

IV. ANNOUNCEMENT OF APPEAL²

Case	N/A
Appellant:	Operator Gazociągów Przesyłowych GAZ-SYSTEM S.A. (Mszczonowska 4, 02-337 Warsaw, Poland)
Appeal received on	7 October 2019
Subject matter	Appeal against ACER Decision no 10/2019
Keywords	Procedure of selection of capacity booking platform, transparency, good administration
Contested decision Number:	10/2019
Language of the case	English

Remedy sought by the Appellant

The Appellant requests the Board of Appeal to:

- 1) annul the Decision no 10/2019 in its entirety and to remit the case to ACER;
- 2) grant the Appellant the right to inspect ACER's case-file related to the Decision in full, alternatively to disclose the scoring in Annex 1 to the Decision and then;
- 3) enable the Appellant to supplement the Appeal with further arguments based on new information revealed to the Appellant in result of case-file inspection;
- 4) hold a hearing.

Pleas in law and main arguments

The contested decision was adopted on 6 August 2019.

The Appellant contests the Agency's decision. The Appellant's claims and arguments can be summarised as follows:

- 1) **breach of rule of law, transparency principle, and Article 41 CFR by arbitral change of the requirements related to the quality criteria that must be met by submitted offers without giving any justification;**
- 2) **principle of transparency and Article 41 CFR, by not providing the proper explanation of requirements of the case study which affected preparation of offers by capacity booking platforms;**
- 3) **principle of equal treatment, principle of transparency and Article 41 CFR, by setting requirements for case study in Task B(i) and B (ii) in an arbitrary way that favoured platforms which had not fulfilled the basic requirements at the time the offers were submitted;**
- 4) **Article 296 TFUE, Article 41 (2) (c) and Article 47 CFR, Article 14 (7) of Regulation (EU) 2019/942, by not giving due reasons for the Decision, i.e. not disclosing in Annex I being an integral part of the Decision and essential part of justification of the choice of RBP Platform, neither overall nor particular scores awarded to each offer and by providing the internally inconsistent reasoning for the Decision;**
- 5) **Article 41 (1) CFR and Article 14 (7) of Regulation 2019/942 by not granting the Appellant the full access to the case-file relating to the Decision, in particular by not disclosing the PRISMA's offer at all as well as neither overall nor particular scores awarded to each offer included in the Annex I to the Decision;**
- 6) **Article 41 CFR, principle of equal treatment, principle of transparency and rule of law by evaluation of case studies presented by each platform and awarding scores to them in a totally discretionary manner and**

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thus exceeding the margin of discretion beyond the confines of law, which led to committing a manifest error of assessment;

- 7) Article 41 CFR, the principle of good administration, the principle of transparency and the principle of non-discrimination and equal treatment **by committing a manifest error of assessment during the evaluation of submitted offers**, which led to the Appellant, RBP and PRISMA being incorrectly awarded points.


Further information

More information on the appeal procedure can be found on the ‘Appeals’ section of the Agency’s website:

http://www.acer.europa.eu/The_agency/Organisation/Board_of_Appeal/Pages/default.aspx

² Announcement published in accordance with Article 9 of Decision BoA No1-2011 Laying down the rules of organisation and procedure of the Board of Appeal of the Agency for the Cooperation of the Energy Regulators.

GSA Platform
 Representative

Date of Submission: 7 October 2019	Name: Piotr Kuś Adam Bryszewski	Signature: 
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