
**CONDITIONAL CAPACITY ALLOCATION AND TRANSMISSION
ABILITY ALLOCATION (PP/PZ)**

CONCLUDED AS RESULT OF A

**BINDING OPEN SEASON PROCEDURE AT THE ENTRY/EXIT POINT
POLAND-SLOVAKIA**

hereinafter referred to as “Conditional PP/PZ”

entered into on in Warsaw, by and between :

„....., entered into
..... at number kept by
.....,
Tax Identification Number (NIP):;
Statistical number (REGON):, with share capital of PLN.....
and the paid up capital in the amount of.....,
represented by :

1.
2.

hereinafter referred to as the "System User"

and

Gas Transmission Operator GAZ-SYSTEM S.A. having its registered office in Warsaw, at ul. Mszczonowska 4, entered into the Register of Entrepreneurs of the National Court Register kept by the District Court for the Capital City of Warsaw, 12th Commercial Department at number 0000264771, Tax Identification Number (NIP): 527-243-20-41; statistical number (REGON): 015716698, with the share capital of PLN 3 771 990 842 PLN, fully paid up, represented by:

1.
2.

hereinafter referred to as the "Transmission System Operator", „TSO” or “GAZ-SYSTEM”

both hereinafter referred to as "the Parties"

Whereas:

1. TSO, together with the Slovak transmission system operator, EUSTREAM A.S. (hereinafter referred to as "EUSTREAM") shall consider a construction of a new bi-directional gas pipeline, which will constitute a connection between Polish and Slovak transmission systems, i.e. from the Strachocina Gas Node in Poland to Gas Compressor Station Velké Kapušany, together with the necessary supportive infrastructure, i.e. Gas Compressor Station in Strachocina and gas pipelines: Pogórska Wola - Tworzeń, Tworóg - Tworzeń and Strachocina - Pogórska Wola (hereinafter referred to as: „**the Gas Interconnection Poland - Slovakia**”), which main purpose is to provide technical capacity between Polish and Slovak transmission systems;
2. one of the conditions for a positive final investment decision and construction of the Gas Interconnection Poland - Slovakia is the reservation by the system users of such amount of bundled capacity of the interconnection point connecting the Polish and Slovak part of the Gas Interconnection Poland - Slovakia (hereinafter referred to as: "**Entry/Exit Point Poland - Slovakia**") which will justify incurring the high costs of building the new transmission infrastructure by TSO and EUSTREAM;
3. The Conditional PP/PZ shall be concluded as a part of the Binding Open Season Procedure at the Entry/Exit Point Poland-Slovakia jointly conducted by TSO and EUSTREAM, in the course of which, to a participant in the procedure, as a result of the submitted order, the bundled capacity of the Entry/Exit Point Poland-Slovakia was allocated;
4. on the Parties concluded a transmission contract No. (hereinafter: "Transmission Agreement");
5. the Parties has decided to conclude the Conditional PP/PZ taking into account the fact that on the basis of the commitments arising from the System User's commitments resulting from the Conditional PP/PZ, TSO will make a financial analysis of the project and will make a decision on the implementation of the Gas Interconnection Poland – Slovakia;
6. due to the considerable costs of construction of the Gas Interconnection Poland-Slovakia, the purpose of the Conditional PP/PZ is to provide a partial coverage of the costs of implementation of the Gas Interconnection Poland-Slovakia from the transmission fees paid by the System User in exchange for gas transmission services provided by TSO in the Entry/Exit Point Poland - Slovakia. The Parties are aware that TSO in case of improper performance of the Conditional PP/PZ by the System User may claim reimbursement of expenses incurred for the implementation of the Gas Interconnection Poland - Slovakia;
7. the commencement of providing gas transmission services will begin after the Gas Interconnection Poland – Slovakia is built and commissioned on both sides of the Polish-Slovak border;

the Conditional PP/PZ was concluded with the following wording:

1 DEFINITIONS

- 1.1 The Parties declare that, unless otherwise defined in the Conditional PP/PZ, any terms defined in the Tariff of GAZ-SYSTEM, TNC of GAZ-SYSTEM or in the Rules of the Binding Open Season Procedure at the Entry/Exit Point Poland-Slovakia (hereinafter the "Rules") have the same meaning in the Conditional PP/PZ.

2 REPRESENTATIONS AND WARRANTIES

- 2.1 Each Party hereby represents and warrants to the other Party that:
- 2.1.1 it has the ability and authority to enter into the Conditional PP/PZ;
 - 2.1.2 is fully authorised and possesses all the corporate authorisations required to conclude the Conditional PP/PZ and to sign the accompanying documents or signed on the basis thereof, as well as to perform all the obligations resulting therefrom;
 - 2.1.3 no additional licences or authorisations are required from the Party upon which the validity and effectiveness of the transactions foreseen under this Conditional PP/PZ would be dependent;
 - 2.1.4 he has undertaken all the actions required by law in order to conclude this Conditional PP/PZ;
 - 2.1.5 once the Conditional PP/PZ has been concluded, it shall constitute an effective and binding source of obligations of the Party which shall be fully enforceable in relation thereto;
 - 2.1.6 both the conclusion and the performance of the Conditional PP/PZ by the Party shall not constitute any breach of any of its obligations (contractual or any other in nature), binding provisions of the law, rulings or administrative decisions binding upon the Party. Any actions in pursuance of the provisions of the Conditional PP/PZ shall not constitute a breach of the provisions of any other contracts, agreements, settlements, decrees, decisions or any other regulations binding upon the Party.

3 THE SUBJECT OF THE CONDITIONAL PP/PZ

- 3.1 The Conditional PP/PZ is an integral part of the Transmission Agreement and it constitutes the capacity allocation in the Entry/Exit Point Poland-Slovakia, and sets out detailed conditions for the provision of gas transmission services in the Entry/Exit Point Poland-Slovakia.
- 3.2 For the issues not regulated in the Conditional PP/PZ, the Transmission Agreement, Tariff of GAZ-SYSTEM, TNC of GAZ-SYSTEM and Rules apply.
- 3.3 The subject of the Conditional PP/PZ is:
- 3.3.1 the allocation for the System User the capacity (contracted capacity) in the Entry/Exit Point Poland-Slovakia, including the System User's obligation to pay the fees for the provision of gas transmission services in the Entry/Exit Point Poland-Slovakia;
 - 3.3.2 the obligation of TSO to provide gas transmission services in the Entry/Exit Point Poland-Slovakia, within the scope of the capacity (contracted capacity), in accordance with the Conditional PP/PZ, Tariff of GAZ-SYSTEM, TNC of GAZ-SYSTEM and the Rules.
- 3.4 On the basis of the Conditional PP/PZ, the System User shall have the right to use the gas transmission services in the Entry/Exit Point Poland-Slovakia in the form of the following capacity (contracted capacity) products:

The direction of gas flow	Capacity product (annual)	The period of validity of the capacity (contracted capacity) product (Gas Year)	Type of capacity (contracted capacity)	The amount of capacity (contracted capacity)
Transmission of gas from Poland to Slovakia (PL>SK)				
Transmission of gas from Slovakia to Poland (SK>PL)				

- 3.5 If as a result of a postponement of the commencement of the provision of gas transmission services in the Entry/Exit Point Poland-Slovakia a period of validity of the capacity (contracted capacity) product will be shortened then originally allocated to the System User in accordance with point 3.4, the gas transmission services provided by the TSO will be settled in accordance with the rules set forth in the Tariff of GAZ-SYSTEM for the capacity (contracted capacity) product originally reserved by the System User in accordance with point 3.4.

4 ENTRY INTO FORCE OF THE OBLIGATIONS SPECIFIED IN THE CONDITIONAL PP/PZ

- 4.1 The period for which the Conditional PP/PZ is concluded.
- 4.1.1 the Conditional PP/PZ is concluded for a definite period of time, from the date of signing the Conditional PP/PZ to the last day of providing the gas transmission services as determined in accordance with point 3.4, subject to the provisions of point 4.2 – point 4.7.
- 4.1.2 The commencement of providing gas transmission services in the Entry/Exit Point Poland-Slovakia will take place on the 1st January 2021 and will be realized for the System User during the gas years, for which the capacity (contracted capacity) has been reserved in the Entry/Exit Point Poland-Slovakia in accordance with point 3.4, subject to the provisions of point 4.2 – point 4.7.
- 4.2 The obligation of the System User to pay for the provision of gas transmission services in the Entry/Exit Point Poland-Slovakia as determined in 3.3.1, and the obligation of the TSO to provide gas transmission services in the Entry/Exit Point Poland-Slovakia as referred to in point. 3.3.2, are conditional and, subject to the provisions of points 4.3 - 4.7, will enter into force on the date of fulfillment all of the following conditions:
- 4.2.1 adoption of the Positive Final Investment Decision by TSO and EUSTREAM, until 1st of July 2019;
- 4.2.2 completion of the construction works and commissioning of the Gas Interconnection Poland – Slovakia along its entire length, on both sides of the border, by 1 January 2021.

- 4.3 TSO shall without undue delay notify the System User on the fulfillment of the conditions set forth in points 4.2.1 - 4.2.2. If the determined conditions are fulfilled after the commencement date of providing by the TSO gas transmission services to the System User in the Entry/Exit Point Poland-Slovakia, determined in accordance with point 3.4, then the TSO will be obliged to commence the provision of gas transmission services to the System User in the Entry/Exit Point Poland-Slovakia on the first Gas Day of Gas Month following the Gas Month in which the System User received the notification on the fulfillment of the conditions set forth in points 4.2.1 - 4.2.2.
- 4.4 In case of delay of commissioning of the Gas Interconnection Poland – Slovakia beyond the deadline set forth in point 4.2.2, the commencement of providing the gas transmission services in the Entry/Exit Point Poland-Slovakia, as determined in 4.1.2, may be postponed for the period not longer than twenty four (24) months, up until 1st of January 2023 at the latest. The TSO shall inform the System User about the postponement in due time and keep the System User informed on new estimated date of commissioning of the Gas Interconnection Poland - Slovakia. Such delay does not give the System User neither the right to terminate the Conditional PP/PZ, nor any claims towards the TSO for the postponement of the commencement of providing the gas transmission services in the Entry/Exit Point Poland-Slovakia, subject to mandatory provisions of law. For the period of postponement of providing the transmission services, the Participants shall not be obliged to pay any transmission fees to the TSO. For the avoidance of any doubt, the Parties agree that the delay of commencement of providing the gas transmission services in the Entry/Exit Point Poland-Slovakia shall not affect the end date of providing by the TSO gas transmission services to the System User in the Entry/Exit Point Poland-Slovakia determined in point 3.4.
- 4.5 The date of commencement of providing gas transmission services specified in point 4.1.2 can be postponed (delayed) in accordance with point 4.3 in particular in the following cases:
- 4.5.1 delays in obtaining approvals, opinions, findings or approvals of administrative - legal nature and other formal conditions for the construction of the Polish section of the Gas Interconnection Poland - Slovakia,
- 4.5.2 difficulties in the construction of the Polish section of the Gas Interconnection Poland - Slovakia caused by the necessity to meet the requirements of environmental protection or difficult weather conditions.
- 4.6 If, despite the delay of commissioning of the Gas Interconnection Poland - Slovakia, the technical status of the Gas Interconnection Poland – Slovakia will allow for providing gas transmission services in the Entry/Exit Point Poland-Slovakia on an interruptible basis, then, until the commissioning of the Gas Interconnection Poland-Slovakia, the firm capacity (contracted capacity) allocated to the System User in accordance with point 3.4, shall be made available to the System User as interruptible capacity. The TSO shall without undue delay notify the System User on the commencement of providing the gas transmission services to the System User in the Entry/Exit Point Poland-Slovakia on an interruptible basis. The obligation of the System User determined in point 3.3.1 and the obligation of the TSO to provide to the System User gas transmission services in the Entry/Exit Point Poland-Slovakia on an interruptible basis, shall enter into force on the first Gas Day of the Gas Month following the Gas Month, in which the TSO notified the System User on the commencement of providing the gas transmission services to the System User in the Entry/Exit Point Poland-Slovakia on an interruptible basis. The fees for the gas transmission services provided in the Entry/Exit Point Poland-Slovakia on an interruptible basis shall be calculated in accordance with the Tariff of GAZ-SYSTEM.

- 4.7 In case of delay of commissioning of the Gas Interconnection Poland - Slovakia beyond 1 January 2023 (the "Long stop date"), or in case that by the date specified in point 4.2.1 EUSTREAM and TSO do not adopt a Positive Final Investment Decision, the obligation of the System User as determined in 3.3.1 and the obligation of the TSO as determined in 3.3.2, shall not enter into force and each of the Parties shall have the right to terminate the Conditional PP/PZ with no liabilities and with no possibility to claim damages, subject to mandatory provisions of law.

5 CONDITIONAL PP/PZ TERMINATION

- 5.1 The Conditional PP/PZ can be terminated on the terms specified in this clause 5. The Parties agree that for the termination of Conditional PP/PZ the provisions of the Transmission agreement.
- 5.2 In case of the introduction on the basis of the generally applicable law change of the rates specified in the Tariff of GAZ-SYSTEM, the obligation to apply them in a modified form does not give the Parties the right to terminate the Conditional PP/PZ. The revised Tariff of GAZ-SYSTEM after their entry into force become a part of the Conditional PP/PZ which results in a duty to apply them as amended.
- 5.3 The Conditional PP/PZ can be terminated at any time by a written agreement of the Parties.
- 5.4 Due to the fact that the Gas Interconnection Poland-Slovakia is implemented on the request of the System User, and the Conditional PP/PZ is the basis for the implementation and securing the return of the costs of implementation of the Gas Interconnection Poland-Slovakia, the TSO and the System User may terminate the Conditional PP/PZ only for good cause as indicated below, with one month's notice:
- 5.4.1 System User has the right to terminate the Conditional PP/PZ due to:
- 5.4.1.1 in case of a failure by the TSO to perform the services specified herein for the period of thirty (30) consecutive days;
 - 5.4.1.2 in case of a breach by the TSO of any material provisions of the TNC of GAZ-SYSTEM, Tariff of GAZ-SYSTEM or this Conditional PP/PZ and a failure to remove such breach in a reasonable time;
 - 5.4.1.3 in the case referred to in point 4.7;
- 5.4.2 TSO has the right to terminate the Conditional PP/PZ due to:
- 5.4.2.1 when the System User is in payment default for at least a month after the date such payment was due, despite a prior written notice of the intention to terminate this Conditional PP/PZ and setting of an additional deadline of at least two (2) weeks for the payment of the outstanding and current obligations, and the System User has failed to pay all current and outstanding obligations within the next thirty (30) days after the lapse of the deadline;
 - 5.4.2.2 a failure to renew the validity of the financial security, or to top it up to the full amount determined in accordance with points 6.2 or 6.6 in the form specified in the Conditional PP/PZ, despite a written demand to top it up within a specified deadline, which cannot be shorter than fourteen (14) days;
 - 5.4.2.3 a failure by the System User to observe the gas curtailment measures that have been introduced in accordance with the valid provisions of the law or provisions of the TNC of GAZ-SYSTEM;

- 5.4.2.4 in case of breach by the System User of any material provisions of the TNC of GAZ-SYSTEM, Tariff of GAZ-SYSTEM or this Conditional PP/PZ and a failure to remove such breach in a reasonable time;
- 5.4.2.5 in the case referred to in point 4.7.
- 5.5 Each Party shall have the right to terminate the Conditional PP/PZ immediately if circumstances of force majeure or removal of the effects of the force majeure will last for more than one hundred twenty (120) days. The Party shall have the right to terminate the Conditional PP/PZ, if the reasons which led to its termination were the result of force majeure.
- 5.6 In the event of termination of the Conditional PP/PZ:
- 5.6.1 by the System User (i) in connection with the introduction of new conditions of the application of the Tariff of GAZ-SYSTEM, or (ii) for reasons other than those specified in point. 4.7, 5.4.1, 5.5, especially in the cases provided in the TNC of GAZ-SYSTEM or in accordance with the Energy Law. (i.e., Journal of Laws of 2012. Item. 1059, as amended.), or
- 5.6.2 by the TSO for good reason referred to in points 5.4.2.1 - 5.4.2.4,
- the System User is obliged to cover the relevant fraction of the realization costs of the Polish part of the Gas Interconnection Poland-Slovakia in the amount calculated in accordance with points 5.7 - 5.9. If the damage of the TSO exceeds the amount of the refund calculated in accordance with points 5.7 - 5.9, the TSO has the right to claim damages exceeding the amount of the due refund.
- 5.7 The method of calculation of the costs of realization of the Polish part of the Gas Interconnection Poland-Slovakia, which the System User is obliged to cover:
- $$K = C \times M \times F$$
- where:
- K - the amount of expenditures for the realization of the Polish part of the Gas Interconnection Poland-Slovakia which the System User is obliged to cover, in PLN,
- C – estimated expenditures planned to incur by the TSO for realization of the Polish part of the Gas Interconnection Poland-Slovakia, in PLN,
- M – ratio of the sum of capacity (contracted capacity) allocated to the System User in accordance with point 3.4 within the Procedure in the period of its duration, to the sum of total amount of capacity of the Entry/Exit Point Poland-Slovakia, allocated within the Procedure in the period of its duration,
- F – ratio of the combined level of capacity for which, realization of the Gas Interconnection Poland – Slovakia will be economically justified, to the sum of total amount of capacity of the Entry/Exit Point Poland-Slovakia, offered within the Procedure in the period of its duration.
- 5.8 The amount of the realization costs of the Polish part of the Gas Interconnection Poland-Slovakia which the System User is obliged to cover, shall be adjusted, once when the Polish part of the Gas Interconnection Poland-Slovakia is commissioned proportionally to the difference, irrespective whether positive or negative, between the planned realization costs and the actual realization costs of the Polish part of the Gas Interconnection Poland-Slovakia.

- 5.9 If the termination of the Conditional PP/PZ by the System User is done within the period after the commencement of providing gas transmission services, the amount of the costs determined in accordance with the point. 5.7 and 5.8, will be reduced proportionally, at the time of submitting the notice of termination, in accordance with the following formula:

$$SK = K \times (1 - R/Z)$$

where:

SK - adjusted amount of the expenditures of the realization of the Polish part of the Gas Interconnection Poland-Slovakia, which the System User is obliged to cover, in PLN,

K - 100% of expenditures and the implementation costs incurred of the realization of the Polish part of the Gas Interconnection Poland-Slovakia, which the System User is obliged to cover, in PLN, determined in accordance with point 5.7 and 5.8,

R – sum of capacity allocated to System User, within the Procedure and performed in the period from commencement of transmission services of gaseous fuel, until the time of submitting the notice of termination,

Z – sum of capacity sum of capacity (contracted capacity) allocated to the System User in accordance with point 3.4 within the Procedure in the period of its duration.

- 5.10 TSO has the right to draw against reimbursement referred to in point. 5.6, the amount of the financial security submitted by the System User in accordance with point 6 of the Conditional PP/PZ.
- 5.11 For the avoidance of any doubts the Parties agree, that unless otherwise regulated in the TNC, the termination of the transmission contract concluded as the result of the Open Season Procedure with EUSTREAM, does not affect the validity of the Conditional PP/PZ.

6 FINANCIAL SECURITY

- 6.1 In order to secure financial claims of the TSO for the provisions included in the Conditional PP/PZ, the System User, upon a request of the TSO, will submit a financial security in the amount equal to the part of the costs of realization of the Polish part of the Gas Interconnection Poland-Slovakia, which the System User is obliged to cover ("K"), calculated in accordance with point 5.7.
- 6.2 TSO will issue a request, referred to in point 6.1, for six (6) weeks before taking the Final Investment Decision. In the request he will indicate the amount of the security, which should be submitted by the System User, calculated on the basis set out in point 6.1.
- 6.3 Financial security may be submitted in one of the following forms:
- 6.3.1 cash deposit made to a bank account specified by the TSO, which is returned upon the termination of the provision of the gas transmission services, together with bank interest at a rate agreed for such account at the time when such deposit is made, less any costs of maintaining the account and costs of the bank transfer, or
 - 6.3.2 irrevocable and unconditional bank or insurance guarantee, which shall be governed by Polish law, payable upon the first demand of the TSO, issued,

as appropriate, by a bank or insurance company with a current rating obtained from a rating agency (the minimum acceptable level Baa2 for Moody's, BBB for Standard & Poor's, BBB for Fitch), which content was accepted by the TSO. If the guarantee has not been issued in the Polish language, it shall be submitted to the TSO together with a sworn translation into Polish.

- 6.4 The expiry date of the financial security should fall two (2) months after the period for which the capacity (contracted capacity) was allocated to the System User in accordance with point 3.4. The TSO may accept a financial security for the minimum term of one gas year, provided that such security is renewed within fourteen (14) days prior to the expiry of its validity.
- 6.5 The financial security must be submitted within one (1) month from receiving the request by the System User. Submission of financial security should be confirmed by the System User by submitting to the TSO a proof of submitting the financial security.
- 6.6 The System User shall have the right to demand that the security be adjusted during the term of Conditional PP/PZ in the case referred to in point 5.8. Within 14 days of the request, the TSO shall advise the System User on the currently required amount of financial security and shall adjust it accordingly.
- 6.7 The financial security submitted by the System User in accordance with point. 6.1 - 6.6 can be used by the TSO in the situations referred to in point 5.6.
- 6.8 The financial security submitted by the System User in accordance with point. 6.1 - 6.6 will be returned by the TSO within fourteen (14) days in case of termination of the Conditional PP/PZ by either Party in the case referred to in point. 4.6 or upon the termination of the provision of the gas transmission services in the Entry/Exit Point Poland-Slovakia within the capacity (contracted capacity) products as allocated to the System User in accordance with point 3.4.
- 6.9 Submission of financial security in accordance with points 6.1 - 6.6 releases the System User from the obligation to submit the financial security specified in the Transmission Agreement regarding the financial liability arising from the Conditional PP/PZ.

7 TRANSFER OF RIGHTS AND OBLIGATIONS ARISING FROM THE CONDITIONAL PP/PZ

- 7.1 Transfer of rights and obligations arising from the Conditional PP/PZ to a third party requires for its validity the written consent of the other Party, subject to point. 7.2 and 7.3 below.
- 7.2 TSO has the right to transfer its' rights and obligations arising from the Conditional PP/PZ on the entity acting as the operator of the transmission system on Polish territory, on the basis of a binding decision by the President of the Energy Regulatory Office.
- 7.3 The System User shall have the right to resell or make available the capacity (contracted capacity) reserved in accordance with point 3.4 subject to the terms set forth in the TNC of GAZ-SYSTEM.

8 FINAL PROVISIONS

- 8.1 Any change of the Conditional PP/PZ requires an annex in writing under the pain of nullity.
- 8.2 An integral part of the Conditional PP/PZ is the Rules of the Binding Open Season Procedure at the Entry/Exit Point Poland-Slovakia.

Signatures of the Parties

TSO

System User