarding the German gas network development plan (NDP) for the demand and supply projections. Section 15a EnWG requires German TSOs to draw up a national NDP every two years. This plan must include all measures for enhancing, reinforcing and expanding the network in line with requirements to guarantee security of supply that are effective and necessary for secure and

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\(^3\) Process for incremental capacity within the meaning of Article 22 et seq 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 (NC CAM); see also https://www.more-capacity.eu/

\(^4\) https://www.fnb-gas-capacity.de/

\(^5\) Accessible using the Gascade transparency tool, https://tron.gascade.biz/


\(^7\) https://www.entsog.eu/tyndp#
reliable network operation in the next ten years. To this end, the TSOs develop a scenario framework to be able to make appropriate assumptions about developments in gas production, supply and consumption as well as exchange with other countries. They take into consideration planned investments in regional and Community-wide networks, storage facilities and LNG facilities as well as the effects of possible supply interruptions. The Bundesnetzagentur approved the scenario framework for the NDP 2020-2030 on 5 December 2019.8 According to the scenario framework, neither the current market situation nor long-term forecasts show any need to increase capacity from Czechia into the Gaspool market area in Germany. This also applies specifically to the Deutschneudorf-EUGAL cross-border interconnection point with entry direction into Germany. The TYNDP produced by the European Network of Transmission System Operators for Gas (ENTSOG) has not identified any need for additional capacity from Czechia to Germany either.9

2.4 Possible economic impact on existing infrastructure
The applicants have assessed and presented in an adequate and comprehensible way the possible economic impact of upgrading the Deutschneudorf-EUGAL cross-border interconnection point by enabling permanent physical bi-directional capacity. They take the view that the costs incurred for the upgrade of the Deutschneudorf-EUGAL cross-border interconnection point would have to be borne by the current network users since, given the lack of demand (see above, sections 2.2 and 2.3 of this decision), in all likelihood the costs could not be covered by capacity bookings. The Bundesnetzagentur shares this assumption.

2.5 Results of the feasibility study
The applicants did not have to conduct a comprehensive feasibility study regarding the enabling of permanent physical bi-directional capacity at the Deutschneudorf-EUGAL cross-border interconnection point. The Bundesnetzagentur did not require a comprehensive feasibility study to be submitted because the expense and time involved in conducting it (including planning and environmental impact assessments) would have been disproportionate in view of the lack of demand for reversal. The applicants correctly point out that it would be necessary to install an additional compressor to enable permanent physical bi-directional capacity at the Deutschneudorf-EUGAL cross-border interconnection point. They examined this in a technical study in preparation for this exemption application.

2.6 Costs of bi-directional capacity
The applicants have also presented a plausible estimate of the costs needed to enable permanent physical bi-directional capacity at the Deutschneudorf EUGAL cross-border

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9 Compare https://www.entsog.eu/tyndp#
interconnection point from the Czech side to the German market area Gaspool. They assume costs of around € for the installation of a gas compressor station and other operating expenses. These cost estimates are in line with those used for comparable measures in the NDP in recent years.

2.7 Benefits to the security of gas supply

The applicants correctly take the calculations of the infrastructure standard in accordance with Article 5 of the SoS Regulation as a basis to assess the potential benefits of permanent physical bi-directional capacity at the Deutschneudorf EUGAL cross-border interconnection point. Article 5 sets out that each Member State must ensure that the necessary measures are taken so that in the event of a disruption of the single largest gas infrastructure, the technical capacity of the remaining infrastructure is able to satisfy exceptionally high gas demand occurring with a statistical probability of once in 20 years. The exact calculation of the N-1 formula for the national risk assessment is carried out by the Bundesnetzagentur using the criteria set out in Annex II to the SoS Regulation. In the latest edition of the national risk assessment from 2018, which has been submitted to the European Commission, the Bundesnetzagentur comes to the conclusion that if the Mallnow cross-border interconnection point were to be disrupted, there would be sufficient transport capacity to satisfy a day of exceptionally high gas demand as specified in the SoS Regulation. The result of the calculation method using the N-1 standard for the cross-border interconnection point Mallnow is at least 198% – well over the necessary 100%. Further entry capacity at the German-Czech border is therefore unnecessary and is not identified in the national risk assessment.

The applicants were additionally able to use the results of the common risk assessment in accordance with Article 7(2) of the SoS Regulation of the Eastern gas supply risk group, Belarus, which was led by Poland and which includes Germany and Czechia as well as other Member States in accordance with point 1(b) of Annex I to the SoS Regulation. All ten scenarios compiled to assess the security of supply in the region found that it would not be necessary to use significant capacity from Czechia to Germany. It was also found that it would not be necessary to use all capacity between German and Poland in any of the ten scenarios. Overall, the calculation using the N-1 standard in the relevant subregion, Central-West, which assumes a disruption to the Kondratki entry point from Belarus to Poland, gives a percentage of between (withdrawal capacity of 30%) and (withdrawal capacity of 100%) – again,

10 A more detailed description of the calculation used for German infrastructure can be found in the prevention plan published by the Federal Ministry for Economic Affairs and Energy (BMWi), page 5, accessible at https://www.bmwi.de/Redaktion/DE/Downloads/P-R/praeventionsplan-gas-fuer-die-bundesrepublik-deutschland.html
11 Point 16 of the "Cooperation mechanism within the Belarus Gas Supply Risk Group" dated 23 November 2017. The agreement has been submitted to the European Commission and has not been published.
12 The report has been submitted to the European Commission and has not been published.
considerably higher than the necessary 100%. Even in the worst case scenario of a disruption, the Member States of the Belarus common risk group came to the conclusion that even Poland would be able to avoid possible supply deficits using its own natural gas storage facilities.\textsuperscript{13} Finally, the Bundesnetzagentur took into account that the calculations of the Belarus common risk assessment do not include the increase of firm exit capacity from Germany to Poland, from 6.1 GWh/h to 13.8 GWh/h, planned for 2021.\textsuperscript{14} It should therefore be noted that Poland already meets a high supply standard and the lack of a further entry option from Czechia to Germany would not lead to any deterioration in the Polish gas supply situation.

Ultimately, in this case the Bundesnetzagentur would not have to decide differently even if permanent physical bi-directional capacity from Czechia to Germany was in fact needed to improve the security of supply because, even then, upgrade of the Deutschneudorf-EUGAL cross-border interconnection point would not necessarily be essential. The applicants correctly point out that the Deutschneudorf-EUGAL cross-border interconnection point is part of the VIP between the German market area Gaspool and Czechia. Within the VIP, it is already possible to use permanent, bookable bi-directional entry capacity from Czechia to Germany by means of the existing cross-border interconnection points Brandov-STEGAL and Deutschneudorf. The existing infrastructure, therefore, already meets the technical requirements to provide the necessary flows of gas in the event of disruption in a Member State. There would therefore be no evident benefit to the security of gas supply from additional permanent physical bi-directional capacity from Czechia to Germany.

Moreover, the exemption granted here from the obligation to enable permanent physical bi-directional capacity at the Deutschneudorf-EUGAL cross-border interconnection point would not lead to the current unfavourable liquidity situation worsening further or becoming entrenched. Gaz-System S.A.’s reasoning that the exemption would maintain the current differences in liquidity between the western European trading markets using the EEX, on the one hand, and central and eastern Europe, on the other, does not stand up to scrutiny. It neglects to take into account that the gas infrastructure, as shown, does not display any capacity restrictions that could deter energy traders from undertaking trading contracts with physical fulfilment. Other trading contracts, without physical fulfilment, are not affected by this anyway and do not depend on free capacity or gas infrastructure. However, these transactions do generate a significant increase in liquidity. As well as other factors such as the number of registered and active traders, the most liquid trading markets in Europe are characterised in particular by a high churn rate.\textsuperscript{15}

\textsuperscript{13} The common risk assessment of the Belarus risk group has been submitted to the European Commission and has not been published.
\textsuperscript{14} Compare https://www.nep-gas-datenbank.de
\textsuperscript{15} The "churn rate" indicates the ratio of traded to physically transported volume of gas.
2.8 Duration of the exemption

The requested exemption is granted for the period of four years as of the date of this decision. The regulatory authority may grant a temporary exemption from the obligation to enable permanent physical bi-directional capacity for a maximum period of four years, in accordance with point 5 sentence 5(b) of Annex III to the SoS Regulation. The Bundesnetzagentur has here properly exercised its discretion to grant the maximum period of time. It did so in particular because of the considerations detailed in sections 2.2 and 2.3 of this decision, according to which there has so far not been any demand for more capacity or for reversal at the relevant cross-border interconnection point and the Bundesnetzagentur takes the view that there will not be any such demand in the short or medium term. The recurring incremental capacity process and requirements planning for the transmission system require constant monitoring by the Bundesnetzagentur, in particular of aspects of security of supply in the European transmission system and necessary expansion and mean that, if appropriate, the Bundesnetzagentur could change its assessment once the granted exemption had reached its time limit.

V. Forwarding of the decision

The Bundesnetzagentur will forward this decision on the application for exemption to the European Commission and ACER in accordance with point 6 of Annex III to the SoS Regulation.
Notification of appellate remedies

An appeal may be filed against this decision within one month of service of the decision. Appeals must be filed with the Bundesnetzagentur, 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 of filing the appeal. The period begins with the lodging of the appeal and may be extended by the court of appeal's presiding judge upon request. The statement of grounds must state the extent to which the decision is being contested and its modification or revocation sought and must indicate the facts and evidence on which the appeal is based.

The appeal and the grounds for appeal must be signed by a lawyer.

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

On behalf of

Yvonne Grösch

(Head of section 609)