

Market information

In December 2016/January 2017, transmission system operators from Poland and Denmark, Energinet and Gas Transmission Operator GAZ-SYSTEM S.A. (hereinafter referred to as: "GAZ-SYSTEM S.A.") held market consultations concerning a binding Open Season Procedure 2017 (hereinafter referred to as "OS 2017") for the Baltic Pipe project:

<http://www.gaz-system.pl/strefa-klienta/konsultacje-z-rynkiem/zakonczone-procedury/2017/open-season-baltic-pipe/>

During the market consultations, market participants could submit written comments and questions concerning the Open Season 2017 procedure to Energinet and/or to GAZ-SYSTEM S.A. Following the consultations, Energinet and GAZ-SYSTEM S.A. evaluated the comments collected during the consultations and corrected appropriately the Rules for Open Season 2017 together with appendices.

The aim of this document is to address the comments and questions received from the participants during the market consultations.

Comment no. 1: In the opinion of market participants, it is necessary to ensure the implementation of the whole project in accordance with the investment schedule, in particular, to ensure that the date of the operational launch of the Baltic Pipe will be no later than 1 October 2022.

The position of GAZ-SYSTEM: The Baltic Pipe project is being implemented in response to the market participants' needs which were signalled within a non-binding procedure of market research conducted in the first half of 2016.

The results of the procedure conducted indicated that there is a market demand for capacity connecting Polish and Danish transmission system from the gas year of 2022/2023.

The Baltic Pipe project covers, among others, construction of a gas pipeline connecting transmission systems of Poland and Denmark. In order to implement it, GAZ-SYSTEM S.A. will be obliged to build a large amount of gas pipelines passing through territories of a few European countries. In order to obtain consents and permissions necessary to build the gas pipeline, it will be crucial to conduct a number of different administrative procedures governed by separate provisions. Moreover, in order to implement the investment, obtaining third party consents will be required. Due to the degree of complexity of the Baltic Pipe project and its complicated organisational and technical structure, it is possible that a number of unpredicted event occur, both at the stage of design and construction of the gas pipeline which may cause delays in its completion.

GAZ-SYSTEM S.A. is aware that a delay in the implementation of the Baltic Pipe project behind the investment schedule may have a negative impact on the situation of the entities which, as a result of the Open Season 2017, obtained the right to use the capacity.

Designing sanctioning mechanisms related to delays in the implementation of the Baltic Pipe Project, GAZ-SYSTEM S.A. has taken into consideration the consequences which a delay arising from failure to

commission the gas pipeline as planned has for the participants of the procedure. Moreover, in relation to the indicated factors, GAZ-SYSTEM S.A. predicts that in accordance with the wording of the Polish Transmission Contract within OS 2017, **GAZ-SYSTEM S.A. intends to keep a System User informed of the progress in the implementation of the Baltic Pipe project. In particular, GAZ-SYSTEM S.A. shall immediately notify the System User of the conditions precedent being fulfilled which condition the arising of an obligation of GAZ-SYSTEM S.A. to provide transmission services.**

Comment no. 2: Possibility to extend the period of Phase 1 and 2

The position of GAZ-SYSTEM: In relation to the comments received from market participants which concerned the possibility of extending the period of Phase 1 and Phase 2 of OS 2017, Energinet and GAZ-SYSTEM S.A. jointly agreed to extend each of the phases by one week. In the final version of the OS 2017 Rules each phase currently lasts for 7 (seven) weeks. Moreover, the deadline for submission of registration documents to both TSOs has been extended to 4 weeks.

The extension of deadlines does not change the fact that both TSOs allow for the possibility to change the schedule of Open Season 2017 pursuant to the provisions of the Open Season 2017 Rules.

Comment no. 3: Schedule for OS 2017

The position of GAZ-SYSTEM: A general schedule for OS 2017 may change in particular if there is no Order to Proceed and/or the total capacity proposed in Phase 1 is insufficient for the implementation of the Fast Track Project. The above means a re-evaluation and a potential change of the schedule of the Baltic Pipe project which may also result in the change of the schedule of OS 2017.

If there is no Order to Proceed and/or the total capacity reserved in the Phase 1 is insufficient for the implementation of the Fast Track Project, the OS 2017 procedure will be continued, and the OS 2017 Capacity in Phase 2 of the OS 2017 will be offered from the Gas Year of 2024, provided that a decision on the implementation of the Baltic Pipe project is made.

A possibility to extend the deadlines specified in the OS 2017 schedule has also been introduced in extraordinary cases, when it is necessary for further implementation of OS 2017.

The principles for the change of the schedule of OS 2017 were described in detail in the OS 2017 Rules. If TSOs needed to change the schedule of OS 2017 in cases other than the ones directly specified in the OS 2017 Rules, there might be a need to obtain a prior consent from national regulatory authorities.

Comment no. 4: Terms and conditions for the implementation of the “Fast Track Project” and for commencement of Phase 2 of OS 2017

The position of GAZ-SYSTEM: For the implementation of the “Fast Track Project” it is necessary for an interested Participant(s) to submit an Order to Proceed as part of which a request for the allocation of an appropriate Capacity of OS 2017 will be submitted. The Order to Proceed must irrevocably be submitted before the end of the final deadline for the Phase 1 of OS 2017 specified in the Open Season 2017 Rules.

If there is no Order to Proceed and/or the total Capacity proposed in the Phase 1 is insufficient for the implementation of the Fast Track Project, the OS 2017 procedure will be continued, and the OS 2017

capacity will be offered from the Gas Year of 2024, **provided that a decision on the implementation of the Baltic Pipe project is made.**

Moreover, if the Fast Track Project is not launched by GAZ-SYSTEM S.A. and Energinet, the Order to Proceed submitted by the Participant with relation to ensuring the implementation of the investment within the Phase 1 will expire together with the obligations related to it, resulting from the OS 2017 Rules.

It should be noted that on the part of GAZ-SYSTEM S.A. the principles concerning the possibility to modify the draft of the Polish Transmission Contract within OS 2017 have been changed. In the case of the implementation of the Fast Track Project, the draft of the Polish Transmission Contract within OS 2017 published together with the launch of OS 2017 will not be subject to further changes.

Comment no. 5: Purpose of the implementation of the Baltic Pipe project and entitlement to terminate transmission contracts concluded as a result of Open Season 2017

The position of GAZ-SYSTEM: the Baltic Piper project is implemented for the purpose of, among others, diversifying possible direction of gas supply on the territory of Poland. Consequently, the entitlement to terminate transmission contracts concluded as a result of Open Season 2017 may be valid only in a situation of a complete impossibility to implement the project, that is, in the case when its promoters fail to obtain consents and permissions necessary to construct the gas pipeline.

Once the construction has begun, when the expenditures incurred for the implementation of the Baltic Pipe project are considerable, it is necessary to ensure that the capacity of the gas pipeline will be used pursuant to the agreements concluded as a result of Open Season 2017. Recovery of the expenditures will be possible only through the provision of transmission services for gas transmitted through the Baltic Pipe.

Comment no. 6: Tariffs for entering into the Polish gas market from Denmark – ensuring the profitability of using the Baltic Pipe gas pipeline for the benefit of the Participants who conclude Polish Transmission Contracts within OS 2017

The position of GAZ-SYSTEM: Taking into account reservations expressed in the comments submitted, GAZ-SYSTEM S.A. wishes to underline that the currently applied methodology for setting tariffs, a summary description of which is published on the operator's website, ensures that the tariff rate set for the entry point to the Polish transmission system created as part of the Baltic Pipe gas pipeline will be the same as the rate applied in the remaining entry points to the Polish transmission system.

At the same time we would like to underline that pursuant to the law, the change of the methodology for setting the tariff by a transmission system operator, as well as approving particular tariffs (including the rates) requires approval of the President of ERO. The President of ERO, as a central government administration authority, is responsible for, among others, balancing interests of energy companies and fuel and energy customers.

Moreover, we inform that in order to ensure transparency of the Open Season 2017 procedure, GAZ-SYSTEM S.A., within the Information Packages no. 1 and 2, intends to make available, among others, a tool enabling the Participant to calculate the costs of gas transmission service through the

entry point to the Polish transmission system within the Baltic Pipe gas pipeline. Information Packages will also contain information concerning the calculation of costs of the Baltic Pipe project.

Comment no. 7: The balance of rights and obligations between a Participant and a TSO in the context of a contractual penalty imposed on a Participant for failure to submit an appropriate Offer in the Phase 2 and lack of sanctions towards TSOs for failure to sign a Polish Transmission Contract within OS 2017 due to the result of an economic test

The position of GAZ-SYSTEM: In accordance with the Rules for OS 2017, based on binding capacity reservations received from the participants of the Open Season procedure, both Operators will conduct an Economic Test. **The conclusion of Transmission Contracts within OS 2017 requires obtaining a positive result in the Economic Test by each of the TSOs.**

The Baltic Pipe project will be implemented only when the Economic Test, conducted on the basis of the binding capacity reservations made by the participants of the Open Season procedure shows that the project is economically justified. **The profitability of the project will be therefore tested on the basis of estimated operators' income from transmission charges which will be in the future paid by the users of the gas pipeline who reserved capacity during the Open Season procedure.**

The above also results directly from the provisions of the Commission Regulation (EU) No. 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, which will be applicable during the implementation of Stage 2 of OS 2017. In accordance with the new law, the project of incremental capacity such as the Baltic Pipe project is initiated **if the economic test has positive results on two sides of an interconnection point.** In turn, in the case when no offer level results in a positive outcome, the specific incremental capacity process shall be terminated. **Therefore, it follows from the regulations cited that there is a necessity to condition the accession to the implementation of the Baltic Pipe project on the results of the economic test.**

As regards obliging a Participant to pay a contractual penalty in the case of failure to submit in Phase 2 the offer of capacity reservation in the amount not less than the one specified in the order submitted in Phase 1, in the opinion of GAZ-SYSTEM S.A., such a sanction is justified by actions which GAZ-SYSTEM S.A. starts on the basis of the Offer submitted by this Participant in Phase 1. As it has already been indicated in the consultation of documentation of Open Season 2017, both operators, as part of the so-called Fast Track Project, start the implementation of project works necessary to build the Baltic Pipe not having at that stage a binding order of a participant for a specified capacity. The implementation of the works will involve bearing their costs, **with no guarantee that the expenditures will be covered in the future by income from transmission services provided. Placing an Order to Proceed is not equal to submitting a binding offer of capacity reservation.** Therefore, in order to secure the costs incurred by the operators within the Project Fast Path, GAZ-SYSTEM S.A. and Energinet reserved a right to demand a contractual penalty from a Participant. However, it should be underlined that a **possible contractual penalty will be payable only in a situation when a Participant of the procedure fails to back up declarations on the amount of capacity reserved made earlier with a binding offer, that is, fails to submit to a TSO a binding Offer in Phase 2 at a level equal to the order placed in Phase 1 of Open Season.**

Furthermore, it should be noted that a Participant of OS 2017 is informed in advance on the conditions on the fulfilment of which the conclusion of Polish Transmission Contracts within OS 2017 depend. Bearing this in mind, until the indicated conditions are not fulfilled, any activity undertaken by a Participant based on a possibility (and not surety) of the future conclusion of a Polish Transmission Contract within OS 2017 should be undertaken at the Participant's sole risk. Thus, there is no symmetry of risks born by particular parties of the Baltic Pipe project.

In the context of the above, granting the Participant the right to demand from GAZ-SYSTEM S.A. a contractual penalty in the case of failure to implement the Baltic Pipe project due to failure to obtain a positive result of the economic test, that is, failing to obtain the confirmation of profitability of the project, is **unjustified**.