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THE BALTIC PIPE PROJECT
APPENDIX 3.C – DRAFT OS 2017
CAPACITY AGREEMENT
DRAFT FOR MARKET
CONSULTATION

6 DECEMBER 2016

Open Season 2017 Capacity Agreement

DRAFT FOR MARKET CONSULTATION

1. The Parties

This Open Season 2017 Capacity Agreement has been entered into between

Energinet.dk

Name: Energinet.dk

Address: Tonne Kjærsvvej 65

Postal code and city: DK-7000 Fredericia

CVR no.: 28 98 06 71

GLN: 579 800 089 357 3 (hereinafter referred to as Energinet.dk)

and

The Shipper

Name:

CVR no.:

GLN:

Contact person:

(hereinafter referred to as the Shipper)

(Energinet.dk and the Shipper are collectively referred to as the Parties and individually as a Party)

2. Background and Purpose

During 2016-2017, Energinet.dk conducted an open season procedure together with GAZ-SYSTEM S.A. (hereinafter referred to as the Open Season 2017 Procedure) in which a demand for the new capacity covered by this Agreement (hereinafter referred to as the OS 2017 Capacity) was identified. This Open Season 2017 Capacity Agreement has been entered into on the basis of the Open Season 2017 Procedure.

The OS 2017 Capacity comprised by this Open Season 2017 Agreement will be made available upon completion of the Expansion of the Transmission System and the Norwegian Tie-in.

The purpose of this Agreement is to ensure that:

- The Shipper is supplied with the OS 2017 Capacity, if the required infrastructure is established;
- Energinet.dk establishes the infrastructure required to provide the OS 2017 Capacity, which the Shipper has been allocated during the OS 2017 subject to fulfillment of the Conditions Precedent;
- Energinet.dk has a viable business case for the construction of the said infrastructure providing the OS 2017 Capacity; and
- The conditions necessary to handle the risks involved, such as postponement, extra costs and unforeseen circumstances in such Expansion of the Transmission System and the establishment of the Norwegian Tie-in, are stipulated in a reasonable manner.

3. Definitions

In this Agreement, the below words and expressions shall have the meaning stated below, unless otherwise indicated by the context.

Words and expressions defined in the Rules for Gas Transport shall have the same meaning in this Agreement, unless otherwise indicated by the context.

"Agreement" shall mean this Open Season 2017 Capacity Agreement, including appendices.

"Baltic Pipe Project" shall mean the project with the aim of providing gas infrastructure in order to connect the gas production in Norway to the demand for gas in Poland and Denmark through the Danish upstream and transmission system. The project consists of five main components; the Norwegian Tie-In, Expansion of the Danish Transmission System, the Compressor Station, the Off-shore Interconnector and the Polish Expansions.

"Business Case" shall mean the Danish business case subject to approval by the supervisory board of Energinet.dk in November 2017.

"Compressor Station" shall mean the compressor station located on the Danish shore at Zealand.

"Conditions Precedent" shall mean the conditions precedent set forth in clause 8.

"Cost of Transportation" shall mean the estimated cost of transportation of the OS 2017 Capacity based on the ratio between the estimated total cost (OPEX, CAPEX and ABEX) including existing cost base and estimated total volume in the Danish Transmission System, including existing volumes, for a defined time period, as stated in the Energinet.dk OS 2017 information packages and Business Case.

"End Date" shall mean the expected last day of the OS 2017 Capacity to the Shipper as stated in clause 5.

"Energinet.dk Group" shall mean Energinet.dk and its affiliated companies.

"Expansion of the Transmission System" shall mean the expansion in the existing west-east capacity in the Danish onshore transmission system.

"Final Investment Decision" shall mean confirmations by Energinet.dk and GAZ-SYSTEM S.A. of the final and binding obligation (upon construction contracts ready for signing and all material permits obtained) between Energinet.dk and GAZ-SYSTEM S.A. to construct the elements of the Baltic Pipe Project and to make available the necessary funds for the realisation of the elements of the Baltic Pipe Project, which shall be issued as soon as Energinet.dk and GAZ-SYSTEM S.A. have obtained the necessary corporate and governmental approvals to invest in the Baltic Pipe Project.

"Future Energinet.dk Upstream Affiliate" shall mean a potential new company within the Energinet.dk Group established for the purpose of Energinet.dk's operation of a Danish upstream gas infrastructure.

"Norwegian Tie-in" shall mean the upstream pipeline to be owned by Energinet.dk from the Norwegian offshore upstream Gassled gas pipe system to the Danish onshore Transmission System.

"Offshore Interconnector" shall mean the natural gas transmission offshore pipeline between Denmark and Poland, from Southeast Zealand through the Baltic Sea and the receiving terminal and onshore pipeline in Poland to connection to existing transmission system in Northwest Poland.

"OS 2017" or **"Open Season 2017"** shall mean the procedure conducted by Energinet.dk and GAZ-SYSTEM S.A. as described in clause 2.

"OS 2017 Capacity" shall mean the capacity covered by this Agreement and described in clauses 2 and 5.

"OS 2017 Capacity Period" shall mean the period in which the Shipper receives the OS 2017 Capacity under this Agreement.

"Open Season 2017 Procedure" or **"OS 2017 Procedure"** shall have the meaning set out in clause 2.

"Start Date" shall mean the expected first day of the OS 2017 Capacity to the Shipper as stated in clause 5.

"Polish Expansions" shall mean the expansion in the existing Polish North Western and Central transmission system.

4. Order of Precedence

In case of any discrepancy between this Agreement, the appendices to the Agreement and other relevant documents, the order of precedence shall be as follows:

- This Agreement;
- The appendices to this Agreement;
- The Rules for Gas Transport in the version applicable at any time;
- Open Season 2017 Rules, including appendices;
- The Shippers' OS 2017 Phase 2 Bid.

In addition, the Shipper is obliged to comply with applicable law in force from time to time.

5. Description of Allocated Capacity

During Phase 2 of the OS 2017, the Shipper has been allocated the OS 2017 Capacity in the Transmission System described in this section.

OS 2017 Capacity:

ENTRY-NS-xxxx-OS17

Maximum hourly Firm Capacity:

Xx,xxx,xxx (kWh_g/Hour)

Point in the Transmission System:

Entry Point

North Sea

Entry point

Baltic Pipe

Exit Point

Baltic Pipe

The Capacity Period is xx years with the Start Date and End Date stated below (subject to change, cf. clause 10):

Start Date: dd-mm-yyyy 06:00 hours

End date: dd-mm-yyyy 06:00 hours

The Baltic Pipe Project consists of upstream and transmission pipelines, which are subject to each their own regulation. The entry Points and exit Points set out in this Agreement depend on the ability to operate the pipelines of the Baltic Pipe Project as a whole. Should this assumption be changed for regulatory reasons or otherwise, an entry Point to the Danish upstream system and an entry/exit Point between the upstream and the Transmission System are expected to be established. Participants, who have requested OS 2017 Capacity at the North Sea Entry Point will in this case receive such capacity at the entry Point to the Danish upstream system and at the entry/exit Point between the upstream and the Transmission System. This change does not entitle said Shippers to renegotiate this Agreement or parts hereof.

6. Tariffs

The tariffs for OS 2017 Capacity must be paid in accordance with the RfG applicable from time to time and must correspond to the tariffs for transportation of existing Capacity in the Transmission System.

The tariffs must be paid from the date on which the OS 2017 Capacity is made available to the Shipper under this Agreement. In case of a postponement of the availability of OS 2017 Capacity, the Shipper shall therefore not pay tariffs during such period of delay even though the Start Date is exceeded.

Energinet.dk reserves the right to make any changes in the tariff provisions of this Agreement, including this clause 6.

The tariffs payable by the Shipper under this Agreement may be changed as set forth in this clause 6. The Shipper will be notified of any changes in writing as soon as possible during the term of this Agreement.

Energinet.dk will determine and announce the date from when the changes will take effect. Changes in the tariff provisions do not entitle the Shipper to renegotiate this Agreement or parts thereof.

In case of Assignment of the Agreement to a Future Energinet.dk Upstream Affiliate in accordance with clause 11 of this Agreement, the Shipper must comply with the rules and pay tariffs according to the rules and tariff conditions of such Future Energinet.dk Upstream Affiliate.

7. Security

The Shipper shall meet the credit requirements to act as a Shipper at all times in accordance with the provisions hereon in the RfG applicable at any time.

In addition, the Shipper may have provided security during OS 2017. Such security will be released as follows:

- i) 50 per cent of the security provided during OS 2017 will be released when the Shipper has received OS 2017 Capacity for a period of 1 year.
- ii) The remaining security provided during OS 2017 will be released by 10 per cent in each of the 5 years following the release of the first 50 per cent set out in item i) above.

8. Conditions Precedent

The Parties' performance of the obligations under this Agreement is subject to fulfillment of the Conditions Precedent as described in this clause 8.

8.1 Conditions Precedent for Energinet.dk

The performance of Energinet.dk's obligations under this Agreement is subject to fulfilment of the following Conditions Precedent:

- i) Final Investment Decision by Energinet.dk for the Expansion of the Transmission System before 1 December 2020;
- ii) Final Investment Decision by Energinet.dk for the Norwegian Tie-in before 1 December 2020, including acceptance from the Gassled owners and the Norwegian Oil and Gas Department with no objections from other relevant Norwegian authorities;
- iii) Approval of the Expansion of the Danish Transmission System and of the Norwegian Tie-in by the Danish Ministry of Energy, Utilities and Climate, including consultation with the Danish Energy Regulatory Authority before 1 December 2018;
- iv) Approval by other relevant Danish public authorities, including approval for construction and environmental approvals for the Expansion of the Danish Transmission System and the Norwegian Tie-in before 1 December 2020;

- v) Cross-border cost allocation (CBCA) and funding from Connecting Europe Facility (CEF) – [to be defined];
- vi) Approval from the Supervisory Board of Energinet.dk of this Agreement and of the Business Case no later than 1 December 2017;
- vii) Final Investment Decision from [to be determined] for the Compressor Station before 1 December 2020; and

It is noted, that Energinet.dk and GAZ-SYSTEM S.A. are investigating the financing, ownership and the operatorship of the Compressor Station.

- viii) Final Investment Decision by GAZ-SYSTEM S.A. for the Offshore Interconnector and the Polish Expansions before 1 December 2020.

In case one or more of the Conditions Precedent listed above is not fulfilled before the date set out in respect of each of the Conditions Precedent, Energinet.dk will be entitled to decide that the Agreement will not come into force or to postpone the day when the Shipper is to receive the OS 2017 Capacity. In this situation, Energinet.dk will to the extent possible have a dialogue with the Shipper.

Energinet.dk shall inform the Shipper of its decision no later than 20 Business Days after it has become evident to Energinet.dk that the Condition Precedent will not be fulfilled.

If the Agreement does not come into force according to this clause 8.1, each Party shall bear its own costs, and no Party shall have a claim against the other Party arising out of this Agreement.

8.2 Conditions Precedent for the Shipper

The performance of the Shipper's obligations under this Agreement is subject to fulfillment of the following Condition Precedent:

- i) The Cost of Transportation as stated in the Business Case does not exceed the Cost of Transportation set out in the information package 2, which was sent by Energinet.dk during OS 2017 in May 2017 by more than 25 per cent.

If the Condition Precedent listed above is not fulfilled, the Shipper will be entitled to decide that the Agreement will not come into force. In this situation, the Shipper shall inform Energinet.dk of its decision no later than 20 Business Days after Energinet.dk has announced the level of Cost of Transportation in the Business Case to the Shipper.

If the Agreement is terminated by a Party according to this clause 8.2, each Party shall bear its own costs, and no Party shall have a claim against the other Party arising out of this Agreement.

9. Shipper Participation

Upon Energinet.dk's request, the Shipper agrees to support any notification, application or certificate for filing necessary to obtain approval to construct the Expansion of the Transmission System and the Norwegian Tie-in.

10. Expected Start Date and Timing

10.1 Postponement of Start Date

Energinet.dk will endeavor that the OS 2017 Capacity is ready for use by the Shipper on the Start Date set out in clause 5. However, if the construction of the Expansion of the Transmission System and the establishment of the Norwegian Tie-in are not completed by the Start Date, Energinet.dk may postpone the Start Date. Such postponement is not considered a delay. In the event of a postponement, Energinet.dk will strive to provide the OS 2017 Capacity at the earliest possible time after the Start Date.

The length of the Capacity Period will not be affected by a postponement of the Start Date.

Energinet.dk will inform the Shipper of the postponement as soon as possible. If Energinet.dk gives notice less than 2 years before the postponement, the Shipper must receive one month of OS 2017 Capacity without payment for each year of postponement, unless the Shipper has received liquidated damages according to clause 15.

Further, if the Shipper has submitted an Order to Proceed in the OS 2017, the Shipper may claim compensation within the first 12 months of postponement from the Start Date stated in clause 5. In the first three months of the postponement, compensation will amount to 12,000,000 DKK. During the 4th to the 12th months of postponement, compensation will amount to 2,000,000 DKK per month.

The Shipper shall inform Energinet.dk in writing of its decision to claim compensation. The claim must be made no later than 10 Business Days after the beginning of the month in which the Shipper is entitled to claim compensation. In case of postponement, Energinet.dk will inform the Participant of the progress of the Expansion of the Transmission System and the Norwegian Tie-in.

In case only part of the total capacity allocated as a result of the Open Season 2017 is available at the Start Date, the available capacity will be distributed on a pro rata basis to the relevant Shippers. The relevant Shippers are the Shippers with an OS 2017 Capacity Agreement with a Start Date on or prior to such OS 2017 Capacity becoming available. If Energinet.dk is only able to provide part of the OS 2017 Capacity under this Agreement in stages, such non-performance will not be deemed a breach of this Agreement. In the event of such pro rata distribution, the Participant is obliged to receive the OS 2017 Capacity as soon as it is available on the terms and conditions of this Agreement.

If the total postponement exceeds 60 months, Energinet.dk and the Shipper will each be entitled to terminate the Agreement. Notice of termination must be given no later than 15 Business Days after Energinet.dk has notified the Shipper that the postponement will exceed 60 months.

If the Agreement is terminated by one of the Parties under this clause 10, each Party shall bear its own costs.

10.2 Advancing of Start Date

If the OS 2017 Capacity becomes available before the Start Date, Energinet.dk will inform the Shipper. In this case, the Shipper may choose to receive the OS 2017 Capacity at this earlier point in time. However, Energinet.dk is not obliged to provide, and the Shipper is not obliged to take the OS 2017 Capacity earlier than the Start Date.

10.3 Postponement of the establishment of the Offshore Interconnector or the Compressor Station

In case the establishment of the Offshore Interconnector or the Compressor Station is postponed, the Shipper may request Energinet.dk to postpone the Start Date correspondingly. The request must be made in writing and contain the following information:

- i) Proposal for a new Start Date, and
- ii) The amount of the OS 2017 Capacity comprised by the requested postponement.

Following such request, Energinet.dk will assess if and to what extent a postponement of the Expansion of the Transmission System and the Norwegian Tie-in may be met. Energinet.dk will take the technical and economic status of the expansion into consideration. The possibility of Energinet.dk meeting the Shipper's request is more likely early in the Project. The Shipper is therefore encouraged to send such request as early as possible.

It is emphasized that circumstances not included in The Baltic Pipe Project cannot allow for a postponement of the Expansion of the Transmission System or the Norwegian Tie-in.

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

11. Assignment to Third Parties

The Shipper's rights and obligations under this Agreement may not be assigned to a third party without Energinet.dk's prior written consent.

At its sole discretion, Energinet.dk may from time to time assign or transfer any or all of its rights and obligations under this Agreement to a member of the Energinet.dk Group, including a possible Future Energinet.dk Upstream Affiliate. With the permission of the relevant Minister, Energinet.dk may also assign its rights and obligations under this Agreement to a third party not within the Ener-

ginet.dk Group to which Energinet.dk's concession is assigned pursuant to Section 32 of the Danish Natural Gas Supply Act.

12. Force Majeure

The Rules for Gas Transport also apply to this Agreement, except the rules regarding extended force majeure, see at present clause 15.7 of the RfG version 16.0. Instead, the following will apply in this respect:

If Force Majeure or repeated Force Majeure impedes or is expected to impede in full or in part the fulfilment of a Party's obligations for a period of more than 120 consecutive Business Days or 180 Business Days, in each case of a Gas Year, the Parties will seek a negotiated solution acceptable to the Parties. If the Parties are unable to agree on a solution within 30 Business Days after a request has been made for a negotiated solution, the Party or Parties having claimed Force Majeure is entitled to terminate the Agreement if affected by the Force Majeure situation.

13. Term of the Agreement

This Agreement will come into force, when signed by Energinet.dk subject to fulfilment of the Conditions Precedent in clause 8. The Agreement will remain in force until the OS 2017 Capacity Period has expired, or the Agreement is terminated pursuant to:

- i) Delay in expansion, see clause 10;
- ii) Force Majeure, see clause 12;
- iii) Material breach, see clause 14.

14. Breach

In the event of a Party's material breach of this Agreement, the other Party is entitled to terminate the Agreement in its entirety with immediate effect subject to giving written notice.

Material breach includes, but is not limited to:

- a) failure by the Shipper to be and remain a registered Shipper in the Register of Players;
- b) failure by the Shipper to provide and maintain the OS 2017 Security;
- c) failure by the Shipper to pay any fee, tariff or similar payable to Energinet.dk with regard to the OS 2017 Capacity for a period of more than 20 Business Days from the due date of the relevant payment;
- d) any breach pursuant to clause 22.1 of the RfG;
- e) failure by Energinet.dk to provide the OS 2017 Capacity in case the OS 2017 Capacity is available provided that (i) the Shipper has given notice of such failure and Energinet.dk, despite the notice, has not provided the OS 2017 Capacity within a period of 20 Business Days after receipt of

the notice, and (ii) Energinet.dk's non-performance is due to circumstances for which Energinet.dk is responsible and which Energinet.dk ought reasonably to have had corrected.

15. Liquidated Damages

In case of delay, Energinet.dk will impose customary liquidated damages on its contractors under the Baltic Pipe Project's contracts.

If the Start Date is postponed, if Energinet.dk is responsible therefore, if the Shipper has suffered a loss, and if Energinet.dk is entitled to the liquidated damages set out in the first paragraph of this clause 15, Energinet.dk will pass on such liquidated damages from the contractor on a pro rata basis to the Shippers affected by such delay. Payment of liquidated damages to the Shipper cannot exceed the Shipper's loss.

Energinet.dk will not in any other way be liable to pay compensation to the Shipper unless otherwise provided for in this Agreement.

16. Liability

The Parties' liability will be governed by the provisions in clause 22.2 of the RfG, see version 16.0.

17. Changes and Amendments

The Shipper shall accept regular changes to the RfG. In the event of changes to the RfG, Energinet.dk shall give at least one month's written notice to the first Business Day of a calendar month, and the changes will then become effective after the expiry of the said notice period.

18. Legal Venue and Choice of Law

18.1 Legal Venue

The Parties shall seek to resolve any disputes between the Parties regarding the interpretation or breach of this Agreement by negotiation, including any claims raised as a consequence of a dispute.

If the Parties are unable to resolve a dispute by negotiation within 20 Business Days from the date when a Party presents a request for negotiation, the dispute must be finally settled by arbitration in accordance with the Rules of Arbitration Procedure of the Danish Institute of Arbitration. The arbitration tribunal will consist of three arbitrators fulfilling the requirements for arbitrators under the Rules of Arbitration Procedure. Each Party will propose an arbitrator and must strive to propose an arbitrator who has knowledge of the natural gas industry. The chairman of the tribunal will be appointed by the Danish Institute of Arbitration.

The arbitration proceedings shall take place in Copenhagen, Denmark.

The arbitration proceedings shall be conducted in English.

18.2 Applicable Law

The Agreement shall be governed by Danish law.

19. Signatures

Place:

Place:

Date:

Date:

Energinet.dk
[Navn]

Shipper
[Navn]

DRAFT FOR MARKET CONSULTATION