

§1

Point 1(a) to (d) of the Decision of 25 February 2009, as amended by the Decision of 7 July 2009 (BK7-08-009), is replaced by the following:

- ‘1.) The capacities created on the basis of the co-ownership interest of W & G Beteiligungs-GmbH & Co. KG (formerly Wingas GmbH & Co. KG) in the Baltic Sea pipeline (*Ostseepipeline-Anbindungsleitung*; hereinafter: ‘OPAL’) are exempted from the application of §§ 20 to 25 of the Energy Industry Act (*Energiewirtschaftsgesetz* – EnWG) for the benefit of the applicant subject to the following:
- a) The exemption applies only to interconnection capacities on the OPAL. Without regard to the physical gas flow, interconnection capacities are:
 - aa) restrictedly allocatable entry capacities at the Greifswald entry point and restrictedly allocatable exit capacities at the Brandov exit point which are supplied coupled (‘**coupled interconnection capacities**’);
 - bb) separately reservable firm dynamically allocable entry and exit capacities where firm capacities for entry at the Greifswald entry point and firm capacities for exit at the Brandov exit point are linked to interruptible access to the virtual trading point of GASPOOL Balancing Services GmbH’s market area (‘**DZK interconnection capacities**’); and
 - cc) separately reservable firm freely allocable exit capacities at the Brandov exit point which can be used unrestrictedly for the transport of gas from the virtual trading point of GASPOOL Balancing Services GmbH’s market area to the Brandov exit point (‘**FZK interconnection capacities**’, together with the DZK interconnection capacities ‘**decoupled interconnection capacities**’)

If, in the case of coupled interconnection capacities, the level of the entry capacity offered differs from the level of the exit capacity offered, the exemption in total covers only the lower of the two values.

The exemption therefore in particular does not apply to (i) counterflow transport with the reservation of entry capacities at the Brandov entry point, (ii) entry capacities at the Greifswald entry point which are not coupled interconnection capacities or DZK interconnection capacities, and (iii) exit capacities which are neither coupled interconnection capacities nor decoupled interconnection capacities. Transfer of gas by the applicant at the Radeland interconnection point between OPAL and the Jamal gas connection pipeline and emergency offtakes and/or emergency inputs by the applicant from or to OPAL which are necessary as a result of a risk to, or disturbance of, the safety or reliability of OPAL or the infrastructure equipment connected to it do not affect either the existence or the validity of the exemption of the coupled interconnection capacities and the decoupled interconnection capacities from the application of §§ 20 to 25 EnWG subject to the following rules. Emergency offtakes and emergency inputs from or to OPAL must be notified to the Ruling Chamber immediately.

- b) Coupled interconnection capacities as entry capacities at the Greifswald entry point and as exit capacities at the Brandov exit point are exempted from the application of §§ 20 to 25 EnWG to the volume of 15 864 532 kWh/h each (**‘exempted coupled interconnection capacities’**). The following provisions apply to exempted coupled interconnection capacities:
- aa) The applicant is obliged to levy charges on the users of the exempted coupled interconnection capacities.
 - bb) The applicant is obliged to apply a market-oriented, transparent and non-discriminatory procedure in the event of a contractual congestion. The general statutory requirements for congestion management remain unchanged in respect of non-exempted capacities.
 - cc) In its contracts on exempted coupled interconnection capacities the applicant is obliged to provide for special rules to prevent the hoarding of capacities and to make use thereof as part of the contractually agreed conditions. The general statutory requirements for bottleneck management remain unchanged in respect of non-exempted capacities. In contracts on exempted coupled interconnection capacities the applicant must at least comply with the following requirements and/or agree the following conditions:
 - (i) If capacities are not nominated on the day (D-1) before the day on which transport is due to take place (D), the applicant must offer those capacities to other shippers as firm capacities on a day-ahead basis in a non-discriminatory manner and make them available in good time so that they can be effectively used on day D (hereinafter ‘short-term UIOLI’).
 - (ii) If transport capacities reserved by a shipper for several quarters (or a similar period calculated on the basis of other periods) are not used or used only to an immaterial extent within a quarter, the applicant must withdraw the reserved capacities from the owner at least for the following quarter and offer them on a non-discriminatory basis to other shippers in good time as firm capacities on a daily, monthly or quarterly basis. Immaterial use is defined as an average nomination of less than 10% of the reserved capacities in the period concerned, whereby pipeline outages as a result of faults, maintenance or similar events are to be taken into account to the benefit of the original shipper. The latter can avoid having the reserved capacities taken away by selling his capacities to a third party in full for the entire duration of the impending removal at least one month before the beginning of the following quarter and providing evidence of this to the applicant (hereinafter ‘long-term UIOLI’).
 - (iii) The capacities taken away can also be offered to third parties with the restriction on the conditions of allocation changed or lifted. Such change or lifting is incumbent upon the applicant within the framework of what is technically feasible and economically reasonable. Nomination or renomination of the original shipper once the capacities

have been taken away is excluded. The original shipper is obliged to pay the agreed charges. Objection by the shipper does not stop the capacities from being taken away unless the shipper can invoke a final and absolute judgment. If there is no third-party demand for the capacities taken away, the original shipper remains entitled to use them.

- c) Decoupled interconnection capacities as entry capacities at the Greifswald entry point and as exit capacities at the Brandov exit point are exempted from the application of §§ 21 and 21a and 23a EnWG to the volume of 15 864 532 kWh/h each (**‘partly-regulated, decoupled interconnection capacities’**). With regard to network access the partly-regulated, decoupled interconnection capacities are subject – in accordance with and/or save as provided in the following provisions in letters d) and e) – to the general provisions on network access in force, currently in particular the Gas Network Access Regulation (*Gasnetzzugangsverordnung*), the Transmission Networks Regulation (EC) No 715/2009 and the EU Network Codes.
- d) Until 3 March 2014 or – if this auctioning procedure is not completed by 3 March 2014 – up to and including the completion of the first auctioning procedure of annual capacities for the partly-regulated, decoupled interconnection capacities, the following applies to the partly-regulated, decoupled interconnection capacities:
 - aa) The applicant is entitled and obliged to supply partly-regulated, decoupled interconnection capacities as DZK interconnection capacities and (while procuring any necessary flow commitments or putting in place alternative measures for such flow commitments) FZK interconnection capacities as follows:
 - (i) As entry capacities at the Greifswald entry point, the partly-regulated, decoupled interconnection capacities are only supplied as DZK interconnection capacities.
 - (ii) As exit capacities at the Brandov exit point, the partly-regulated, decoupled interconnection capacities are supplied in the following volume as DZK interconnection capacities and FZK interconnection capacities:
 - FZK interconnection capacities amounting to 1 800 000 kWh/h, and
 - DZK interconnection capacities amounting to 14 064 532 kWh/h.

Notwithstanding the provision of the first sentence of letter d), the following applies: if the demand for FZK interconnection capacities at the Brandov exit point during the allocation of exit capacities in two consecutive annual auctioning procedures of annual capacities exceeds the supply of FZK interconnection capacities at the Brandov exit point of 1 800 000 kWh/h, the applicant is obliged to increase the supply of FZK interconnection capacities to the extent necessary to satisfy the

demand up to a maximum of 3 600 000 kWh/h, provided that such an increase is economically reasonable. This obligation does not exist if there are reasonable grounds for assuming that demand exceeded the supply of FZK interconnection capacities of 1 800 000 kWh/h at the Brandov exit point only because buyers took part in the auction for the purpose of speculating with capacities. If the supply of FZK interconnection capacities is increased to above 1 800 000 kWh/h, the supply of DZK interconnection capacities is reduced (by a maximum of 1 800 000 kWh/h) in line with such an increase only if and to the extent that such a reduction is technically necessary.

- bb) The duration of entry and exit contracts for partly-regulated, decoupled interconnection capacities is subject to the restrictions laid down in the general provisions in force on the duration of entry and exit contracts. Within the scope of these restrictions the applicant is entitled to award partly-regulated, decoupled interconnection capacities for as long as possible.

FZK interconnection capacities at the Brandov exit point must be awarded as short and medium-term contracts within the meaning of § 14 para 1 of the Gas Network Access Regulation.

The award of partly-regulated, decoupled interconnection capacities is conducted in accordance with the general provisions in force on the allocation of entry and exit capacities and, in line with the current provisions in force relating thereto, must accordingly be performed by auctioning on the 'PRISMA primary' capacity platform in accordance with the conditions which apply to capacity auctions on that capacity platform. Participation in capacity auctions for partly-regulated, decoupled interconnection capacities is not subject to any rules or restrictions which depart from or go beyond the general provisions. In particular, Gazprom, Gazprom Export and associated companies may participate in capacity auctions for partly-regulated, decoupled interconnection capacities on the same terms as third parties and book and use partly-regulated, decoupled interconnection capacities.

- cc) The applicant is obliged to levy charges on the users of the partly-regulated, decoupled interconnection capacities in accordance with the following criteria. The basic price for the partly-regulated, decoupled interconnection capacities awarded at the auctions is determined by non-discriminatory, transparent pricing. Non-discriminatory means that the prices must correspond exactly to the charges for the exempted, coupled interconnection capacities, unless departures from those charges are technically justified with regard to the capacity product concerned (DZK interconnection capacities, FZK interconnection capacities) and the particular form it takes.

If the charges for the exempted, coupled interconnection capacities change, the applicant is obliged to notify the change in charges to the Federal Network Agency immediately. In that case the applicant is furthermore obliged to adjust the basic prices for the partly-regulated,

decoupled interconnection capacities on a non-discriminatory basis.

- e) For the period after 3 March 2014 or – if this auctioning procedure has not been completed by 3 March 2014 – following the conclusion of the first auctioning procedure of annual capacities for the partly-regulated, decoupled interconnection capacities, the above provisions in letter d) continue to apply provided that they do not conflict with the mandatory general provisions on network access in force. The mandatory general provisions on network access in force take precedence. At any event the applicant is entitled and obliged to supply DZK interconnection capacities of at least 12 264 532 kWh/h at the Brandov exit point and at least 15 864 532 kWh/h at the Greifswald entry point.’

§ 2

Point 1(j) of the Decision of 25 February 2009, as amended by the Decision of 7 July 2009, is repealed.

§ 3

Furthermore, the operative part of the Decision of 25 February 2009, as amended by the Decision of 7 July 2009, remains unchanged.

§ 4

The application of § 118 para 7 EnWG remains unchanged as regards §§ 8 to 10e EnWG.