**Základné tézy budúcej zmluvy medzi SEPS a PSE, ktorou bude definovaná úloha SEPS pri zabezpečení prístupu slovenských poskytovateľov do poľského kapacitného mechanizmu**

**UPOZORNENIE!**

**Tieto tézy, ako aj ďalšie uvedené informácie v rámci tohto dokumentu nie sú finálne a môžu sa meniť**

**O finálnej podobe zmluvy medzi SEPS a PSE bude spoločnosť SEPS náležite informovať**

**PREAMBLE**

**WHEREAS:**

1. On basis of the Capacity Market Act of 8 December 2017 and in accordance with European Commission Decision of 7th February 2018 approving Polish capacity market State aid No. SA.46100 (2017/N) – Poland – Planned Polish capacity mechanism, capacity market mechanism has been introduced in Poland.
2. PSE as Polish transmission system operator has been entrusted with the tasks of the operator of the capacity market. The capacity market in Poland started to operate in 2018 with the first delivery year being 2021.
3. The following documents provide a basis for functioning of the capacity market in Poland:
4. the Capacity Market Act of 8 December 2017, together with implementing regulations to the Act, applied accordingly;
5. the current Capacity Market Rules, approved by the decision of the President of ERO;
6. the European Commission Decision of 7th February 2018 approving Polish capacity market State aid No. SA.46100 (2017/N) – Poland – Planned Polish capacity mechanism;
7. the Regulation (EU) 2019/943 of the European Parliament and Council of 5th June 2019 on the internal market for electricity.
8. The Polish capacity market envisages participation of capacity market units comprising physical cross-border units.
9. The Capacity Market Act of 8 December 2017 provides for solution for participation of capacity market units comprising physical cross-border units where capacity providers will bid directly and explicitly in the Polish capacity auctions (so called “target solution”).
10. Pursuant to Article 6(4) of the Capacity Market Act of 8 December 2017, in order to enable capacity market units comprising physical cross-border units to participate in the capacity auctions, PSE shall conclude, with the operator of the transmission system directly interconnected with the Polish power system, an agreement laying down, in particular, the principles for:
    1. providing information required to confirm the existence of the physical cross-border unit and its technical parameters;
    2. providing data enabling to verify and settle the performance of the capacity obligation by capacity market units comprising physical cross-border units;
    3. announcing and conducting test system stress events with regard to capacity market units comprising physical cross-border units.
11. Pursuant to Article 6(5) of the Capacity Market Act of 8 December 2017, the target solution for cross-border participation in the Polish capacity market will only be implemented on the synchronous profile zone referred to in Article 6(6)(1) of the Capacity Market Act of 8 December 2017, when all of the three agreements between relevant transmission system operators will be concluded i.e.:
12. the agreement between PSE and 50Hertz Transmission GmbH (Germany);
13. the agreement between PSE and SEPS A.S. (Slovak Republic);
14. the agreement between PSE and ČEPS A.S. (Czech Republic).
15. Capacity market units comprising physical cross-border units will be entitled to participate in the capacity auctions in the Polish capacity market starting from the delivery period 2025 until the delivery period 2030.
16. The Capacity Market Act of 8 December 2017 establishes the Settlement Body as the entity responsible for performing financial settlements related to the capacity market. Therefore, the Settlement Body is the entity obliged to pay the remuneration in the target solution for cross-border participation.

**THEREFORE** in consideration of the mutual covenants set forth herein, the **Parties** agree as follows:

# LIST OF ABBREVIATIONS AND DEFINITIONS OF TERMS

## List of abbreviations

|  |  |  |  |
| --- | --- | --- | --- |
|  | DSO | - | Distribution System Operator |
|  | President of ERO | - | President of the Polish Energy Regulatory Office |
|  | TSO | - | Transmission System Operator |

## Definitions of terms

|  |  |  |  |
| --- | --- | --- | --- |
|  | Additional Auction | - | a Capacity Auction with the Delivery Period being a quarter of a calendar year, held in the year preceding the year of the Delivery Period |
|  | Adjusted Capacity Obligation | - | volume of capacity which the Capacity Market Unit is obliged to delivered during the System Stress Event, equal or lower to its Capacity Obligation |
|  | Agreement | - | this agreement regarding the target solution for foreign capacity participation in Polish capacity market concluded between **SEPS** and **PSE** |
|  | Capacity Agreement | - | an agreement between a Capacity Provider and **PSE** |
|  | Capacity Auction | - | an auction in which a Capacity Provider offers to **PSE** a Capacity Obligation for a Delivery Period |
|  | Capacity Congestion Rent | - | a product of capacity awarded to Capacity Market Units from the Zone whose offers were accepted in the course of a given Capacity Auction and the difference between the auction clearing price and last accepted offer submitted by the Capacity Provider regarding the Capacity Market Unit from the Zone |
|  | Capacity Congestion Revenue | - | Capacity Congestion Rent due to **SEPS** |
|  | Capacity Market Act | - | the act of 8th December 2017 – Capacity Market Act (Journal of Laws of 2018, item 9 and its subsequent amendments) |
|  | Capacity Market Unit | - | a Physical Cross-Border Unit or a group of such units that has obtained a certificate for the Capacity Auction |
|  | Capacity Obligation | - | an obligation of the Capacity Provider to maintain, during the Delivery Period, readiness to deliver the required electrical capacity to the System via a Capacity Market Unit, and to deliver the specific electrical capacity to the System during System Stress Events |
|  | Capacity Provider | - | an owner of a Capacity Market Unit, being an owner of Physical Cross-Border Units constituting the Capacity Market Unit or being an entity authorised by the owners of such Physical Cross-Border Units to dispatch them in scope of capacity market processes |
|  | Civil Code | - | the act of 23rd April 1964 – Civil Code (consolidated text: Journal of Laws of 2019, item 1145 and its subsequent amendments) |
|  | Delivery Period | - | a calendar year or quarter for which a Capacity Auction is held |
|  | Demand Side Response Capacity Market Unit | - | a Physical Cross-Border Demand Side Response Unit or a group of such units that has obtained a certificate for the Capacity Auction |
|  | Demonstration | - | the process referred to in Article 67(1) of the Capacity Market Act |
|  | DSR Test | - | a demand side response performance test referred to in Article 53(1) of the Capacity Market Act |
|  | Energy Law Act | - | Act of 10 April 1997 – Energy Law (consolidated text: Journal of Laws of 2019, item 755 and its subsequent amendments) |
|  | Main Auction | - | a Capacity Auction with the Delivery Period being a calendar year, held in the fifth year prior to the Delivery Period |
|  | Main Certification | - | certification for the purpose of Main Auction or certification for the purpose of Additional Auction |
|  | Metering Data | - | a sum of electricity flows measured, at the all Metering Points between a Physical Cross-Border Unit and transmission and distribution grid not owned by the owner of the unit or with the connected end-users |
|  | Metering Point | - | a location within the grid, a piece of equipment or an installation where measurement of the flow of electricity is performed, as defined in the grid connection agreement or in the electricity transmission or distribution services agreement |
|  | Physical Cross-Border Unit | - | a Physical Cross-Border Generating Unit and a Physical Cross-Border Demand Side Response Unit |
|  | Physical Cross-Border Demand Side Response Unit | - | a Physical Demand Side Response Unit located within **SEPS’s** territory |
|  | Physical Cross Border Generating Unit | - | a Physical Generating Unit located within **SEPS’s** territory |
|  | Polish Working Day | - | any day from Monday to Friday, excluding statutory holidays in Poland |
|  | Register | - | capacity market register held by **PSE**, referred to in Article 55 of the Capacity Market Act |
|  | Settlement Body | - | an entity referred to in Article 61 (2) of the Capacity Market Act, i.e. Zarządca Rozliczeń S.A., National Official Business Register (REGON) 141188023, Tax Identification Number (NIP): 701-00-95-709 having its registered and principal executive office at Tytusa Chałubinskiego 8, 00-679 Warsaw, Poland, registered in the commercial registry held by the District Court for Warsaw XII Commercial Registry Division under No 0000292313 |
|  | System | - | the electric power system referred to in Article 3(23) of the Energy Law Act |
|  | System Stress Event | - | a full hour in which the surplus capacity available to the **PSE** under the daily planning processes of the System within the territory of the Republic of Poland operation is lower than the required value defined according to Article 9g(4)(9) of the Energy Law Act, announced by **PSE** |
|  | Test System Stress Event | - | the process referred to in Article 67(5) of the Capacity Market Act |
|  | Unproven Demand Side Response Capacity Market Unit | - | Demand Side Response Capacity Market Unit in regard to which Capacity Provider has not passed the demand side response performance test referred to in Article 6.1.1. |
|  | Working Day for both Parties | - | any day from Monday to Friday, excluding statutory holidays in Poland and Slovak Republic |
|  | Zone | - | the zone defined in Article 6(6)(1) of the Capacity Market Act, i.e. synchronous profile zone comprising the transmission systems of 50Hertz Transmission GmbH (in Germany), ČEPS A.S. (in the Czech Republic) and **SEPS** (in Slovak Republic) |

# PURPOSE AND SUBJECT MATTER OF THE AGREEMENT

## Purpose of the Agreement

The purpose of the Agreement is to establish cooperation rules between **Parties** in order to allow Capacity Market Units comprising Physical Cross-Border Units to participate explicitly in the Capacity Auctions for Delivery Periods between 2025 and 2030.

## Subject matter of the Agreement

The Agreement defines the conditions of:

##### cooperation between the **Parties** for the purpose of confirming the existence and parameters of Physical Cross-Border Units;

##### providing data enabling to verify and settle the performance of the Capacity Obligation by Capacity Market Units comprising Physical Cross-Border Units;

##### announcing and conducting demand side response performance test with regard to Physical Cross-Border Demand Side Response Units forming part of Unproven Demand Side Response Capacity Market Units;

##### announcing and conducting Test System Stress Events with regard to Capacity Market Units comprising Physical Cross-Border Units;

##### providing data enabling to verify the performance of Demonstration of Capacity Market Units comprising Physical Cross-Border Units;

##### calculating and settling the Capacity Congestion Rent and penalties between the **Parties**;

##### accessing the Register.

# RESPONSIBILITIES OF THE PARTIES

**SEPS** undertakes to cooperate with **PSE** in the process of:

##### Main Certification;

##### carrying out the DSR Test;

##### carrying out the Test System Stress Event;

##### verification of Capacity Obligation performance;

##### verification of Demonstration.

**PSE** undertakes to:

##### provide **SEPS** with the list of Physical Cross-Border Units comprising Capacity Market Units with a valid certificate;

##### agree with **SEPS** on the date when the DSR Test is safe to be performed;

##### agree with **SEPS** on the date when the Test System Stress Event is safe to be performed;

##### notify **SEPS** about the Test System Stress Event result;

##### notify **SEPS** about the System Stress Event announcement;

##### provide **SEPS** with the information on the amount of Capacity Congestion Revenue;

##### provide **SEPS** with access to the Register for the purpose of execution of the Agreement’s provisions.

# COOPERATION OF THE PARTIES FOR THE PURPOSE OF MAIN CERTIFICATION PROCESS

The Main Certification process is conducted by **PSE**.

In order to enable Capacity Providers to establish Capacity Market Units containing Physical Cross-Border Units in the course of Main Certification, in relation to each Physical Cross-Border Unit willing to form part of a Capacity Market Unit **SEPS** shall issue:

##### a confirmation stating compliance with the actual situation of the technical parameters and location of that Physical Cross-Border Unit, drawn up according to the template constituting Appendix 1 to the Agreement (Physical Cross-Border Unit Confirmation), signed by the duly authorised representatives of **SEPS**;

##### a commitment to provide **PSE** with data referred to in Article 5.2, enabling the verification and settlement of the performance of the Capacity Obligation during the Delivery Period, drawn up according to the template constituting Appendix 2 to the Agreement (Data Provision Commitment), signed by the duly authorised representatives of **SEPS**.

**PSE** shall refuse to issue a certificate to the Capacity Provider if the application for certification submitted in the course of Main Certification contains either Physical Cross-Border Unit Confirmation or Data Provision Commitment drawn up using forms or models inconsistent with the Appendix 1 and Appendix 2 to the Agreement or signed by persons unauthorised to represent **SEPS**.

Any provisions required to issue a confirmation referred to in Article 4.2(1) by **SEPS**, in relation to Physical Cross-Border Unit, shall be agreed bilaterally between **SEPS** and the Capacity Provider.

Commitment referred to in Article 4.2(2) shall be binding until the last day of the Delivery Period, **SEPS** has no right to terminate the commitment.

In relation to the Physical Cross-Border Units connected to the DSO’s grid in the control area of **SEPS**, the commitment referred to in Article 4.2(2) shall be issued by **SEPS,** instead of the DSO**,** based on the data provided by respective DSO to SEPS.

After issuing the commitment referred to in Article 4.2(2) in relation to the Physical Cross-Border Units, **SEPS** is responsible for delivering the required data to **PSE** in the manner described in Article 5 of the Agreement.

Any provisions required to issue a commitment referred to in Article 4.2(2) and for further data delivery by **SEPS** in relation to Physical Cross-Border Unit connected to the DSO’s grid are out of the scope of the Agreement.

# DATA PROVISION FOR THE PURPOSE OF THE CAPACITY AGREEMENT PERFORMANCE

## General rules

### **PSE** shall provide **SEPS** with the list ofPhysical Cross-Border Units comprising Capacity Market Units with a valid certificate.

### The list referred to in Article 5.1.1 shall be sent to **SEPS** by e-mail to the address defined in Article 13.1.1(2), within 3 (three) Polish Working Days after the final results of the given Capacity Auction are announced by the President of ERO in accordance with Article 39(3) of the Capacity Market Act. The list shall contain at least:

### name and type of the Physical Cross-Border Unit;

### name and type of the Capacity Market Unit;

### Capacity Provider’s identification data;

### duration of the Capacity Agreement;

### Capacity Congestion Revenue value referred to in Article 9.2.4 resulting from the given Capacity Auction;

### amount of the Capacity Obligation assigned to each Capacity Market Unit.

### **SEPS** shall have continuous access to the information referred to in Article 5.1.2(1) - (6) through the Register

## Scope of data and manner of its transmission

### After the System Stress Event occurrence, **PSE** shall examine whether Capacity Market Units containing Physical Cross-Border Units had performed their Capacity Obligation by verifying the condition referred to in Article 57(7)(1) of the Capacity Market Act.

### **PSE** shall inform **SEPS** about the result of verification referred to in Article 5.2.1 by e-mail to the address defined in Article 13.1.1(2) within 4 (four) calendar days from the System Stress Event in question.

### If the result of the abovementioned verification is positive, the provisions of the Articles 5.2.4 - 5.2.9 shall not apply in regard to that System Stress Event.

### If thecondition referred to in Article 57(7)(1) of the Capacity Market Acthas not been met, **SEPS** shall provide **PSE** with the:

##### Metering Data and

##### unit-based unused valid bids to generate or reduce the demand for electricity, as submitted at the energy exchange and the balancing market, if needed, based on the verification performed as described in Article 57(1) of the Capacity Market Act.

### in relation to all Physical Cross-Border Units which form part of Capacity Market Units covered by the Capacity Obligation during a given System Stress Event.

### Data referred to in Article 5.2.4 shall be provided to **PSE** by **SEPS**:

##### via the Register or

##### by e-mail to the address defined in Article 13.1.1(1) if the Register does not provide relevant functionalities,

##### with at least hourly resolution and free of charge.

### Data referred to in Article 5.2.4 concerning given System Stress Event shall be submitted to **PSE** not later than on the 5th calendar day of the month following the month of its occurrence.

### If unit-based bids referred to in Article 5.2.4(2) are unavailable because the energy exchange or the balancing market in Slovak Republic is not using unit-based bidding, **SEPS** shall request the Capacity Provider to define the volume of capacity assigned to all Physical Cross-Border Units forming part of Capacity Market Unit in unused valid bids submitted to energy exchange and balancing market for the period of the System Stress Event.

### Information described in Article 5.2.7 along with a statement by the Capacity Provider that the data provided is accurate, true, complete and free from computational errors shall be provided to by **SEPS** to **PSE** as indicated in the Article 5.2.5 and within the time limit indicated in the Article 5.2.6.

### **SEPS** shall do its utmost to ensure that the Capacity Provider fulfils the obligations referred to in Article 5.2.7 and Article 5.2.8 in particular **SEPS** shall provide all necessary support to the Capacity Provider to fulfil its obligations.

## Data adjustment

### The Capacity Provider may raise objections regarding the data referred to in Article 5.2.4.

### In case objections are raised, **PSE** shall immediately refer the objections raised to **SEPS** by e-mail to the address defined in Article 13.1.1(2).

### **SEPS** shall conduct repeated verification of the data in question and transfer any verified data to **PSE** no later than on the 5th calendar day of the month following the month of the notification referred to in Article 5.3.2.

## Provision of information on grid congestions

### **SEPS** shall provide **PSE** with the information on congestions in the **SEPS’s** grid or relevant DSO’s grid based on information provided to SEPS by respective DSO restricting the capability of Physical Cross-Border Units which form part of Capacity Market Units covered by the Capacity Obligation to perform the Adjusted Capacity Obligation.

### The information referred to in Article 5.4.1 shall be provided for each System Stress Event during which the grid congestions occurred, no later than on the 5th calendar day of the month following the month of its occurrence.

### The information on grid congestions shall be provided via the Register or, if the Register does not provide relevant functionalities, by e-mail to the address defined in Article 13.1.1(1).

### The information on grid congestions shall be provided separately for each Physical Cross-Border Unit as a maximum net value of capacity that given unit is capable to deliver because of the grid congestion.

# DEMAND SIDE RESPONSE PERFORMANCE TEST

## General Rules

### According to the Article 53(1) of the Capacity Market Act, the Capacity Provider shall conduct, not later than one month prior to the commencement of the Delivery Period specified in the Capacity Agreement concerning an Unproven Demand-Side Response Capacity Market Unit, a DSR Test consisting in providing capacity in a continuous manner over the period of one hour.

### The DSR test referred to in Article 6.1.1 is announced by **PSE** directly to the Capacity Provider following the agreement referred to in Article 6.1.3.

### The date and time of the DSR test regarding given Physical Cross-Border Demand Side Response Units which form part of Unproven Demand-Side Response Capacity Market Unit shall be agreed between **PSE** and **SEPS** based on following rules:

##### **PSE** shall inform **SEPS** about proposed time of the DSR Test not later than 3 (three) Working Days for both Parties in advance,

##### not later than 1 (one) Working Day for both Parties before the proposed timeof the DSR Test, **SEPS** shall provide **PSE** with the opinion whether the DSR Test is safe to be performed during the proposed time.

### In case of the opinion referred to in Article 6.1.3(2) being negative, **SEPS** shall suggest a new date of the DSR Test but not later than 2 (two) Working Days for both Parties after the time suggested by **PSE**.

### DSR test shall be deemed safe to be performed when the safety of the Slovak transmission system would not be affected by the performance of the DSR Test by given Physical Cross-Border Demand Side Response Units.

### **SEPS** provides **PSE** with the opinion referred to in Article 6.1.3(2) even if the tested Physical Cross-Border Demand Side Response Unit is connected to DSO’s grid.

### Lack of:

##### the opinion referred to in Article 6.1.3(2) or

##### proposal of a new date of the DSR Test referred to in Article 6.1.4,

##### within the time limits indicated in respective points above, shall be treated as **SEPS’s** consent to perform the DSR Test during the time proposed by **PSE**.

### Communication between the **Parties** for the purpose Articles 6.1.3 - 6.1.4 shall be held by e-mail to the addresses defined in Article 13.1.1.

## Manner of DSR Test verification

### Verification of the DSR Test shall be conducted by **PSE**.

### For the purpose of DSR Test verification, **SEPS** shall provide **PSE** with the Metering Data referred to in Article 5.2.4(1) regarding the indicated Physical Cross-Border Demand Side Response Unit in regard to which the DSR Test has been conducted, concerning period necessary for the verification of the DSR Test.

### The Metering Data referred to in Article 6.2.2 shall be provided as described in the Article 5.2.5, within 7 (seven) calendar days after the DSR Test.

### **PSE** notifies Capacity Provider about the result of the DSR Test directly.

# TEST SYSTEM STRESS EVENT

## General rules

### According to Article 67(5) of the Capacity Market Act, **PSE** may announce, not more frequently than once per quarter, a Test System Stress Event for selected Capacity Market Units covered by the Capacity Obligation.

### During the Test System Stress event, Capacity Market Unit shall deliver capacity to the System in amount not less than its Capacity Obligation.

### The Test System Stress Event referred to in Article 7.1.1 is announced by **PSE** directly to the Capacity Provider.

### The date and time of the Test System Stress Event regarding given Capacity Market Unit comprising Physical Cross-Border Units shall be agreed between **PSE** and **SEPS** based on following rules:

##### **PSE** shall inform **SEPS** about proposed time of the Test System Stress Event not later than 3 (three) Working Days for both Parties in advance,

##### not later than 1 (one) Working Day for both Parties before the proposed timeof the Test System Stress Event, **SEPS** shall provide **PSE** with the opinion whether the Test System Stress Event is safe to be performed during the proposed time.

### In case of the opinion referred to in Article 7.1.4(2) being negative, **SEPS** shall suggest a new date of the Test System Stress Event but not later than 2 (two) Working Days for both Parties after the time suggested by **PSE.**

### Test System Stress Event shall be deemed safe to be performed when the safety of the Slovak transmission system would not be affected by the performance of the Test System Stress Event by given Capacity Market Unit comprising Physical Cross-Border Units.

### **SEPS** provides **PSE** with the opinion referred to in Article 7.1.4(2) even if the tested Capacity Market Unit comprises Physical Cross-Border Units connected to DSO’s grid.

### Lack of:

##### the opinion referred to in Article 7.1.4(2),

##### proposal of a new date of the Test System Stress Event referred to in Article 7.1.5,

### within the time limits, shall be treated as **SEPS’s** consent to perform the Test System Stress Event during the time proposed by **PSE**.

### Communication between the **Parties** for the purpose Articles 7.1.4 - 7.1.5 shall be held by e-mail to the addresses defined in Article 13.1.1.

## Manner of Test System Stress Event verification

### Verification of the Test System Stress Event shall be conducted by **PSE**.

### For the purpose of Test System Stress Event verification, **SEPS** shall provide **PSE** with the Metering Data referred to in Article 5.2.4(1) regarding the indicated Physical Cross-Border Unit forming part of Capacity Market Unit in regard to which the Test System Stress Event has been conducted, concerning period necessary for the verification of the Test System Stress Event.

### The Metering Data referred to in the Article 7.2.2 shall be provided as described in Article 5.2.5 no later than on the 5th calendar day of the month following the month of the Test System Stress Event occurrence.

### **PSE** notifies Capacity Provider and **SEPS** about the result of the Test System Stress Event directly.

# DEMONSTRATION

## General rules

According to Article 67(1) of the Capacity Market Act, upon the end of each quarter of the Delivery Year the Capacity Provider whose Capacity Market Unit is covered by the Capacity Obligation shall demonstrate to **PSE**, the ability to perform the Capacity Obligation, with regard to each Capacity Market Unit that the Capacity Agreement is concerned with.

## Manner of Demonstration verification

### Verification of the Demonstration shall be conducted by **PSE.**

### For the purpose of Demonstration verification, upon **PSE’s** request, **SEPS** shall provide **PSE** with the Metering Data referred to in Article 5.2.4(1) regarding the indicated Physical Cross-Border Units, concerning period necessary for the verification of the Demonstration.

### Request referred to in Article 8.2.2, shall contain at least:

##### name and type of the Physical Cross-Border Unit;

##### Capacity Provider’s identification data;

##### date and hour indicated by the Capacity Provider for the purpose of Demonstration,

##### and shall be sent to **SEPS** by e-mail to the address defined in Article 13.1.1(2).

### Metering Data referred to in Article 8.2.2 shall be provided within 7 (seven) calendar days from the date of request, according with the manner defined in the Article 5.2.5.

### **PSE** notifies Capacity Provider about the result of the Demonstration directly.

# CAPACITY CONGESTION RENT

## General rules

### The entity obliged to pay Capacity Congestion Rent shall be the Settlement Body acting on basis of Article 61(1) of the Capacity Market Act.

### The settlement period of the Capacity Congestion Rent shall be a calendar month.

### The basis for **SEPS** to issue an invoice shall be an information referred to in Article 9.3.1 provided by **PSE**.

### Capacity Congestion Rent from a given Capacity Auction is only due to **SEPS** during the Delivery Period which the Capacity Auction concerns.

### Capacity Congestion Rent resulting from a given Capacity Auction shall be due to **SEPS** starting from the first calendar month of Delivery Period which the Capacity Auction concerns.

### Both **PSE** and **SEPS** are obliged to spend the Capacity Congestion Rent revenue in accordance with the provisions of Article 19(2) and (3) of the Regulation (EU) No 2019/943 of the European Parliament and of the Council on the internal market for electricity.

## Manner of calculation

### Capacity Congestion Rent shall be calculated in PLN.

### If the offer submitted by the Capacity Provider regarding the Capacity Market Unit from the Zone determined the clearing price of a given Capacity Auction, Capacity Congestion Rent resulting from it shall be nil.

### Capacity Congestion Rent resulting from given Capacity Auction shall be split 50/50 between **PSE** and TSOs relevant for the Zone.

### Capacity Congestion Revenue shall be divided equally into each month of Delivery Period which the Capacity Auction concerns in accordance with the following formula:

### where:

##### CCR – monthly Capacity Congestion Revenue resulting from a given Capacity Auction, expressed in PLN;

##### CA – volume of capacity awarded to Capacity Market Units from the Zone whose offers were accepted in the course of a given Capacity Auction, expressed in kW;

##### PA – the auction clearing price, expressed in PLN / kW / year;

##### PZ – price of the last accepted offer submitted by the Capacity Provider regarding the Capacity Market Unit from the Zone, expressed in PLN / kW / year.

## Circulation of accounting documents

### **SEPS** shall be provided by **PSE** with the information on the total amount of Capacity Congestion Revenue within 7 (seven) calendar days of the end of settlement month, by e-mail to the address defined in Article 13.1.1(2). Total amount of Capacity Congestion Revenue shall be defined as a sum of Capacity Congestion Revenues calculated in accordance with the Article 9.2.4 for each Capacity Auction separately, due in a given settlement month.

### The accounting document that provides a basis for payment of Capacity Congestion Revenue to **SEPS** shall be an invoice.

### The invoice referred to in Article 9.3.2 shall be issued within 3 (three) Polish Working Days after the information referred to in Article 9.3.1 is provided by **PSE** and shall be delivered to **PSE** via the Register and additionally by e-mail to the address defined in Article 13.1.1(1). The payment shall be made within 21 (twenty one) calendar days from the day of delivery of the duly issued invoice to **PSE** in manner foreseen above.

### Capacity Congestion Revenue, resulting from the issued invoice, shall be paid to the bank account with the IBAN number XXXX XXXX XXXX XXXX XXXX XXXX XXXX and BIC/SWIFT code XXXXXXXXXXX, owned by **SEPS**.

### In case of issuing the invoice incorrectly, **PSE** shall request **SEPS** to issue an adjusting invoice or shall issue a correction note and provide it to **SEPS** by e-mail to the address defined in Article 13.1.1(2).

### The adjusting invoice shall be issued by **SEPS** within 3 (three) Polish Working Days after receipt of the request referred to in Article 9.3.5 from **PSE**, and sent to **PSE** via the Register and additionally by e-mail to the address defined in Article 13.1.1(1).

### The adjusting invoice shall be issued with a payment period of 21 (twenty one) calendar days from the day of delivery of the duly issued invoice to **PSE** in manner foreseen in Article 9.3.6.

### The invoice or adjusting invoice shall be issued in compliance with the Council Directive 2006/112/EC.

### Any change of information provided in Article 9.3.4 requires a written notification to the other **Party** sent by registered post or via the Register or by e-mail to the addresses defined in Article 13.1.1 and will not require amendment of the Agreement.

# ACCESS TO THE IT SYSTEMS

## General rules

### Register is maintained in Polish.

### **PSE** shall provide Register functionalities dedicated for TSOs other than **PSE** in English.

### Access to the Register shall be available remotely through Internet and free of charge.

### **Parties** shall not be held responsible for any technical problems, including any delays in data transmission not attributable to them.

### Any technical problems related to the operation of the Register, attributable to **PSE**, shall be immediately reported to **PSE’s** administrators by e-mail to the address published on the **PSE**’s website.

### Whether a defect of the Register has taken place, for the purpose of fulfilling the obligations arising from the Agreement, **Parties** shall communicate by e-mail to the addresses defined in Article 13.1.1.

### Personal data held in the Register shall be processed by **PSE** in accordance with the Personal Data Protection Act of 10th May 2018 (Journal of Law of 2018, item 1000 and its subsequent amendments) and in accordance with the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation). Personal data shall be processed for the purposes set out in the Agreement and in the Capacity Market Act. The controller of the personal data held in the Register shall be **PSE**. Any personal data held in the Register may be made available only to parties duly authorised to access such data under the law.

### **PSE** shall keep the natural persons whose data is held in the Register informed of their rights in accordance with the provisions of the Personal Data Protection Act of 10th May 2018 and in accordance with General Data Protection Regulation.

## Register users

### Register users shall be natural persons acting for and on behalf of **SEPS.**

### Register users representing **SEPS** shall have dedicated sets of rights that allow them to inspect their data and perform operations in the Register to the extent necessary for the fulfilment of the entities’ tasks specified in the Agreement. The detailed scope of rights of each Register user representing **SEPS** shall be adapted to the scope of operations performed in the Register and it is out of scope of the Agreement.

### The manner of designation and revocation of the Register users acting for and on behalf of **SEPS** shall be agreed between **Parties** before the Delivery Period.

# LIABILITY

## General terms

### Liability of the **Parties** for non-performance or incorrect performance of the Agreement shall be based on the general rules of the Civil Code, save that liability for lost profits is excluded, which means that each of the **Parties** may seek remedy only to the extent of actual loss.

### The exclusion and limitation of liability referred to in Article 11.1.1 shall not apply to liability for damage caused through wilful misconduct, liability for damage that may not be excluded or limited by a legal transaction, and liability for damage resulting from an act in tort.

## Force majeure

The **Parties** shall not be liable for non-performance or incorrect performance of its obligations in a situation where it demonstrates that this was caused by a sudden, unforeseeable event beyond the **Party**’s control, the effects of which could not have been prevented or counteracted with the exercise of due care.

# TERMINATION OF THE AGREEMENT

## General terms

### Subject to Article 12.1.2, **Parties** shall not have the right to unilaterally terminate the Agreement when at least one of the Capacity Market Units from the Zone is covered by the Capacity Obligation in the remaining period of the Agreement.

### Each of the **Party** shall have the right to terminate the Agreement by immediate notice in case of:

##### final revocation by the President of ERO of the licence granted to **PSE**, necessary for the performance of the Agreement, or the expiry of the period for which the licence has been granted, or the loss of **PSE’s** status of electricity transmission system operator, unless **PSE** has acquired the status of interconnected electricity transmission system operator;

##### final revocation of the licence granted to **SEPS**, necessary for the performance of the Agreement, or the expiry of the period for which the licence has been granted, or the loss of **SEPS’s** status of electricity transmission system operator, unless **SEPS** has acquired the status of interconnected electricity transmission system operator;

##### revocation of the capacity market in Poland or when the decision to cease organization of the capacity auctions is made.

### Notices by the **Parties** arising from this Article shall be effective only if made in writing, in accordance with general rules of representation, and such notices shall be deemed given when delivered to the other **Party**. The effect in the form of termination of the Agreement shall arise upon delivery of the notice of termination of the Agreement to the other **Party.**

## Termination of the Agreement

Despite termination of the Agreement, obligations arising from the Agreement and from the Capacity Market Act, during the period prior to the date of termination of the Agreement, shall remain in effect.

# COMMUNICATION

## Representatives

### For the purpose of communication regarding execution of the Agreement (with the right to amend it excluded) the **Parties** indicate following representatives and addresses:

##### on behalf of **PSE**:

##### xxxxx xxxxxx tel. xxxxxxxxx, e-mail: xxxxx@pse.pl

##### xxxxx xxxxxx tel. xxxxxxxxx, e-mail: xxxxx@pse.pl

##### address: Warszawska 165, 05-520 Konstancin-Jeziorna, Poland

##### on behalf of **SEPS**:

##### xxxxx xxxxxx tel. xxxxxxxxx, e-mail: xxxxx@xxx.xx

##### xxxxx xxxxxx tel. xxxxxxxxx, e-mail: xxxxx@xxx.xx

##### address: Mlynské nivy 59/A, 824 84 Bratislava 26, Slovakia

### Any change of information provided in Article 13.1.1 requires a written notification to the other **Party** sent by registered post or via the Register and will not require amendment of the Agreement.

## Manner of communication

### Unless otherwise indicated in the Agreement, any notice to be given pursuant to the Agreement shall be in writing and signed by the duly authorised representative of the entity giving it for the time appointed for the purposes of the Agreement. Any such notice shall be served by sending registered post to the address set out in Article 13.1.1 of the Agreement and in each case marked for the attention of the relevant **Party** (or to such other address as shall have been duly notified in accordance with this section).

### Any notice served by e-mail or post shall be deemed to have been duly given:

##### in the case of delivery by e-mail, at the time of transmission subject to confirmation of receipt;

##### in the case of registered post, at 10 a.m. CET on the third Working Day for both Parties following the date of posting (in the absence of contrary proof of the actual time of receipt);

##### provided that in each case where delivery by e-mail occurs after 6 p.m CET on a Working Day or on a day which is not a Working Day for both Parties, service shall be deemed to occur at 9 a.m CET on the next following Working Day for both Parties.

### References to time in this section are to Central European Time ("CET”).

### All notices or formal communications under or in connection with the Agreement shall be in the English language or, if in any other language, accompanied by a translation into English. In the event of any conflict between the English text and the text in any other language, the English text shall prevail.

# AMENDMENT OF THE AGREEMENT

In case of changes in the legal or factual situation relating to the provisions of the Agreement such as in particular:

1. approval of methodologies referred to in Article 26(11) of Regulation (EU) 2019/943 of the European Parliament and Council of 5th June 2019 on the internal market for electricity;
2. any amendments made to the Capacity Market Act;
3. any amendments made to the Capacity Market Rules;
4. any other changes to the legislative environment disabling the proper performance of the Agreement;

##### the **Parties** undertake to amend the Agreement in a way enabling conformity with the new provisions of law and proper performance of the Agreement.

Unless otherwise indicated in the Agreement, any amendments to the Agreement are null and void unless agreed and executed in writing by the **Parties**.

# FINAL PROVISIONS

## Extraordinary change in circumstances

The **Parties** preclude the possibility of applying Article 3571 of the Civil Code to the extent to which that provision allows for the possibility of specifying the manner of performance of an obligation or the amount of performance.

## Term of the Agreement

### The Agreement is concluded under the condition precedent that all of the remaining agreements regarding the target solution implementation in the Zone are concluded, i.e.:

1. the agreement between PSE and 50Hertz Transmission GmbH (Germany) is concluded
2. the agreement between PSE and ČEPS A.S. (Czech Republic) is concluded and

### **PSE** shall inform **SEPS** on the conclusion of the agreements regarding the target solution implementation in the Zone with other TSOs relevant for the Zone taking place after conclusion of the Agreement by e-mail to the address defined in Article 13.1.1(2), within 5 (five) Working Days for both Parties from conclusion of the respective agreement.

### Agreements referred to in Article 15.2.1 shall be made available to **SEPS** for review upon request sent to PSE by e-mail to the address defined in Article 13.1.1(1). **SEPS** hereby agrees to make available this Agreement and any changes thereto to 50Hertz Transmission GmbH and ČEPS A.S. upon their request.

### The Agreement shall expire with the last day of year 2030, subject to Article 15.2.5.

### In spite of the expiry of the Agreement, obligations arising both from Agreement and from the Capacity Market Act with regard to settlements in respect of the Capacity Congestion Rent for the period ending at the date of expiry of the term of the Agreement, shall remain in force.

## Disputes

### Should any disputes arise in connection with the performance or application of the Agreement, the disputing **Parties** shall seek to clarify the same through bona fide negotiations.

### If negotiations of the disputing **Parties** fail to lead to resolution of the dispute within 30 (thirty) calendar days of notification of the dispute to the other **Party**, each of the disputing **Parties** may, after the expiry of the period, refer the case to a common court having jurisdiction over Śródmieście district in Warsaw, Poland.

### The provisions of Article 15.3.1 and 15.3.2 shall not apply to disputes resolved by the President of ERO.

### The arising or existence of a dispute concerning the performance of the Agreement shall not relieve the **Parties** of the obligation to perform the Agreement.

## Language of the Agreement

### The Agreement is executed in English.

## Governing law

### The Agreement shall be governed by the laws of Poland.

## Interpretation

### Words denoting the singular may where the context requires include the plural and vice versa.

### The headings of Articles, paragraphs, subparagraphs or Appendixes are inserted for convenience only and do not affect their interpretation.

### Any reference to any agreement, rule, enactment, statutory provision, regulation or code or any subdivision or provision of it shall be construed at the particular time as a reference to the text then in force, as it may have been amended, modified, consolidated, re-enacted or replaced.

### All references to Articles or Appendixes refer to the corresponding Articles or Appendixes of the Agreement as amended, supplemented or modified in accordance with Article 15 of the Agreement unless otherwise specified.

### All references to the term "person" shall refer to any individual, company, entity, business, trust, partnership, joint venture or other person whatsoever, in the broadest meaning of the word.

## Other provisions

### Failure by either **Party** to exercise any rights under the Agreement shall not be construed as waiver of such rights in the future.

### If, at any time, any provision of the Agreement becomes illegal, invalid or unenforceable in any respect under the applicable law, neither the legality, validity nor enforceability of the remaining provisions of the Agreement shall in any way be affected or impaired thereby. The **Parties** shall, in good faith, use their best efforts to replace any illegal, invalid or unenforceable provisions with such that is legal, valid and enforceable and comes as close as possible to the invalid provision.

### The Agreement is executed in English in 2 (two) original copies of equal legal power, one for each **Party**.

### Any appendices are inseparable parts of the Agreement.

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