



# **THE GREEN GAS LOLLAND-FALSTER PROJECT**

## **APPENDIX 3 - OS 2020 CAPACITY AGREEMENT**

**FINAL**

This OS 2020 Capacity Agreement (hereinafter referred to as the "Agreement") has been entered into between:

Name: Energinet Gas TSO A/S  
Address: Tonne Kjaersvej 65  
Postal code and city: DK-7000 Fredericia  
CVR No.: 39315084  
EAN/GLN:  
(hereinafter referred to as "Energinet")

and

Name:  
Address:  
Postal code and city:  
Country:  
CVR No.:  
VAT No.:  
EIC:  
(hereinafter referred to as the "Shipper")

(Energinet and the Shipper also referred to herein collectively as "Parties" and individually as "Party").

## 1. Background and purpose

2020, Energinet conducted an open season procedure (hereinafter referred to as "OS 2020"), as part of which i.a. the capacity covered by this Agreement was allocated for the period of time stipulated herein.

The purpose of this Agreement is to ensure that Energinet establishes the infrastructure required to provide the OS 2020 Capacity in the OS 2020 Capacity Period subject to fulfilment of the Conditions Precedent (and provided this Agreement has not been terminated by Energinet).

## 2. Definitions

In this Agreement, the below terms shall have the meaning stated below, unless otherwise indicated by the context. Terms defined in RfG shall have the same meaning in this Agreement, unless otherwise indicated by the context.

**"Agreement" or "OS 2020 Capacity Agreement"** shall mean this agreement for capacity entered into between the Shipper and Energinet based on the OS 2020.

**"Business Case"** shall mean Energinet's business case as described in clause 10 of the OS 2020 Rules.

**"Conditions Precedent"** shall mean the conditions precedent set out in clause 9.

**"End Date"** shall mean the last Gas Day of the OS 2020 Capacity Period as stated in clause 4.

**"Force Majeure"** Force Majeure shall have the meaning set out in Rules for Gas Transport.

**"OS 2020"** shall mean the open season procedure conducted by Energinet in 2020 in respect of the Green Gas Lolland Falster Project.

**“OS 2020 Capacity”** shall mean the capacity covered by this Agreement as stated in clause 4.

**“OS 2020 Capacity Period”** shall mean the period during which the Shipper’s OS 2020 Capacity under this Agreement is available, cf. clause 4.

**“OS 2020 Rules”** shall mean Energinet’s rules for OS 2020, including all appendices thereto.

**“Bid”** shall mean the binding bid or bids submitted by the Shipper in the OS 2020 as this is set out in further detail in the OS 2020 Rules.

**“Incremental Capacity”** shall mean capacity in excess of the current technically available capacity, requested by the market.

**“Rules for Gas Transport”** shall mean Energinet’s Rules for Gas Transport including appendices in the version applicable at any time.

**“Start Date”** shall mean the first Gas Day of the OS 2020 Capacity Period as stated in clause 4.

**“Written Notice”** shall mean any document signed by one of the Parties and delivered to and received by the other Party and any written message from one Party received by the other Party, including by electronic means.

### 3. Priority

In case of any discrepancy between this Agreement and the documents listed just below, priority shall be given to the documents in the following order:

- this Agreement;
- OS 2020 Rules;
- Rules for Gas Transport;
- Rules for the Supply of Upgraded Biogas into the Danish Gas System (Rules for Bio Natural Gas) and
- the Shippers' Bid.

Rules for Gas Transport is applicable to this Agreement to the extent that an issue is not regulated by this Agreement. In addition, the Shipper is obliged to comply with applicable law in force at any time.

### 4. Capacity

Under OS 2020, the Shipper has been allocated the following OS 2020 Capacity:

Maximum Firm Capacity: (kWh/Hour) for the

RES Entry Point Lolland-Falster

Exit Lolland-Falster

The OS 2020 Capacity Period has the following Start Date and End Date:

Start Date:

End Date:

This OS 2020 Capacity shall be considered as Incremental Capacity, and is allocated for the relevant temporary point, either being the exit point Exit Lolland-Falster, or the entry point RES Entry Point Lolland-Falster.

## **5. Tariffs and Financial Contribution**

The tariffs for the OS 2020 Capacity must be paid in accordance with the Rules for Gas Transport.

The tariffs must be paid from the Start Date on which the OS 2020 Capacity is made available to the Shipper under this Agreement. In case of postponement of the availability of OS 2020 Capacity, the Shipper shall not pay tariffs during such postponement period even though the Start Date has passed.

According to applicable law at the time of signing this Agreement, changes in the tariff methodology are subject to prior approval by the Danish Utility Regulator and such changes cannot be made unless such prior approval has been granted.

The tariffs payable by the Shipper under this Agreement may be changed as set forth in this clause 5. The Shipper will be notified of any changes by Written Notice. Energinet will determine and announce the date from when the changes will take effect. Neither changes in the tariff methodology nor changes of the tariffs shall entitle the Shipper to terminate this Agreement.

The Financial Contribution must be paid during the OS 2020 Capacity Period for the Green Gas Lolland-Falster Project.

## **6. Security**

The Shipper shall meet the credit requirements to act as a Shipper at all times in accordance with the provisions hereon in Rules for Gas Transport.

In addition, the Shipper may have provided security in accordance with the OS 2020 Rules. Such security will be released with 20 per cent after each full Gas Year, where the Shipper has received the OS 2020 Capacity.

The security provided under the OS 2020 is subject to an ongoing review. Such review may lead to a requirement for increase in the required security, cf. OS 2020 Rules.

## **7. Shipper participation**

Upon Energinet's request, the Shipper agrees to support any notification, application or certificate necessary in order to obtain approval of the establishment of the Green Gas Lolland-Falster Project.

## **8. Changing of the Start Date**

### **8.1 Postponement of the Start Date due to Energinet's matters**

Energinet endeavours that the OS 2020 Capacity is available for the Shipper on the Start Date set out in clause 4. However, if Energinet's construction of the infrastructure necessary for the OS 2020 Capacity is not completed on the Start Date stated in clause 4, Energinet is entitled to postpone the Start Date without this being considered as a delay. In this event, Energinet endeavours to provide the OS 2020 Capacity at the earliest possible time after the Start Date set out in clause 4, and the duration of the OS 2020 Capacity Period is maintained.

Energinet will inform the Shipper about the postponement of the Start Date as soon as possible by Written Notice. If Energinet provides the Shipper with the Written Notice less than one year before the postponement takes effect, the Shipper shall not pay the Capacity Charge, nor the Commodity Charge for the OS 2020 Capacity in the first Month of each Gas Year. The said 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 relevant Gas Years for two Gas Years.

## **8.2 Postponement of the Start Date due to Evida's matters**

If Evida's part of the construction is postponed, Energinet will inform the shipper about the postponement as soon as possible by Written Notice. In this case, the Shipper may request Energinet to postpone the Start Date correspondingly. The request must be made by a Written Notice and must contain a proposal for a new Start Date.

Energinet will respond to the Shipper's request no later than 30 Business Days after Energinet has received the Shipper's Written Notice.

## **8.3 Advancing of the Start Date**

If the OS 2020 Capacity is available before the Start Date, Energinet may propose an amended earlier Start Date to the Shipper. In this case, the Shipper may, in its sole discretion, decide an amended earlier Start Date within the frame of Energinet's proposal.

## **9. Conditions Precedent for Energinet**

This Agreement is on Energinet's side subject to the fulfilment of each of the following conditions precedent (or waiver of such condition(s) by Energinet in its sole discretion) on the dates specified below:

- a) No later than 1 June 2020, the obtainment of the corporate approvals of the Green Gas Lolland-Falster Project by Evida.
- b) No later than 1 July 2020, approval of the Business Case related to the Green Gas Lolland-Falster Project by the supervisory board of Energinet SOV. This approval will take a number of matters into account, including, but not limited to effects of the Project on gas transportation costs in Denmark, security of supply, socioeconomics, environment and protection of users from a Danish national and regional perspective.
- c) No later than 1 December 2020, positive investment decision related to the Green Gas Lolland-Falster Project by the supervisory board of Energinet SOV. This decision will take several matters into account, including, but not limited to:
  - Energinet and Evida having concluded a cooperation agreement for the construction, covering the period of time from the positive investment decision and until the commissioning date of the Green Gas Lolland-Falster Project;
  - Energinet has been granted approval from the Danish Minister for Climate, Energy and Utilities for the implementation of the Green Gas Lolland-Falster Project, cf. section 4 of the Consolidated Act No 1097 of 8 November 2011 on Energinet.dk with later amendments.

If the Conditions Precedent stated in this clause 9 have not been either fulfilled or waived by Energinet before or on the dates stated above, this Agreement shall terminate with immediate effect, subject to Energinet's Written Notice.

A Party cannot in any way be held liable by the other Party for any loss suffered by the other Party due to this termination.

## **10. Written Notice**

Any Written Notice made under the Agreement shall be sent to a Party at the below-mentioned address and email and for the attention of the individual stated below:

The Shipper:

Address:

Contact person:

Telephone no.:

E-mail:

Energinet:

Address:

Contact person:

Telephone no.:

E-mail:

Contacts details in this clause may be amended by the relevant Party by Written Notice to the other Party and shall be effective upon receipt by the other Party of electronic mail or letter to the addresses stated in this clause 10.

## **11. 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. The receiving Shipper must meet all formal and other requirements under this OS Capacity Agreement.

Energinet shall be entitled to assign any of its rights and obligations under this 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 at any time.

Energinet will inform the Shipper about any assignment as soon as possible by Written Notice.

## **12. Force Majeure**

### **12.1 General**

The rules on Force Majeure shall apply to this OS 2020 Capacity Agreement as detailed in RfG.

## **13. Term of this Agreement**

Subject to fulfilment or waiver of the Conditions Precedent in clause 9, this Agreement shall be in force from the date of signature by Energinet and shall remain in force until the end of the OS 2020 Capacity Period, unless this Agreement is terminated due to:

- a) extended Force Majeure, cf. clause 12.3;
- b) material breach, cf. clause 14; or
- c) termination, cf. clause 15.

## **14. Material breach**

In the event of a Party's material breach of its obligations under this Agreement, the other Party is entitled to terminate this Agreement in its entirety subject to giving Written Notice.

However, this Agreement may only be terminated by Energinet, if Energinet has demanded by Written Notice that the material breach be remedied and the Shipper has not remedied the material breach within 10 Business Days of receiving such Written Notice, unless the termination is caused by failure to pay or by lack of or insufficient documentation of a credit approval and/or security by the Shipper.

Further, a Party is entitled to terminate this Agreement with immediate effect if the other Party is declared bankrupt or becomes insolvent, suspends its payments or is subject to compulsory or voluntary liquidation or similar and the other Party has not provided the necessary security within a time limit set by the terminating Party.

If the termination of this Agreement is due to the Shipper's material breach hereof, the Shipper is no longer entitled to utilize the OS 2020 Capacity. Energinet may resell or otherwise dispose of the OS 2020 Capacity.

Material breach includes, but is not limited to:

- a) termination of the Shipper Framework Agreement under which this Agreement has been concluded;
- b) failure by the Shipper to provide, to maintain, and if required under clause 6 to increase the security provided under the OS 2020;
- c) failure by the Shipper to pay any charge or fee payable to Energinet with regard to the OS 2020 Capacity; and
- d) if this Agreement is based on false or misleading information given by the Shipper in the OS 2020.

## **15. Termination**

Energinet is entitled to terminate this Agreement in its entirety with immediate effect subject to giving Written Notice, if the main prerequisites for the initiation of the Project, such as gas demand or natural gas production are significantly and irreversibly altered.

Energinet cannot in any way be held liable by the Shipper for any loss suffered by the Shipper due to such termination.

## **16. Liability**

Unless otherwise stated in this Agreement, a Party which does not fulfil its obligations under this Agreement (the "Liable Party") shall compensate the other Party (the "Injured Party") for all documented direct losses suffered by the Injured Party as a consequence thereof. The Liable Party cannot be held liable for the Injured Party's operational losses and other indirect losses, including loss of profit and recourse claims from the Injured Party's co-contractors unless the Liable Party acted wilfully or with gross negligence.

For the avoidance of doubt, it should be noted that in the event of this Agreement being terminated due to the Shipper's material breach hereof, the Shipper shall be liable to pay damages to Energinet for any loss suffered in this connection. The fact that Energinet resells the OS 2020 Capacity covered by this terminated Agreement does not exempt the Shipper from liability. Energinet shall use reasonable efforts to resell the relevant OS 2020 Capacity.

## **17. Amendments**

Changes, modifications and supplements to this Agreement shall not be valid unless made in writing and signed by the Parties.

This Agreement is subject to the version of Rules for Gas Transport applicable at any time, which the Shipper by signing this Agreement accepts to be bound by. In case of conflict between this Agreement and Rules for Gas Transport, this Agreement shall prevail, cf. clause 3.

The Parties shall accept any changes to this Agreement as a consequence of changes in applicable law.

## **18. Severability**

If any of the provisions of this Agreement become invalid, ineffective or unenforceable, the remainder of this Agreement will remain in full force and effect.

The Parties shall in good faith replace the invalid, ineffective or unenforceable provisions with other provisions having similar economic consequences for the Parties, provided that this does not change the essential terms of this Agreement.

## **19. Legal venue and choice of law**

### **19.1 Legal venue**

The parties shall seek to resolve by negotiation all disputes between the parties regarding the interpretation or breach of agreements, including any claims raised as a consequence of disputes.

If the parties are unable to resolve a dispute by negotiation within 20 Business Days of the date on which a request for negotiation was presented by a party, the dispute shall be finally settled by arbitration in accordance with the Rules of Procedure for Arbitration of the Danish Institute of Arbitration, unless the dispute falls within the jurisdiction of another court of law or public authority. The arbitration tribunal shall consist of three arbitrators who shall fulfil the requirement to arbitrators in the abovementioned Rules of Procedure. Each party shall propose an arbitration judge and shall strive to propose an arbitration judge who has knowledge of the natural gas industry. The chairman of the arbitral tribunal shall be proposed by the Danish Institute of Arbitration.

The court of arbitration shall be set in Copenhagen, Denmark.

The arbitration proceedings shall be conducted in the Danish language.

### **19.2 Applicable law**

This Agreement shall be governed by Danish law.

## **20. Signatures**

The Parties have executed this Agreement on the respective dates specified below, in two identical copies, with effect from **31 March 2020**.

Place:

Place:

Date:

Date:

Energinet  
[Name]

Shipper  
[Name]

[Name]

[Name]