

**THE NATIONAL ENERGY REGULATORY AUTHORITY**

**DECISION NO. 1399/26.09.2017**

**on the amendment of the binding Open Season Rulebook for the Open Season to be jointly performed by the National Gas Transmission Company Transgaz S. A. Medias and Földgázszállító Zártkörűen Működő Részvénytársaság – FGSZ Ltd for the allocation of incremental capacity at the Csanadpalota interconnection point between the Romanian and the Hungarian gas transmission systems approved by the Decision of ANRE President no 1.123/2017**

Considering:

- the provisions of Regulation (EU) 2017/459 of the Commission of 16 March 2017 establishing a network code on capacity allocation mechanisms in gas transmission systems and repealing Regulation (EU) No 984/2013,
- the provisions of Art. 99 (k) and Art. 130 (1) (d<sup>1</sup>) of Electricity and Gas Law No. 123/2012, as further amended and supplemented.
- Transgaz' letter no 43325/15.09.2017 registered with ANRE under no 62084/18.09.2017 by which the National Gas Transmission Company Transgaz SA Medias submitted to the National Energy Regulatory Authority the new schedule of the activities related to the open season procedure jointly agreed by Transgaz and Földgázszállító Zártkörűen Működő Részvénytársaság – FGSZ Ltd, taking into account the proposals made by the stakeholders during the public consultations conducted in the period 24.08 – 08.09.2017;

Based on

- Art. 5 (1) (d) and Art. 10 (1) (a) and (o) point 2 of Government Emergency Ordinance No. 33/2007 on the organization and functioning of the National Energy Regulatory Authority, approved as further amended and supplemented by Law No.160/2012,

**The President of the National Energy Regulatory Authority adopts the following**

**DECISION**

**Art. I.** – The binding Open Season Rulebook for the Open Season to be jointly performed by the National Gas Transmission Company Transgaz S. A. Medias and Földgázszállító Zártkörűen Működő Részvénytársaság – FGSZ Ltd. for the allocation of incremental capacity at the Csanadpalota interconnection point between the Romanian Gas Transmission System and the Hungarian Gas Transmission System, approved by the Decision of the ANRE President no 1.123/2017 (*the Rulebook*) is amended as follows:

**1. Article 3.4. “Binding Open Season Procedure Overview” is amended as follows:**

**“3.4. Binding Open Season Procedure Overview**

## Binding RO-HU Open Season Procedure Overview

All deadlines are to be understood as 23:59 CET of the respective day.

Milestone	Date
Announcement of the Binding Open Season Procedure	16.10.2017
Customer Registration	16.10.2017 – 03.11.2017
Confirmation Customer Registration (TSOs)	by 15.11.2017
Bid submission window I: Submission of Bids	15.11.2017 – 19.12.2017
Economic Test I	19.12.2017 – 29.12.2017
TSOs to publish aggregated allocation results	29.12.2017
<i>In case of <u>positive</u> Economic Test I:</i>	
TSO to send acceptance of Bids in form of contract duly signed by TSO to Successful Bidders and inform Bidders about aggregate allocation results	by 15.01.2018
Successful Bidders to return countersigned contract to TSO	by 29.01.2018
<i>In case of <u>negative</u> Economic Test I:</i>	
Bid submission window II: TSOs to submit updated requirements to Bidders	by 28.02.2018
Bid submission window II: Bidders may submit updated Bids to TSOs	19.03.2018 – 06.04.2018
Economic Test II	06.04.2018 – 10.04.2018
TSOs to publish aggregated allocation results	11.04.2018
<i>In case of <u>negative</u> Economic Test II:</i>	
TSO to inform Bidders about terminated Open Season procedure	by 12.04.2018
<i>In case of <u>positive</u> Economic Test II:</i>	
TSOs to send acceptance of Bids in form of contract duly signed by TSO to Successful Bidders	by 12.04.2018
Successful Bidders to return countersigned contract to TSO	by 25.04.2018
Bidders' latest execution date of step back right from contracts concluded upon positive Economic Test I or II	14.12.2018
<i>In case of step back right not being executed:</i>	
Successful completion of the Open Season procedure (concluded contracts remain in place, TSOs to inform Successful Bidders)	by 16.12.2018
<i>In case of step back right being executed:</i>	
TSOs to inform Bidders that a further Economic test needs to be performed	16.12.2018
Economic Test III	07.01.2019 – 21.01.2019

TSOs to publish aggregated allocation results	28.01.2019
<i>In case of <u>positive</u> Economic Test III:</i>	
Successful completion of the OS procedure (concluded contracts remain in place, TSOs to inform Successful Bidders)	by 28.01.2019
<i>In case of <u>negative</u> Economic Test III:</i>	
Bid submission window III: TSOs to submit requirements to Bidders	by 04.02.2019
Bid submission window III: Bidders may submit new additional) Bids for the remaining available capacity to TSOs	05.02.2019 – 25.02.2019
Economic Test IV	25.02.2019 - 04.03.2019
TSOs to publish aggregated allocation results	11.03.2019
<i>In case of <u>positive</u> Economic Test IV:</i>	
Successful completion of the OS procedure (contracts concluded before 14.12.2018 remain in place, TSOs to inform Successful Bidders), TSOs to send acceptance of Bids in form of contract duly signed by TSO to Successful Bidders	by 12.03.2019
Successful Bidders to return signed contract to TSO	by 26.03.2019
<i>In case of <u>negative</u> Economic Test IV:</i>	
TSO to inform Bidders about terminated OS procedure and termination of the contracts	by 12.03.2019

**2. Article 3.5 “Registration”, “Customer Registration Process” is amended as follows:**

**“Customer Registration Process”**

Applicants that are interested in participating in the binding Open Season Procedure should proceed as follows, taking into account the detailed timetable provided in Article 3.4.

To initiate the Registration Process Applicants have to fill in the Registration form (Annex 1) duly signed by authorized person(s) within their organization and submit it to each TSO and pay the Participation Fee of gross EUR 2,000. The payment of the Participation Fee by 03.11.2017 is a precondition for the Applicant to participate in the Binding Open Season Procedure. The Participation Fee applies for the participation for incremental capacity at each IP. The Applicant shall pay half of the Participation Fee to each TSO (i.e. EUR

1,000 per TSO). The Participation Fee shall be paid to the following bank accounts stating the reference "Participation Fee Open Season":

**For FGSZ Zrt.:**

Account keeping financial institution: OTP Bank Plc.

Bank account number: HU21 1176 3945 0141 8888 0000 0000

SWIFT code: OTPVHUHB

**For SNTGN TRANSGAZ S.A.:**

Account keeping financial institution: BRD – Groupe Societe Generale, MEDIAS Branch, 1 Mihai Eminescu street, Medias, Romania

Bank account number: RO19 BRDE 330S V829 1259 3300

SWIFT code: BRDEROBUXXX

By **15.11.2017** the TSOs will confirm the successful registration only if the Applicant registers with both TSOs at the IP and the Participation Fee is duly paid to both TSOs. Please note that applications and payments received after **03.11.2017**, 23:59 CET, cannot be considered. The Participation Fee shall not be reimbursed for any reason."

**3. Article 4.2.1 "Process of Economic Tests and Bid submission windows" is amended as follows:**

**4.2.1 Process of Economic Tests and Bid submission windows**

**Bid submission window I**

Bids to be submitted by registered post or courier (original) duly signed until **19.12.2017**, 23:59 CET.

**Economic Test I**

After the conclusion of the Economic Test I TSOs shall inform Bidders about the individual and aggregated allocation results by **29.12.2017**. In case the Economic Test I is positive the relevant TSO(s) shall send acceptance of the Bids in form of contract(s) duly signed by TSO in duplicate, with registered mail or courier to the Successful Bidders by **15.01.2018**.

The successful Bidders are obliged to duly sign and return to the respective TSO one original version of the received Contract with registered mail or courier by **29.01.2018**; the omission to do so shall - due to the fact that the Contract has already been entered into at the moment the TSO has duly mailed the signed originals - not impact its validity.

### **Bid submission window II**

In case the Economic Test I is negative, the TSOs shall offer Bidders to submit Bids based on an updated price-quantity relationship, communicated to all Bidders. Bidders may participate in the Bid submission window II on a voluntary basis. A Bid submitted by a Bidder in the Bid submission window II as outlined in Article 3.4 shall replace the previously submitted Bid. If no updated Bid is submitted by a Bidder, the respective original Bid remains valid for the Economic Test II.

### **Economic Test II**

After Bids have been received in the course of the Bid submission window II, the Economic Test II will be performed. TSOs shall inform Bidders about the individual and aggregated allocation results by **11.04.2018**. In case the Economic Test II is positive the relevant TSO(s) shall send acceptance of the Bids in form of contract(s) duly signed by TSO in duplicate, with registered mail or courier to the Successful Bidders by **12.04.2018**.

The Successful Bidders are obliged to duly sign and return to the respective TSO one original version of the received contract with registered mail or courier by **25.04.2017**; the omission to do so shall - due to the fact that the Contract has already been entered into at the moment the TSO has duly mailed the signed originals - not impact its validity.

In case the Economic Test II is negative, the TSO shall inform Bidders via registered mail about the termination of the Open Season procedure by **12.04.2018**.

### **Termination by Bidder through step back right**

Successful Bidders shall be entitled to step back from their concluded contracts upon a positive Economic Test I or II by 23:59 CET **14.12.2018**, without the obligation to give reasons for this decision. In such a case, the Bidder shall pay a termination fee (i.e. penalty fee) being a fixed rate of the value of its Bid within 15 days of the termination notification of the contracts. The value of its Bid shall be calculated by multiplying the Reserve Price and the supplement as stipulated in this Binding Open Season Procedure plus a premium/surcharge, as applicable, as a result of a binding Open Season Procedure, with the capacity that was allocated to the Bidder. The fixed rate for Transgaz shall be 0.033%, and for FGSZ 0.033% of the respective value of the individual Bid.

In case all Bidders whose offers were considered in the positive Economic Test, relinquish their step back right before the deadline of **14.12.2018**, TSOs shall proceed with the execution of the Project without delay and publish the successful completion of the Open Season procedure.

### **Economic Test III**

In case one or more Successful Bidder(s) make use of their right to step back from concluded contracts upon a positive Economic Test I or II and this release of previously allocated capacity leads to a negative Economic Test (Economic Test III), another Bid submission window is offered. Economic Test III shall take into account the signed commitments of the Successful Bidders from Economic Test I or II who did not exercise their step back right. TSOs shall inform Bidders by **04.02.2019**.

### **Bid submission window III**

TSOs shall offer Bidders to submit Bids based on a required price-quantity relationship. Bidders may participate in the Bid submission window III on a voluntary basis. In this Bid submission window III only the released and remaining available (i.e. not allocated) capacity shall be offered by the TSOs to all Bidders, including

unsuccessful Bidders from previous Bid submission windows, except those who have exercised their step back right. The amount of capacity offered in the Bid submission window III shall be published by TSOs for the IP.

Successful Bidders who did not exercise their step back right retain the capacity allocated to them.

#### **Economic Test IV**

After new Bids have been received in the course of the Bid submission window III, a final Economic Test will be performed (Economic Test IV).

TSOs shall inform all Bidders about the individual and aggregated allocation results by **11.03.2019**.

If the Economic Test IV is positive, the relevant TSO(s) shall send acceptance of new Bids in form of contract(s) duly signed by TSO in duplicate with registered mail or courier to the Successful Bidders by **12.03.2019**. The Successful Bidders are obliged to duly sign and return to the TSO one original version of the received contract with registered mail or courier by **26.03.2019**; the omission to do so shall - due to the fact that the Contract has already been entered into at the moment the TSO has duly mailed the signed originals - not impact its validity.

In case the Economic Test IV is negative, the TSOs shall inform the Bidders by **12.03.2019** via registered mail about the termination of the Open Season procedure and the termination of the contracts. In such case, no penalties, damages or termination fee is to be paid by the Bidders who did not step back from their contracts.

#### **4. Article 5.1.1. “Financial security for the Bid submission” is amended as follows:**

##### **“5.1.1. Financial security for the Bid submission**

The Bidder shall submit a financial guarantee equal to the termination fee (penalty fee) as set out in Article 4.2.1 above, upon the end of the relevant Bid submission window.

In case of the Bidder’s exercise of the step back right by 23:59 CET **14.12.2018**, the Bidder shall pay a financial penalty according to the Article 4.2.1. If the Bidder fails to fulfil this obligation, SNTGN Transgaz shall be entitled to draw the financial guarantee of the Bidder subject to the terms of the contracts signed. The security expires 8 weeks after the expiration of the step back right. If Bids are not accepted by the TSO or the Bidder relinquishes its step back right before the deadline of **14.12.2018**, the security shall be released by the TSO within 15 days upon request of the Bidder.

The Bidder shall submit the financial guarantee as follows:

- a) As a letter of bank guarantee in Lei or EURO equivalent according to the European Central Bank (ECB) exchange rate on the date the guarantee is issued (according to template provided in Annex no 5) and/or
- b) As a guaranteed account (collateral deposit) in Lei or EURO equivalent according to the ECB exchange rate on the date the guarantee is issued and/or
- c) As an escrow account in Lei or EURO equivalent according to the ECB exchange rate on the date the guarantee is issued.

Transgaz accepts letters of bank guarantee issued by a bank with a rating from one of the following rating agencies: Standard&Poors, Moody's or Fitch, at least at the level of "investment grade".

**5. In Annex no 3 "Framework gas transmission contract concluded as a result of the binding open season procedure for capacity booking at the interconnection point of the national gas transmission system in Romania with the transmission system of Hungary, Csanadpalota, article 7, points i) and j) are amended as follows:**

"i) to return to the NU the amount of the financial guarantee for the bid submission, within maximum 15 days from the written request of the NU, if the NU expressly waives the right to unilaterally terminate the contract prior to **14.12.2018**;

j) to return to the NU the amount of the financial guarantee for the bid submission if the NU makes proof of the establishment of the financial guarantee subsequent to **14.12.2018**, according to Art. 11 (1) (b) of the Contract."

**6. In Annex no 3, article 8, point c) is amended as follows:**

"c) waive the right to unilaterally terminate the contract, in writing, prior to **14.12.2018**;"

**7. In Annex no 3, article 11, paragraph (1) point a) is amended as follows:**

"a) within maximum 10 days from the express waive of the right to unilaterally terminate the contract, prior to **14.12.2018**; or"

**8. In Annex no 3, article 16, paragraph (1) is amended as follows:**

"(1) The full or partial culpable breach of the contract obligations by the NU, other than the payment obligations, shall entitle the TSO to claim damages, proportionally with the prejudice, according to art. 1.530 of the Civil Code For the avoidance of doubt, in the event of exercising the right to unilaterally terminate the Contract prior to **14.12.2018**, the NU owes the TSO exclusively the penalty provided in art. 18 par. (1) letter d)."

**9. In Annex no 3, article 18, paragraph (1), points d) and e) are amended as follows:**

"d) by unilateral termination by the NU any moment prior to **14.12.2018**, by paying a penalty of 0.033% of the value of the firm capacity requested by the bid, within 15 days from the Contract termination notification date. If the NU does not pay within the deadline, the TSO shall execute the financial guarantee for the submission of the bids established in line with the Open Season Rulebook,

e) by operation of law following the notification sent by the TSO to the NU prior to **12.03.2019**, if the result of the Economic Test conducted in line with the Open Season Procedure remains negative. This situation does not entail any payment obligation for the Parties."

**Art. II – (1)** This Decision is communicated to the National Gas Transmission Company Transgaz S.A. Medias and it is published on its website.

(2) The National Gas Transmission Company Transgaz S.A. Medias publishes on its website the entire *Rulebook provided in art I*, amended according to the provisions herein, in Romanian and English.

**Art. III** – The National Gas Transmission Company Transgaz S.A. Medias will carry out the provisions of this Decision, and the specialist divisions of the authority will monitor the compliance with such provisions.

**President**  
**of the National Energy Regulatory Authority**  
**Niculae Havrilet**