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24 March 2017

EFET comments on the Open Season procedure

Dear Sir or Madam,

EFET¹ welcomes the opportunity to provide additional comments on the binding open season procedure jointly decided upon by SNTGN Transgaz SA (Transgaz), Gas Connect Austria GmbH (GCA) and FGSZ Natrual Gas Transmission Private Company Limited (FGSZ) for the allocation of gas transmission capacity from Romania to Hungary and from Hungary to Austria and presented on March 8th 2017 in Budapest.

We consider setting the rules right as absolutely necessary for the successful outcome of the open season. Unfortunately, although we are only one week away from the opening of the registration period we observe that, while much progress has been

¹ The European Federation of Energy Traders (EFET) promotes competition, transparency and open access in the European energy sector. We build trust in power and gas markets across Europe, so that they may underpin a sustainable and secure energy supply and a competitive economy. We currently represent more than 100 energy trading companies, active in over 27 European countries. For more information: www.efet.org.

achieved so far, **there are still a number of very material aspects that would make it impossible for market participants to put forward their bids.**

Therefore, while presenting you the list of concerns we maintain, **we kindly but firmly invite you to consider a postponement of the offer date** until all issues have been clarified and all relevant terms and conditions published and in any case **allowing at least two months between the final publications of all relevant documentation and the start of the procedure.** Failure to do this will mean that third parties will be less willing to underwrite any new capacity and there is greater likelihood that the economic test will not be met and that a larger proportion of costs would need to be socialised.

In any case it is essential that existing capacity is made as accessible as possible through increased convergence of transportation access terms, transparency of capacity and tariffs, and maximisation of available capacity.

Please find here our detailed comments on the published procedure:

On Commitment Level

- **The level of binding commitments needed by all three TSOs to achieve positive economic tests needs to be critically reviewed.** The commitment value (f factor) does not correlate the level of investment needed for Phase 2 of RoHuAt with the relevant positive externalities (increased security of supply and competition).
- Excessive tariffs and/or commitment expectations will discourage market participants which may be prepared to finance the development of Phase 2 of RoHuAt infrastructure and force them to find more cost-effective solutions to market gas.

On tariffs

- **We believe that a clear tariff description should allow each bidder to develop a robust estimate of the commitment value** (and associated uncertainty) corresponding to its bid (the open season documentation contains ambiguities on the open season tariff applicable at IP1 and IP2).
- Also, GCA and FGSZ must agree on who will provide the appropriate pressure at the Hungarian/Austrian border point prior to the publication of the final OS terms and the proposed GCA and FGSZ tariffs must reflect that agreement.
- More in general, we would have appreciated to see tariffs justified on the basis of transparent data in compliance with the provisions of Chapter VII on

Consultation Requirements and Chapter VIII on Publication Requirements of the EU TAR Network Code.

- Equally, we would have expected to see the f factors motivated on the basis of a cost-benefit analysis and ultimately set to the advantage of end-users. Currently we see no data backing the tariffs published and no justification of the f factors.

On the contractual framework

- **In general we would expect a robust and coordinated contractual framework reflecting all aspects of the open season procedure. Specifically the following rights & obligations should be reflected in the contracts with the TSOs:**

- A successful bidder who enters into a Contract with a TSO^[1] must have the right to unilaterally terminate the Contract at any time prior to the Confirmation Date. However, to our understanding this right is not provided in the Contract proposed by TGZ and the FGSZ Contract is not yet provided.
- A successful bidder who enters into a Contract with a TSO must have a "step-back" right to terminate such Contract, if
 - at one IP, entry capacity was allocated and contracted but the corresponding exit capacity contract (or vice versa) was cancelled by another TSO (e.g. because of a negative Economic Test II), or
 - across the two IPs, capacity linked over the two IPs was allocated and contracted but one capacity contract was subsequently cancelled at one IP by another TSO.

This right ensures that successful bidders are not left with individual entry or exit capacities and corresponding payment obligations while the desired product (a capacity bundle at an IP or a transport across both IPs) is not provided. In cases where the step-back right is exercised, the successful bidders must also be relieved from the obligation to pay a bid cancellation fee to the extent such bidder has not caused the cancellation by a TSO through its own actions, e.g. when a new shipper replaces a successful bidder. In general, we also think that a proportionate cancellation fee should not cover the entire value of a given booking but rather a period of max 2 years of booked capacity as the TSOs may well find alternative use for the capacity during such period.

^[1] Transgaz ("TGZ"), FGSZ, or Gas Connect Austria ("GCA")

³ October 1, 2018

- A TSO shall have the right to terminate (cancel) a Contract with a successful bidder in case other successful bidders terminate their Contracts and such termination results in a negative economic test.
- All TSOs must make available the capacity contracted under the Contracts with a successful bidder on a firm basis as of the start-up date. In case capacity is not made available at one of the entry or exit points along one flow direction (i.e. from Romania into or through Hungary and into Austria, or from Hungary to Romania) as of the start-up date, and for the period until capacity is made available:
 - the successful bidder must be relieved from any tariff payments to all TSOs for capacity allocated under the open season;
 - the TSO who causes the delay must pay to the successful bidder a penalty corresponding to the applicable TSO's capacity tariff (note, this is a common incentive in investment projects but not stipulated in either of the TSOs' contracts), and
 - if the delay exceeds 12 months beyond the start-up date, the successful bidder must have the right to terminate the Contracts.
- Each TSO's Contract must suspend (postpone) those network user obligations stated in the relevant Netcode, GT&Cs or Frame Contracts, as the case may be, which cannot reasonably be applicable to a successful bidder as of the effective date of the Contract (because transportation services are provided about 4 years later only). E.g. obligations to provide tariff payment related guarantees should not be effective as of Contract signing but only three months prior to the start-up of transportation services.
- Moreover, the availability of a single point of contact for the bid submission would avoid a number of potential misunderstand and operational complexities.
- Finally, we see no reason for the contracts to be entered at the time of the conclusion of the auction and long before the relevant FIDs have been taken. Differently, we deem appropriate for the contracts to be concluded before the deadline for the withdrawal from the binding biddings.

On timing and planning

- We suggest the introduction of a coordination mechanism between TSOs and shippers allowing them to receive timely information on project development as it moves towards the final target date.

In conclusion **we strongly recommend the TSOs to ensure that the final open season procedure and associated documentation are revised taking into account comments from market participants.** We appreciate this will require a significant professional effort and a delay of the start of the open season by a few

weeks, but in our opinion, designing a process that will position all stakeholders for success is much more important.

While we appreciate the complexity and uniqueness of the exercise that you have endeavoured to manage, we are of the opinion that ensuring an efficient capacity allocation rests at the core of TSOs' activities.

To ensure our feedback is well received we remain available to discuss and provide any necessary clarification.

We thank you for your kind attention.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Davide Rubini', with a stylized, cursive script.

Davide Rubini
Vice-Chairman

EFET Task Force Central
and South Eastern Europe Gas (TF CSEE-G)