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**Annex 2 to the Preliminary agreement on the holding capacity auctions and on the submission of bids in such capacity auctions**

as well as

**Annex to the General Terms and Conditions of Service**

**Supplementary Terms and Conditions of Business of XX GmbH for allocating new technical capacities as of DD MM YYYY**

These Supplementary Terms and Conditions of Business define provisions that supplement or differ from the General Terms and Conditions of Service of XX GmbH (“transmission system operator”) in the version dated DD MM YYYY governing new technical capacities at border crossing points in accordance with Article 2 Section 3 of Commission Regulation (EU) No. 984/2013 of 14 October 2013 establishing a Network Code on Capacity Allocation Mechanisms in Gas Transmission Systems and supplementing Regulation (EC) No 715/2009 of the European Parliament and of the Council, in the version applicable on 1 October 2016.

**Article 1 General, scope**

1. In addition to the procedure for the Gas Network Development Plan 2016, the transmission system operators GASCADE Gastransport GmbH (“GASCADE”), Gasunie Deutschland Transport Services GmbH (“Gasunie”) and ONTRAS Gastransport GmbH (“ONTRAS”) jointly carried out a market survey from 21 August until 16 October 2015 under the name “more capacity” to determine the need for new transport capacities for high calorific natural gas at the boundaries of the GASPOOL market area. The aim of the market survey was to be able to estimate the future need for new cross-market-area transport capacities as early and as realistically as possible. Fluxys Deutschland GmbH has been involved in the “more capacity” market survey since April 2016; NEL Gastransport GmbH (“NGT”) has also been involved in it since July 2016. Offering levels have been derived from the non-binding demand for cross-market-area capacities determined on the basis of the survey. The new technical capacities determined in the above manner are to be allocated in capacity auctions.
2. The new technical capacities will not exist at the time the capacity auctions are held, and the transmission system operator has not made a final decision on network expansion measures to create the new technical capacities (hereinafter referred to as “network

expansion”). Creation of the new technical capacities depends in particular on all necessary permissions for network expansion and operation of the network being obtained, as well as on the regulatory framework and the permissions required in this regard. In view of the above, Article 2 Sections 3 and 4 of the current version of the cooperation agreement and Article 1 Section 5 of the transmission system operator's General Terms and Conditions of Service specify that the transmission system operators can conclude in their Supplementary Terms and Conditions of Business arrangements for new technical capacities which supplement or differ from their General Terms and Conditions of Service.

3. If no provisions that supplement or differ from the General Terms and Conditions of Service are concluded in these Supplementary Terms and Conditions of Business, the General Terms and Conditions of Service of the transmission system operator shall otherwise apply to new technical capacities.
4. Definitions:
  - a. New technical capacities: New technical capacities at border crossing points in accordance with Article 2 Section 3 of Commission Regulation (EU) No 984/2013 of 14 October 2013 establishing a Network Code on Capacity Allocation Mechanisms in Gas Transmission Systems and supplementing Regulation (EC) No 715/2009 of the European Parliament and of the Council, in the version applicable on 1 October 2016 (“NC CAM”).
  - b. Existing capacities: Available capacities in accordance with Article 2 Section 1 No. 20 of Regulation (EC) No 715/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the natural gas transmission networks and repealing Regulation (EC) No 1775/2005 at the time of the 2017 annual auction, not including the new technical capacities.
  - c. Performance period of the entry or exit contract: The period of time for which the contractual rights and obligations of the transmission system operator and the transport customer apply in accordance with Articles 3 and 4 of the transmission system operator's General Terms and Conditions of Service.

## **Article 2      Marketing horizon**

1. New technical capacities shall be offered for a period of 25 years as of the anticipated commissioning of the underlying network expansion measures.
2. Contrary to Article 2 Section 1, new technical capacities shall be offered at border crossing points in accordance with Article 11 NC CAM provided a bundled capacity product is

formed with the new technical capacities and it is not disclosed on the part of the neighboring transmission system operator as new technical capacity in accordance with Article 2 Section 3 NC CAM.

### **Article 3 Conclusion of contracts**

1. The entry or exit contract relating to new technical capacities between the transport customer and the transmission system operator shall be formed by allocation of the capacities in accordance with Article 1 Section 2 of the transmission system operator's General Terms and Conditions of Service. Subject to the provisions in Section 3 of this Article 3 and contrary to Article 1 Section 2 of the transmission system operator's General Terms and Conditions of Service, the entry or exit contract shall be effective subject to the condition precedent that the following conditions a) to d) are met cumulatively:
  - a) Upon completion of the respective auctions for new technical capacities on the primary capacity platform, all offered standard capacity products of the existing capacities with an equivalent or higher quality at the border crossing points have been marketed across the transmission system operators in the respective flow direction (existing capacities are booked out with priority).
  - b) As part of an economic assessment based on the entry and exit contracts concluded subject to the above condition precedent, the transmission system operator has determined that the measures to create new technical capacities for an offering level are cost-effective.
  - c) The costs of the expansion measures required for creating the new technical capacities have been acknowledged by the regulatory authorities.
  - d) The transmission system operator's management has agreed to expansion of the network.
2. If one or more of the conditions in Section 1 a) to d) of this Article 3 are not met by 30 June 2019, they shall be regarded as not having occurred and the entry or exit contract shall become definitively ineffective, subject to the provision in Section 3 of this Article 3.
3. Regardless of the occurrence or non-occurrence of one or more conditions in accordance with Section 1 a) to d) of this Article 3, the transmission system operator shall be authorized to decide by 1 June 2019 that the entry or exit shall definitively be effective.

4. The transmission system operator shall give the transport customer written notice that the entry or exit contract is effective immediately after the occurrence of the conditions in accordance with Section 1 a) to d) of this Article 3 or in accordance with Section 3 of this Article 3.
5. If one or more conditions in accordance with Section 1 a) – d) of this Article 3 do not occur and the entry or exit contract does not become effective, all and any claims for liability against the transmission system operator shall be excluded.
6. The results of the auctions shall be published in aggregated form after the end of the auctions, taking into account the need to keep business and trade secrets confidential. Transport customers who take part in the capacity auctions shall receive separate confirmations of the result of the capacity auctions from the transmission system operator.

#### **Article 4 Auction process**

1. New technical capacities shall be marketed in accordance with the terms and conditions of business of the primary capacity platform. The terms and conditions of business shall be published by the platform operator on its website.
2. As part of the auctions on the primary capacity platform, multiple auctions per border crossing point for similar capacity products can be held simultaneously for new technical capacities in order to present multiple offering levels. Irrespective of the provisions in Article 3, only the entry or exit contract that corresponds to the highest offering level for which the transmission system operator has determined that the measure is effective in accordance with Article 3 Section 1 b) shall become effective. The transmission system operator shall cancel the other allocations by giving the transport customer written notice.

#### **Article 5 Tariffs**

1. Article 25 of the transmission system operator's General Terms and Conditions of Service shall apply, subject to the provision that the Parties
  - a. agree variable tariffs for the performance period of the entry or exit contract in each case from 1 October to 31 December. The variable tariffs as defined here are the tariffs that are formed in future in accordance with regulatory requirements or are approved in future by the regulatory authorities, as well as the other tariffs or tariff components stated in Article 25 Section 1 of the General Terms and Conditions of Service and any future cost allocations that will apply in each case on 1 October of a year in the respective performance period of the entry or exit contract according to the price sheet published on the transmission system operator's website; and

- b. agree variable tariffs for the performance period of the entry or exit contract in each case from 1 January to 30 September. The variable tariffs as defined here are the tariffs that are formed in future in accordance with regulatory requirements or are approved in future by the regulatory authorities, as well as the other tariffs or tariff components stated in Article 25 Section 1 of the General Terms and Conditions of Service and any future cost allocations that will apply in each case on 1 January of a year in the respective performance period of the entry or exit contract according to the price sheet published on the transmission system operator's website.
    - c. Article 25 Section 3 Sentence 1 and Section 4 of the transmission system operator's General Terms and Conditions of Service shall not apply in the cases specified in a) and b) since price adjustments are not involved.
  2. As part of the auction, the specific capacity tariff currently applying at the time of the auction and formed in accordance with regulatory requirements shall be used. However, use of the specific capacity tariff in accordance with Sentence 1 shall not constitute an agreement on the tariffs and shall say nothing about the level of the actually agreed tariffs to be charged for the performance period of the entry or exit contract in accordance with Section 1 of this Article 5. There is consequently no price adjustment within the meaning of Article 25 Section 3 Sentence 1 and Section 4 of the transmission system operator's General Terms and Conditions of Service.

## **Article 6 Rights and obligations after the entry or exit contract takes effect**

1. After the entry or exit contract takes effect in accordance with Article 3, the transmission system operator shall endeavor to take all economically reasonable measures to ensure that the capacities allocated to the transport customer are made available on time for the performance period of the entry or exit contract. In particular, the necessary permissions under public law and the regulatory framework shall be taken into adequate account in assessing whether the measures are economically reasonable and justifiable.
2. If the transmission system operator complies with its obligations in accordance with Article 6 Section 1 and it transpires in the course of network expansion that the new technical capacities cannot be adhered to at the border crossing points at the start of the performance period of the entry or exit contract, in particular due to the fact that definitive permissions under public-law have not been received, the transmission system operator shall notify the transport customer immediately and inform it whether and when the start of the performance period of the entry or exit contract can be expected. The delay may also cover the entire performance period of the entry or exit contract. The obligations of the

Parties toward each other shall be suspended during the delay. Any further claims by the Parties against each other shall be excluded.

3. If transport capacities upstream or downstream of the border crossing points of the transmission system operator are not available at the start of the performance period of the entry or exit contract, the transport customer shall still be obliged to fulfill the contract, in particular to pay the tariffs agreed in the entry or exit contract, and shall not be authorized to rescind or otherwise terminate the entry or exit contract.
4. In relation to Section 3, that shall mean in particular that the transport customer shall not be authorized to plead Article 313 of the German Civil Code (*BGB*) (Interference with the basis of the transaction) or Article 314 *BGB* (Termination, for a compelling reason, of contracts for the performance of a continuing obligation).

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