

Q & A

Open Season 2017 – Baltic Pipe project

Valid for 13.07.2017

A. General Questions:

1. Is there any chance that only a part of the project will be constructed?

Energinet and GAZ-SYSTEM are currently conducting an Open Season for the project consisting of construction of the whole Baltic Pipe, in line with the description presented in the Open Season 2017 Rules. No different project is currently under consideration.

If the market demand shows that there is a demand only for a part of the project, this would require a new approach, as it would be a new project.

2. Will the presentations from the two information meetings be published?

Yes, please visit <https://en.energinet.dk/openseason2017> and <http://en.gaz-system.pl/strefa-klienta/konsultacje-z-rynkiem/aktualne-konsultacje/open-season-baltic-pipe/> to find the presentations from the information meetings in respectively Stavanger, Norway and Ballerup, Denmark.

3. What is the reason of having two phases of the Open Season? Why not to do only one, binding phase?

According to ERGEG Guidelines for Good Practice on Open Season Procedures (GGPOS) (C06-GWG-29-05c), an open season should be structured in two phases. First phase should include an assessment of the market's needs (be non-binding), while the second one shall end with the final allocation and binding agreements being signed. Therefore, the Open Season 2017 was divided into two phases to fulfill those criteria.

4. What will happen with the Project and with the 2nd phase of the Open Season if the bids collected during the phase 1 are not sufficient?

Independent of the result of phase 1, phase 2 will take part, but the overall timeframe might be subject to changes in such a situation. If the total requested OS 2017 capacity in the phase 1 bid(s) is insufficient to pursue the Fast Track Project, the Baltic Pipe Project will be evaluated and potentially changed.

5. Do you foresee to extend Phase 1 of the Open Season?

No. The timetable, on the one hand, balances the opportunity for shippers to have sufficient time to assess the project and submit bids, and on the other hand, maintains a fast track timetable in order to provide gas transportation services as of 1 October 2022.

6. Why is there a lack of information regarding the activities on Norwegian site, especially the one conducted by Gassco?

Energinet will engage and discuss with Gassco to provide more information in relation to this part of the project.

7. The allocation process will end by signing capacity contracts, therefore does it mean that you will not sell the capacity in the auctions?

In the Open Season 2017, no capacity will be offered in auctions. The capacity will be offered and allocated according to the Open Season 2017 Rules, i.e. using the pro-rata mechanism in case of over-demand, with priority for the submitted bids with the longest duration.

8. The Open Season 2017 vs incremental CAM procedures.

The Open Season procedure is conducted on the basis of transitional provisions of the NC CAM, i.e. art. 31 of the NC CAM. The provision allows for conducting the allocation procedure in a different process than incremental procedure, as defined in line with the NC CAM. Such possibility is available to the TSOs only if all the necessary approvals for the process were granted before 1st of August 2017. As both, GAZ-SYSTEM and Energinet, has obtained the necessary approvals from their regulators in March 2017, the Open Season 2017 will be performed based on the Open Season 2017 Rules, and not as an incremental process. However, it should be underlined that according to art. 31 of the NC CAM, the process will partially be based on the NC CAM, i.e. the TSOs will be obliged to perform the economic test after the allocation process.

9. Is it correct that you can book the capacity only at the tie-in and you don't have to book the capacity at the IP BP?

Yes, this is correct – there is no obligation to book the capacity for the whole transportation route. However, it should be underlined that bookings in all points creating the corridor from the entry in Denmark to exit Poland are required for the establishment of the Baltic Pipe.

10. What does it mean that there is “a limited possibility to amend the Open Season documents”?

The possibility of the TSOs to amend the Open Season documents is included in the Open Season 2017 Rules, as well as in the additional Polish and Danish rules for the Open Season 2017. According to the Open Season 2017 Rules, the TSOs may amend the Rules only in limited cases.

11. What will happen if a shipper denies signing the capacity contract after Phase 2 and having made a bid?

A bid is a binding commitment in itself, therefore a shipper would be liable for a failure to sign the capacity contract. In such case provisions regarding the Financial security described in the the additional Polish and Danish rules for the Open Season 2017 will apply.

B. Questions regarding the Danish part of the Baltic Pipe Project:

1.1 Expected gas quality

Questions:

- What is the provision of calorific value of natural gas to be transported between Entry Point North Sea and Exit Point Baltic Pipe and the technical capacity in normal cubic meter?
- Are the definition of a normal cubic meter used by Energinet the same as the one used by GAZ-SYSTEM?
- Are there any issues related to gas quality between Gassco, Energinet and GAZ-SYSTEM which may have negative impact on the project schedule or budget?

Answers:

- The gas from Norway will meet the requirements in Energinet's Rules for Gas Transport and will meet the requirements in the Danish gas legislation under the authority of The Danish Safety Technology Authority (Gasreglementet), cf. <https://www.retsinformation.dk/Forms/R0710.aspx?id=144715> [and](http://www.sik.dk/) <http://www.sik.dk/>.
- The infrastructure will be dimensioned in accordance with the result of the Open Season 2017 and will be able to deliver the contracted OS 2017 capacity in kWh/h.
- The reference conditions for the normal cubic meter is defined in Energinet's Rules for Gas Transport: Normal cubic meter corresponds to the volume of natural gas which, at 0 degrees celcius and an absolute pressure of 1.01325 bar, and without water vapor, occupies the volume of one cubic meter.
- Any potential gas quality issues are to be addressed in the design phase of the project and assumed to have minimal effect on cost and time schedule.

1.2 Joint Bid

Question:

- Is it acceptable that two affiliated Participants register for the Danish part of the Open Season 2017, but finally only one of them submit a Bid?

Answer:

- Please note that the concept of "Joint Bid" is namely relevant in respect of the evaluation of the received Bids. Please be aware of the fact that Bids from associated Participants must fulfill certain supplementary requirements stipulated in clause 5.3 of Appendix 3.
- Clause 5.2 of Appendix 3 - Rules applicable to participation in the Danish part of the OS 2017 ("Appendix 3") stipulates a prohibition against bids from associated participants. However, clause 5.3 of Appendix 3 stipulates exceptions from the prohibition in clause 5.2. If Energinet finds that it has been substantiated that associated participants fulfill the exceptions in clause 5.3 of Appendix 3, associated participants could be registered as Participants in the Danish part of the Open Season

2017. Participants, excepted based on clause 5.3 of Appendix 3, decides at its sole discretion whether they wish to submit a bid.

1.3 Link between Phase 1 Bid and obligation to submit a Phase 2 Bid

Question:

- Is a Participant who submitted Phase 1 Bid entitled to split its Phase 2 Bid into a two Bids (send by two affiliated Participants excepted under clause 5.3 of Appendix 3)?
- Are associated Participants (excepted under clause 5.3 of Appendix 3) who submitted Phase 1 Bids entitled to merge their bids in Phase 2 into a single Bid?

Answer:

- The answer is no to both questions. A Participant that has submitted a Phase 1 Bid cannot transfer the obligation to submit a Phase 2 Bid to another Participant associated with the Participant, which has submitted the Phase 1 Bid.

1.4 The possibility to assign Capacity allocated after Phase 2 Bid

Question:

- Is it possible after the Danish OS 2017 Capacity Agreement has been signed to assign the capacity or part of the capacity allocated after Phase 2 Bid to an affiliated Participant?

Answer:

- Please read clause 12 of the Danish OS 2017 Capacity Agreement regarding assignment: "The shipper's rights and obligations under this Agreement may not be assigned to a third party without Energinet's prior written consent. Such consent shall not be unreasonably withheld or delayed."

1.5 Evaluation of joint Bid on one of the points

Question:

- In case of submission of a joint bid (two bids from associated Participants excepted under clause 5.3 of Appendix 3) for one of the offered points in the Danish part of the Open Season 2017, followed by a single Bid for a corresponding capacity volume for the other point done by only one of associated Participants excepted under clause 5.3 of Appendix 3, will the whole Bid submitted for two points be treated as one joint Bid for the purpose of capacity allocation and potential reduction of capacity pursuant to clause 11.3 of the Danish OS 2017 Rules?

Answer:

- Participants, excepted based on clause 5.3 of Appendix 3, decides at its sole discretion whether they wish to submit a bid and the level of OS 2017 Capacity requested at relevant point(s). However, in respect of the evaluation of the Bids, Bids from associated participants as described in clause 5.3 of Appendix 3, will be handled as one joint Bid.

1.6 Ability to submit joint Bid for bundled capacity on one side**Question:**

- Is it possible that two affiliated shippers submit a joint Bid for Exit Point Baltic Pipe (DK -> PL) and only one of these shippers submit a Bid for Entry Point Baltic Pipe (DK -> PL)? Or in other words, is it acceptable that bundled Capacity for Exit Point Baltic Pipe (DK -> PL) and Entry Point Baltic Pipe (DK -> PL) will be owned by two affiliated Participants?

Answer:

- Pursuant to Article 19 in conjunction with Article 3(4) 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, the operators of adjacent transmission systems shall offer bundled capacity products at interconnection points such as the Interconnection Point Denmark and Poland, i.e. capacity (at entry and exit points) on both sides of the interconnection point through a single allocation procedure. Due to the fact that the capacity is offered bundled, the bundled capacity should be booked by the same entity on both sides of the interconnection point. Therefore, the bundled capacity cannot be purchased by two separate entities.

1.7 Non-Secured Credit Limit**Question:**

- Is the Credit Limit granted to registered shipper pursuant to Rules for Gas Transport applicable to determination of Non-Secured Credit Limit defined in clause 7.1 of the OS 2017 Danish Rules?
- Please confirm that the level of security is determined by multiplying the respective capacity bookings by the forecasted capacity tariff presented in the Information Package 2.

Answer:

- According to clause 6 of the Danish OS 2017 Capacity Agreement, the Shipper shall meet the credit requirements to act as a Shipper at all times in accordance with the provisions of Rules for Gas Transport. In addition, the Shipper may have provided security in accordance with Appendix 3.

- Yes, Energinet confirms that it is the forecasted tariff presented in the Information Package 2 will be used in the calculation.

1.8 Non-Secured Credit Limit for affiliated Participants

Question:

- Would it be possible that in the case of a joint Bid that the overall financial liability versus the security requirements stated in the Danish OS 2017 Rules will be accounted for Credit Limit of the Participant's parent company?

Answer:

- Pursuant to clause 7.2 of Appendix 3, a Participant's parent company may improve a Participant's Non-Secured Credit Limit.

1.9 Review of security

Question:

- Please elaborate on what "ongoing review" in clause 6 of the Danish OS 2017 Capacity Agreement means?
- May an ongoing review also lead to lowering the value of the necessary security provided by the Participant?
- What happens if the demand for security is increased and the Shipper cannot provide the requested security?

Answer:

- At any time, Energinet is entitled to assess the Participant's creditworthiness, including based on information from the shipper about e.g. ratings.
- Yes, the ongoing review may lead to lowering the value of the necessary security provided by the Participant.
- According to clause 15 b) of the Danish OS 2017 Capacity Agreement, "Material breach includes, but is not limited to: ... failure by the Shipper to provide and maintain the security provided under the OS 2017". Further, see clause 15 of the Danish OS 2017 Capacity Agreement.

1.10 Liquidated damages in case of no Bid (or reduced Bid) in Phase 2

Question:

- Is the liability of a Participant who materially breached his obligations and did not bid in Phase 2 (or reduced its Bid) limited to his proportional share of DKK 30 million (in proportion to respective Phase 1 Bid)?
- Are liquidated damages of DKK 30 million only applicable in a case if the Baltic Pipe Project is discontinued?

Answer:

- If more than one Participant has materially breached its obligations as set out in the preceding sentence, the obligation to pay liquidated damages in the amount of DKK 30,000,000 will be shared between the Participants in breach in proportion to their respective Phase 1 Bids, cf. clause 9.2 of Appendix 3.
- No, the reason is that the Participant has influenced the decision to initiate the Fast Track Project.

1.11 Future tariffs**Question:**

- Will there before Phase 2 starts be a status of Energinet's work on guiding principles of the future market design and tariff setting methodology?

Answer:

- Yes, there will be a status. In Information Package 2, which will be published prior to the start of Phase 2, there will be a status on the intended implementation by Energinet of the EU regulation on harmonized transmission tariff structures for gas (TAR NC).

1.12 The level of information in Information Package 2**Question:**

- Will Information Package 2 include all relevant information about tariffs in order to determine liability which Shipper can take by submitting his Phase 2 Bid?
- Will Information Package 2 include information about unit tariffs divided into separate tariff components as planned by Energinet?
- Will Information Package 2 include information about tariff de-escalators for long term capacity bookings?

Answer:

- Information Package 2 will include tariff simulations for the defined base case, where the tariff is based on a uniformed tariff methodology. The Participant is made expressly aware of the fact that the tariffs for the OS 2017 Capacity will not be determined until the OS 2017 Capacity is made available to the Participant, and of the fact that the tariffs may change during the term of the Danish OS 2017 Capacity Agreement. Therefore information provided in Information Package 2 will be based on the information Energinet has on this point of time. In addition, the Participant has to be aware that there is a planned process for changes in the current tariff methodology as a consequence of the EU regulation on harmonised transmission tariff structures for gas, and an approval from DERA of these changes to the methodology will not have been approved before the publication of the Information Package 2.
- Yes.

- As a de-escalators for long term capacity booking may have to be a part of the ongoing process of changes to the current tariff methodology and those changes have to be approved by DERA, a de-escalator for long term capacity booking will not be included.

1.13 Shipper participation and involvement ahead of the Start Date

Question:

- Please elaborate on scope of information disclosed during briefings organized pursuant to clause 7.1 of the Danish OS 2017 Capacity Agreement?
- As this provision is the part of the Danish OS 2017 Capacity Agreement, will those briefings be solely open to Shippers who entered into the OS 2017 Capacity Agreement?
- Will issues, which required immediate attention from the Participants, be communicated directly to the Participants without undue delay (and not only at the quarterly meetings)?

Answer:

- During briefings organized pursuant to clause 7.1 of the Danish OS 2017 Capacity Agreement, Energinet expects to disclose information regarding project development i.a. progress of the Danish part of the project, current overall project schedule, agreements with consultants and contractors etc. Energinet will not provide shippers with any reports or other project documents except for the presentations from the quarterly briefings.
- No, those briefings will not be solely open to Shippers who entered into the Danish OS 2017 Capacity Agreement. As stated in clause 7 of the Danish OS 2017 Capacity Agreement, those briefings will be open for all market participants. However, following such briefings bilateral meetings may be arranged with Energinet relating to the Danish OS 2017 Capacity Agreement.
- Yes, Energinet will communicate directly to the market participants, if issues, which require immediate attention from the market participants, occur.

1.14 Implementation of narrowing commissioning date window mechanism

Question:

- Will a commissioning date estimates be provided during the briefings about the development of the Baltic Pipe Project as stated in the Danish OS 2017 Capacity Agreement?

Answer:

- During the planning of the project all activities will be planned in order to reach the agreed Start Date. At the briefings organized pursuant to clause 7.1 of the Danish OS 2017 Capacity Agreement i.a. the progress of the Danish part of the project as well as the current overall project schedule will be presented. Energinet does not expect to

provide information about commissioning date estimates based on “narrowing commissioning date window”.

1.15 Indemnification

Question:

- How is the work with the Indemnification clause in the Danish OS 2017 Capacity Agreement processing?
- If Energinet does not introduce the indemnification clause would Energinet still impose penalties in the form of liquidated damages for Shippers who would not maintain their Phase 2 offer compared to their Phase 1 offer?

Answer:

- Before the launching of Phase 2, Energinet will use best endeavors to include an indemnification clause into the Danish OS 2017 Capacity Agreements with a capacity period of more than 10 years.
- Yes.

1.16 Force Majeure

Question:

- Would Energinet inform and consult with the Shippers regarding the agreements with its contractors in order to align the interests of Energinet and the Shippers?
- During the project will Energinet inform the Shipper immediately of any delays in order for the Shippers to minimize its losses due to delay and other defaults of the contractors of Energinet?
- In which cases would Energinet share liquidated damages with the Shippers?

Answer:

- Energinet does not plan to consult Shippers regarding the agreements with contractors in the Baltic Pipe Project. However during the briefings about the development of the Baltic Pipe Project organized pursuant to clause 7.1 of the Danish OS 2017 Capacity Agreement, Energinet will include information about agreements with consultants and contractors. Energinet will utilize the general experience in the industry when selecting procurement strategy, consultants and contractors.
- Please read the answer to question 13.
- Please read clause 17 of the Danish OS 2017 Capacity Agreement.

1.17 Compensation

Question:

- Will the compensation of DKK 30 million only be payable to shippers who submitted a Phase 1 Bid or to all Shippers who have been allocated OS 2017 Capacity, cf. third paragraph of clause 8.1 of the Danish OS 2017 Capacity Agreement?
- Please confirm, that payment under third paragraph of clause 8.1 of the Danish OS 2017 Capacity Agreement should not exclude the Shipper's ability to recover losses pursuant to clause 17 of the Danish OS 2017 Capacity Agreement?
- Please describe the mechanism of granting tariff payments exemptions under the second paragraph of clause 8.1 of the Danish OS 2017 Capacity Agreement?
- Will the legal term "frustration" apply and when in the event of a longer postponement?
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Answer:

- The Shipper may claim compensation, if (a) Energinet has received a Phase 1 Bid from the Shipper in OS 2017, and (b) the Start Date under the relevant Danish OS 2017 Capacity Agreement is the Gas Year 2022.
- Confirmed.
- The Shipper shall not pay the Capacity Charge, nor the Commodity Charge for the OS 2017 Capacity in the first Month of each Gas Year, unless the Shipper receives liquidated damages according to clause 17. The right to reduction in Capacity Charges and Commodity Charge is restricted to the duration of the postponement, i.e. calculated in number of year(s). Example: If the postponement is more than 1 year and less than 2 years, the Shipper shall not pay the Capacity Charges and Commodity Charge in the first Month of the said Gas Years for two Gas Years.
- Energinet and/or the Shipper are entitled to terminate the Danish OS 2017 Capacity Agreement in accordance with clause 15 and 16.

1.18 Availability of only one part of the OS 2017 Capacity

Question:

- Please confirm that if only a part of the capacity is available on the declared Start date, the Participant is still entitled to receive liquidated damages passed on from the contractor in line with the mechanism stated in clause 17 in the Danish OS 2017 Capacity Agreement?
- Please confirm if only a part of the capacity is available on the declared Start Date, the Participant is eligible for a proportional share of the DKK 30 million compensation outlined in the third paragraph of clause 8.1 of the Danish OS 2017 Capacity Agreement?

Answer:

- Energinet will pass on received liquidated damages from the contractor(s) to the Shipper(s) affected by such delay, if (i) the Start Date is postponed, (ii) Energinet is

responsible for the postponement, and (iii) the Shipper has suffered a loss; cf. the second paragraph of clause 17 of the Danish OS 2017 Capacity Agreement.

- The Shipper may claim compensation, if the conditions stated in the third-fifth paragraph of clause 8.1 of Appendix 3 are fulfilled.

1.19 Proceeding in a case of postponement of Start date due to GAZ-SYSTEM SA

Question:

- Is it correctly assumed that in the case of lack of available OS 2017 Capacity in Entry Point Baltic Pipe (DK->PL), the Start Date for OS 2017 Capacity in Exit Point Baltic Pipe (DK->PL) is automatically postponed pursuant to clause 8.1 of the Danish OS 2017 Capacity Agreement?

Answer:

It is not correct. In the case of lack of available OS 2017 Capacity in Entry Point Baltic Pipe (DK->PL), the conditions are stipulated in clause 8.1 of the Danish OS 2017 Capacity Agreement.

1.20 Liquidated damages

Question:

- Is It correctly understood that contractors should be liable, if two conditions are fulfilled, cf. the second paragraph of clause 17 of the Danish OS 2017 Capacity Agreement?

Answer:

- Energinet will pass on received liquidated damages from the contractor(s) to the Shipper(s) affected by such delay, if (i) the Start Date is postponed, (ii) Energinet is responsible for the postponement, and (iii) the Shipper has suffered a loss; cf. the second paragraph of clause 17 of the Danish OS 2017 Capacity Agreement.

1.21 Liability

Question:

- Should the potential resell of capacity not have impact on the value of liabilities (contrary to wording included in second paragraph of clause 18 of the Danish OS 2017 Capacity Agreement)?
- Could you describe the distinction between direct losses and indirect losses?

Answer:

- The fact that Energinet resells the OS 2017 Capacity covered by a Danish OS 2017 Capacity Agreement does not exempt the Shipper from liability. In this case the liability is restricted to the actual loss. Accordingly, Energinet shall use reasonable efforts to resell the relevant OS 2017 Capacity.
- As a starting point, a loss will be categorized as direct the closer association the loss has to the behavior of a party. Indirect losses are most commonly referred to as consequential losses. That is, loss which is a consequence of the direct loss, including operational losses and recourse claims from a party's co-contractor.

1.22 Capacity

Question:

- When will Energinet be able to confirm that it will be able to own and operate the entire infrastructure of the Baltic Pipe Project (including upstream part)?
- And will Energinet on a periodic basis inform the Shippers about the progress of such right to operate and own the Baltic Pipe Project?

Answer:

- At this stage, we cannot inform the shippers about the time horizon related to this confirmation.
- Please read the answer to question 13.

1.23 Assignment

Question:

- Please confirm that Energinet is entitled to assign any of its rights and obligations under the Danish OS 2017 Capacity Agreement without the Shipper's consent, including assignment or transfer to (i) group companies which are wholly owned by Energinet and (ii) gas upstream system operator(s) and gas transmission system operator(s) in Denmark?

Answer:

- Confirmed. Please note that it is stipulated by law that Energinet shall own and operate certain parts of the gas transportation system.

1.24 Legal venue

Question:

- What is the agreed way to present a willingness to negotiate a dispute?

Answer:

- A written notice could be one way to present a willingness to negotiate a dispute.

1.25 Mitigation strategy of project delay risk related to the negotiation of “Construction Agreement”

Question:

- Is there a risk of project delay related to negotiations of the “Construction Agreement” between Energinet and GAZ-SYSTEM? If so, what actions are planned to be taken in order to manage this risk?

Answer:

- All essential terms and conditions for the Construction Agreement, i.e. the co-operation between GAZ-SYSTEM SA and Energinet from Investment Decision and until Start Date, have already been agreed. Thus, Energinet consider the risk of project delay due to Construction Agreement negotiations very low.

1.26 How should the associated companies submit bids to Energinet, if they are to be treated as a joint bid?

Answer:

- A completed bid form (within certain limits) for each of the associated companies must be submitted to Energinet.

1.27 In Information Package 1, it is published that the costs of the compressor station will be shared between Energinet and GAZ SYSTEM. Has DERA approved this? Moreover, has DERA considered what the risks are for the Danish shippers in the context of the tariff level, if there are no bookings after 15 years?

Answer:

- There is a framework agreement between Energinet and GAZ SYSTEM which among other things describe how the costs for the compressor station shall be shared. DERA has not approved this framework agreement.

Energinet encourages that shippers interesting in the answer for the last question raise it directly to DERA.

1.28 Definition of the force majeure in the Danish OS Capacity Agreement – how should we understand the fact, that the definition covers i.a. the lack of necessary permits for construction?

- According to clause 13 of the Danish OS 2017 capacity agreement, the lack of necessary permits for construction shall be regarded as force majeure.

1.29 Danish OS Capacity Agreement – currently the “indemnification clause” included in the Danish OS Capacity Agreement is conditional. Do we understand correctly that in the final version of the Danish OS Capacity Agreement it will be unconditional?

- Energinet will use best endeavors to include an indemnification clause into the Danish OS 2017 capacity agreement. If the indemnification clause is introduced, the indemnification clause will be unconditional.

C. Questions regarding the Polish part of the Baltic Pipe Project:

1.1 Expected gas quality

Questions:

- What is the calorific value of natural gas that will enter the Polish network at the Baltic Pipe point and the technical capacity at this point (both from Denmark to Poland and from Poland to Denmark) expressed in normal cubic meters?
- Is the definition of a normal cubic meter used by GAZ-SYSTEM S.A. the same as the one used by Energinet?
- Are there any disputable issues in the networks of three TSOs (Gassco, Energinet.dk and GAZ-SYSTEM) connected with acceptable quality parameters of natural gas that could negatively affect the timeliness and total cost of the NO-DK-PL connection?

Answers:

- According to art. 10 of the 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, GAZ-SYSTEM S.A. offers only capacity expressed in the energy units per unit of time (kWh/h). The same unit is then used in the tariff rates applied by GAZ-SYSTEM S.A. For any recalculation of the capacity (i.e. from energy units to volumetric units), for internal needs of the shipper, the values available on GAZ-SYSTEM website should be used.
- According to the preliminary analysis of the quality of gas, conducted as a part of the Feasibility Study for the Baltic Pipe Project, gas that will be transported through the new interconnection, from Denmark to Poland, will fulfill the quality parameters established by both TSOs, i.e. GAZ-SYSTEM S.A. and Energinet.

1.2 Seniority of the terms of Conditional PP / PZ

Questions:

- In which areas may there occur potential contradictions between the terms of Conditional PP / PZ and TNC and Tariff?
- Do the terms of Conditional PP / PZ have seniority over the terms of TNC and Tariff, given the ambiguities arising from the comparison of the wording of clauses 3.2 and 6.3 and 6.4 of the Conditional PP/PZ, to the extent that application of the terms of Conditional PP / PZ is more beneficial to the user than the terms of TNC and Tariff?

Answers:

- The provisions of Items 3.2 and 6.3 and 6.4 of the Conditional PP/PZ are not contradictory. Item 3.2 of Conditional PP/PZ governs the relationship between the terms of Conditional PP/PZ and the terms of TNC, Tariff and GTCs applied by GAZ-SYSTEM SA, regarding the derogations associated with the implementation of the Open Season procedure, e.g. as regards the period for which the capacity is made available (standard period of 15 gas years following the gas year in which the allocation takes

place) or the form and manner of concluding the PP / PZ. This is a standard clause used in such contracts. Those derogations result from the methods of allocation of transmission capacities, approved by the decision of the President of the Energy Regulatory Office of 24.03.2017 (file ref. no.: DRR.WRG.7129.2.1.2017.AKI), on the basis of which the OS 2017 Regulations have been prepared, together with the appendixes. The wording of Item 3.2 ensures that at the date of concluding Conditional PP / PZ, it will be binding on both parties, even if there are any differences in relation to TNC, Tariff or GTC in force at the given time. In turn, Items 6.3 and 6.4 of Conditional PP / PZ indicate that the implementation of the Polish OS 2017 Capacity Agreement will always be governed by the then applicable terms of TNC and Tariff – without the need to annex Conditional PP / PZ, at the same time waiving the right to terminate the agreement in such case.

1.3 Exhaustive nature of the list of conditions precedent

Question:

Is the list of conditions precedent indicated in Item 4.2 of the Draft of Polish OS 2017 Capacity Agreement exhaustive?

Answer:

The list of conditions precedent as set forth in Item 4.2 of the draft Polish OS 2017 Capacity Agreement is non-exhaustive. The translation error of point 4.2 present in the English draft version of the Polish Open Season 2017 Capacity Agreement has been remedied.

1.4 Framework) schedule of works to be taken to fulfill the conditions precedent relating to the final investment decision

Questions:

- What is the schedule of actions required to be taken in order to allow the materialization of conditions precedent referred to in Item 4.2, the planned involvement of GS in the performance of the identified actions, the scope of third parties' participation in the performance of the indicated tasks and the estimated deadlines for the materialization of conditions precedent?
- Is there a risk of project delay associated with the negotiations of the “construction agreement” between operators? If so, then what actions will be taken to manage the risk?

Answers:

- The activities to be undertaken in order to enable the materialization of the conditions precedent indicated in Item 4.2 of the draft Polish OS 2017 Capacity Agreement are currently under implementation of both operators. From the point of view of the Participant, it is an important fact that those activities should be completed by 1 December 2018 at the latest. This date was set taking into account the list of activities to be undertaken by both TSOs to meet the specific criteria which they deem relevant

for the purpose of taking positive Investment Decisions, and such date should be treated as final.

- The scope of engagement of third parties in the implementation of particular criteria corresponds to the content of specific conditions.
- The obligation of GAZ-SYSTEM S.A. to provide gas transmission services under the Polish OS 2017 Capacity Agreement becomes effective provided that the conditions precedent listed in Item 4.1 are met, i.e. if both operators adopt positive Investment Decisions. The conditions stipulated in Item 4.2 of the Polish OS 2017 capacity Agreement constitute only the decision criteria for GAZ-SYSTEM S.A. to take a positive Investment Decision. The list included in the draft Polish OS 2017 Capacity Agreement is non-exhaustive and GAZ-SYSTEM S.A. is entitled to take a positive Investment Decision even if any of the conditions specified in Item 4.2 of the Polish OS 2017 Capacity Agreement has not been met. In case of possible delays in meeting the specific decision criteria set forth in Item 4.2 of the draft Polish OS 2017 Capacity Agreement, GAZ-SYSTEM S.A. will have appropriate tools to assess the risks and potential causes of delays in meeting particular criteria, and to take the final Investment Decision on the basis of such assessment.

1.5 Update provided to OS Participants by GS regarding the Polish part of the project

Questions:

- What is the scope of information to be provided to Participants by GAZ-SYSTEM S.A. pursuant to Item 4.4 of Conditional PP / PZ?
- Is it possible to introduce a mechanism analogous to that provided for under Item 7 of the Danish capacity agreement, which also provides for the organization of quarterly project status update meetings between the operator and shippers?
- Will issues, which required immediate attention from the Participants, be communicated directly to the Participants without undue delay (and not only at the quarterly meetings)?
- Will those information be communicated only to entities that have signed Conditional PP / PZ with GAZ-SYSTEM S.A.?

Answer:

If both – Energinet and GAZ-SYSTEM S.A. adopt positive Investment Decisions and decide to implement the Baltic Pipe Project, GAZ-SYSTEM S.A. will be submitting quarterly reports on the execution of the Polish part of the Baltic Pipe Project to the Participants, with which the Polish OS 2017 Capacity Agreement was concluded. Further details concerning the communication of the progress in the implementation of the Polish part of the Baltic Pipe Project, shall be presented to the Participants before conclusion of the Polish OS 2017 Capacity Agreements.

1.6 Mechanism of “narrowing the project launch date window”

Question:

Will a mechanism of “narrowing the project launch date window” be introduced, according to which an estimated project launch date could be regularly communicated to OS Participants in the form of an estimated term with a permitted time tolerance from that point?

Answer:

If the so-called Fast Track approach is adopted for the project, the operators will be implementing the Baltic Pipe Project in accordance with a work schedule which aims at enabling the commencement of transmission services on 1 October 2022. Information on work progress will be provided by GAZ-SYSTEM S.A, as explained in our answer to question 1.5 above. Conditional PP/PZ enables GAZ-SYSTEM S.A. to postpone the commencement date of the services in due advance, so the mechanisms will be put in place in the case of any delays in Project implementation by either Party which affect the commencement date of the services (cf. Item 4.5 – 4.7 of Conditional PP/PZ). At present, GAZ-SYSTEM S.A. does not plan to implement any additional mechanisms which would allow for specifying a binding commissioning date of the Baltic Pipe.

1.7 Consultations of the terms of EPC contract and the tender procedure for EPC contractor with OS Participants

Question:

Does GAZ-SYSTEM S.A. plan to consult the terms of the future EPC contract and the EPC contractor selection criteria with OS Participants?

Answer:

GAZ-SYSTEM S.A. does not envision a possibility of consulting the terms of EPC contract and the tender procedure for EPC contractor with OS Participants. The experience gained by GAZ-SYSTEM S.A. in the course of numerous and important infrastructural projects implemented by GAZ-SYSTEM S.A. and its’ affiliates guarantees that both the conditions of the EPC and of the tender procedure for EPC contractor will be prepared in a manner which adequately secures the success of the Polish part of the Baltic Pipe Project.

1.8 Necessary postponement of commencement of provision of transmission services due to delays in the implementation of the Danish part of the project

Question:

Is there a possibility to amend Item 4.7 of the Polish OS 2017 Capacity Agreement to guarantee an automatic postponement of the commencement of provision of transmission services in the event of delays in the execution of the Danish part?

Answer:

GAZ-SYSTEM S.A. sees no possibility of altering the provisions of Item 4.7 of the draft Polish OS 2017 Capacity Agreement. GAZ-SYSTEM S.A. has no control over the construction of the Baltic Pipe by Energinet, and it may not assume the risks resulting from any delays in this regard in

advance. However, we want to stress, that acting on the basis of the item 4.7, GAZ-SYSTEM S.A. will take its best efforts to ensure that OS 2017 Capacity is provided at the same time.

1.9 Aligning differences between GS and ENDK in the approach to shippers' rights in the event of project delays

Questions:

- Does Item 5.4 of Conditional PP / PZ provide for a transfer to the shipper of the contractual penalties imposed by GAZ-SYSTEM S.A. on subcontractors for delays in project execution?
- Is it possible, pursuant to Item 5.4 of Conditional PP / PZ, in the case of postponement of the commencement date of provision of transmission services, to exempt an OS Participant from payment for the reserved capacity for a certain period immediately following the launch of the NO-DK-PL route?

Answers:

- Item 5.4 of Conditional PP / PZ obliges the System User to minimize the damage, i.e. to take measures limiting the scope of possible loss of the System User caused by the delay in the implementation of the Baltic Pipe Project. Item 5.4 does not deal with the possible remedies of the resulting loss, and therefore it will not enable GAZ-SYSTEM S.A. to transfer to the System User the contractual penalties received by from subcontractors.
- Charges for the provision of transmission services at the Baltic Pipe Entry / Exit Points will be collected pursuant to GAZ-SYSTEM S.A. tariff, i.e. for the transmission services provided (see Item 3.6 of Conditional PP / PZ). GAZ-SYSTEM S.A. does not provide for the possibility of exempting an OS Participant from payment for the reserved capacity for a certain period following the commencement of provision of transmission services at the Baltic Pipe Entry / Exit Point.

1.10 GAZ-SYSTEM's S.A. liability if only part of the transmission capacity sold under OS is available

Questions:

- Will GAZ-SYSTEM S.A. be liable if only part of the capacity allocated to Participants has been made available?

Answer:

The principles of liability stipulated in Item 5.1 of Conditional PP/PZ indicate that the parties are liable towards each other for "culpable failure to perform or undue performance" of the obligations specified in Conditional PP/PZ. Pursuant to the provisions of Item 3.4.1, GAZ-SYSTEM S.A. will be obligated to provide the System User with transmission services at the Entry/Exit Point Baltic Pipe to the extent specified in Item 3.5 of Conditional PP/PZ, subject to the provisions regulating the postponement of the commencement date of such services. The fact that only a part of the allocated capacity is provided to a System User represents undue performance of obligations by GAZ-SYSTEM S.A. Please note that the liability of GAZ-SYSTEM S.A. will be verified in the context of the principles of liability stipulated in Conditional PP/PZ.

1.11 Aligning the evaluation criteria of capacity bookings submitted by OS Participants

Question:

Is it possible, pursuant to the provisions of Directive 2009/73/EC, to include in Appendix 4 provisions allowing GS to cancel the capacity bookings of selected OS Participants if, in GS opinion and after consultation with ERO, their acceptance would jeopardize the proper functioning of the gas market in Poland?

Answer:

Due to the conditions of Baltic Pipe Project implementation on the Polish side, especially the fact that GAZ-SYSTEM S.A. offers only capacity of Entry Point Baltic Pipe (DK->PL) and Exit Point Baltic Pipe (PL->DK) as part of the Open Season 2017 procedure, it is currently impossible to supplement Appendix 4 with any provisions allowing GAZ-SYSTEM S.A. to cancel capacity bookings of specific OS 2017 Participants. Please note that due to the fact that both TSOs offer bundled capacity at the Interconnection Point Denmark and Poland, rejection of a Bid by Energinet under item 9.5 and 10.3 of Appendix 3 will form the basis for the rejection of the Bid by GAZ-SYSTEM S.A. (pursuant to the provisions of item 4.1.4.3 or 6.1.6.3 of Appendix 4).

1.12 Dissolution / termination of Conditional PP / PZ without reimbursement of costs

Questions:

- In what cases before launching the NO-DK-PL route the OS Participant is entitled to terminate Conditional PP / PZ without having to reimburse GAZ-SYSTEM S.A. the costs described in Item 6.11?
- In what cases after launching the NO-DK-PL route the OS Participant will be entitled to terminate Conditional PP / PZ without having to reimburse GAZ-SYSTEM S.A. the costs described in Item 6.13?
- In what situations the dissolution / termination of Conditional PP / PZ by GAZ-SYSTEM S.A. does not necessitate reimbursement of costs incurred by GAZ-SYSTEM S.A. by the OS Participant?

Answers:

- The OS Participant is entitled to terminate Conditional PP/PZ without a refund of the costs incurred by GAZ-SYSTEM S.A. only after commissioning of the Baltic Pipe and commencement of gas transmission services by GAZ-SYSTEM S.A., and only in special circumstances, i.e. in case of breach by GAZ-SYSTEM S.A. as set forth in Item 6.7.1 of Conditional PP/PZ, or in cases of force majeure as set forth in Item 6.7.3 of Conditional PP/PZ.
- On the part of TSO, Conditional PP/PZ may be terminated without a refund of costs incurred by GAZ-SYSTEM S.A. by the OS Participant only in special circumstances as specified in Conditional PP/PZ, i.e. in cases of force majeure as set forth in item 6.7.3 of Conditional PP/PZ, or if the agreement between GAZ-SYSTEM S.A. and Energinet

governing the implementation of the Baltic Pipe Project is terminated, i.e. in accordance with Item 6.8.

1.13 Possibility of terminating the Polish OS 2017 Capacity Agreement due to termination of the Danish OS 2017 Capacity Agreement by ENDK

Question:

Is there a possibility of modifying the Item 6.15 with a provision that the termination / dissolution of the Danish OS 2017 Capacity Agreement for reasons beyond the control of an OS Participant is a reasonable basis for terminating Conditional PP / PZ?

Answer:

According to Item 6.15 of Conditional PP/PZ, the validity of the Polish OS 2017 Capacity Agreement is independent of the validity of the Danish OS 2017 Capacity Agreement. The Participant's interests are adequately secured by the provisions of Item 6, which i.a. authorize GAZ-SYSTEM S.A. to terminate Conditional PP/PZ if the Baltic Pipe Project is not implemented by its promoters. In all other cases, if the Baltic Pipe Project is implemented, GAZ-SYSTEM S.A. sees no grounds for enabling the Participant to terminate Conditional PP/PZ without incurring the resulting costs, in accordance with the provisions of the Polish OS 2017 Capacity Agreement.

1.14 Scope of financial guarantees granted to GS

Questions:

- If an OS Participant's credit rating improves, the value of its share capital increases or the level of transmission tariffs decreases, will the amount of financial security to be maintained by the Participant be reduced?
- What is the relation between the amount of financial guarantees granted to GS within the GTC and within OS participation?
- Is the scope of financial guarantees required by GS on account of Phase 2 Bids subject to reduction by the amount of financial guarantees already submitted to GS for the implementation of the GTC of the Capacity Agreement?
- Please confirm that after a period of six years from the commencement of provision of transmission services on the NO-DK-PL route, i.e. when the guarantee submitted by OS Participant shall cease under Item 5.8 of Appendix 4, Item 2.7 of GTC shall not apply. By the same token, please confirm that after the expiry of the period provided for in Item 5.8, financial guarantees will be required in the amount provided for by GTC,

Answers:

- Due to the risks associated with the implementation of the Baltic Pipe Project, the terms of Conditional PP / PZ do not regulate the possibility of reducing the amount of financial security in the event of an increase of the Non-Secured Credit Line. Nonetheless, if, as a result of an improvement of the Non-Secured Credit Line, the amount of financial security submitted under Conditional PP / PZ is significantly overstated (i.e. by more

than 10% – see section 2.22 of GTC), the System User may apply to GAZ-SYSTEM S.A for a reduction of financial security. GAZ-SYSTEM S.A. will take all reasonable efforts to accommodate the request.

- Financial guarantees granted to GAZ-SYSTEM S.A. by the System User pursuant to GTC are adjusted to the level of risks incurred by GAZ-SYSTEM S.A. within the framework of current transmission operations, conducted using existing infrastructure. In turn, the purpose of financial security submitted under OS 2017 is to secure the risks generated for GAZ-SYSTEM S.A. due to its accession to the implementation of the Baltic Pipe Project, based on the OS 2017 Participant demand expressed by submitting a binding Bid in Phase 2. Due to the different purpose of the two types of security and different type of risk hedged, it was necessary to diversify the amount of financial security provided under GTC and Open Season 2017.
- No, the amount of financial security submitted with the Bid in Phase 2 should be determined in accordance with Additional GAZ-SYSTEM's S.A. Rules for the Open Season 2017 and it is not subject to reduction by the amount of financial guarantees already submitted to the TSO under the Capacity Agreement. The financial security submitted under GTC secures the existing obligations of the Participant (having the Shipper status) towards GAZ-SYSTEM S.A.
- Yes - pursuant to Item 7.10 of Conditional PP / PZ - following the lapse of the period provided in Item 7.8 of Conditional PP / PZ, the System User will be obliged to submit financial security in respect of financial liabilities resulting from Conditional PP / PZ, in the amount and form determined in accordance with GTC.

1.15 Compensation for not submitting / submitting smaller capacity booking in Phase 2

Question:

Is the total amount of compensation paid by a Participant to GAZ-SYSTEM S.A. in case of not submitting / submitting smaller capacity booking in Phase 2, after submitting a capacity booking in Phase 1, limited to 100 thousand PLN?

Answer:

Yes, it is limited to PLN 100,000.00 (say: one hundred thousand zloty).

1.16 Possibility of purchasing “bundled capacity” by two related entities

Question:

Does GAZ-SYSTEM allow the possibility that the associated capacity of the Baltic Pipe Exit Point (DK->PL) will be reserved by an associated entity to the entity reserving capacity at the Baltic Pipe Entry Point (DK->PL)?

Answer:

Pursuant to Article 19 in conjunction with Article 3(4) 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, the operators of adjacent transmission systems shall offer bundled capacity products at interconnection points such as

the Interconnection Point Denmark and Poland, i.e. capacity (at entry and exit points) on both sides of the interconnection point through a single allocation procedure. Due to the fact that the capacity is offered bundled, the bundled capacity should be booked by the same entity on both sides of the interconnection point. Therefore, the bundled capacity cannot be purchased by two separate entities.

1.17 Status of bundled capacity

Question:

Does offering of a “bundled” capacity mean that the capacity at both points will only be available at the moment when there is technical capacity for the transmission service on both sides, i.e. if there are any issues with the possibility of launching/providing transmission services on one side, will the capacity allocation on the other side be automatically suspended?

Answer:

Pursuant to Item 4.7 of Conditional PP/PZ, GAZ-SYSTEM S.A. will not be obliged to postpone the commencement date of transmission services at the Baltic Pipe Entry/Exit Point as appropriate in the case of any delays in the implementation of the Danish part of the project. Therefore, GAZ-SYSTEM S.A. can provide capacity even if no capacity has been provided in the Danish part of the Baltic Pipe (by analogy to the rules adopted by Energinet), however, GAZ-SYSTEM S.A. will take its best efforts to ensure that OS 2017 Capacity is provided at the same time. Furthermore, transmission services at the Interconnection Point Denmark and Poland will be provided by GAZ-SYSTEM S.A. on the terms and conditions stipulated in the TNC and the Tariff, and approved by the President of the Energy Regulatory Office. The possibility of suspending the transmission services (after GAZ-SYSTEM S.A. commences the provision of transmission services at the Baltic Pipe Entry/Exit Point) should therefore be verified in the context of the provisions of TNC and Tariff of GAZ-SYSTEM S.A., bearing in mind the fact that GAZ-SYSTEM S.A. is not liable for any defects to or limitations in the neighboring transmission systems.

1.18 Are you expecting any problems in the offshore section of the Project?

Answer

GAZ-SYSTEM aims at fast implementation of the offshore section, taking into account all necessary permissions to be granted. For this reason works are most advanced in terms of offshore section.

1.19 Firm capacity in the Polish direction – how will it be treated in comparison with capacity of other entry points to the Polish transmission system, in particular in the light of the obligation to maintain the mandatory reserves of gas?

Answer

The contractual points Entry Point Baltic Pipe (DK->PL) and the Exit Point Baltic Pipe (PL->DK) shall be treated as all other entry and exit points to/from the Polish transmission system. Therefore, the entry capacity allocated by GAZ-SYSTEM to the shipper in the Entry

Point Baltic Pipe (DK->PL) can be used to fulfill the obligations of the shipper related to maintaining the mandatory reserves of gas.