

Questions and answers

3rd information package

1. Does the IP have an EIC code?

A: Yes, it has just arrived: 21Z000000000505P

2. The amount of the financial security to be provided according to the contract is five times of the yearly capacity fee. The amount of the financial security to be provided is unreasonably high compared to other open season procedures.

A: FGSZ will consider revising the amount of financial security for the Contract and decrease it to the level of three times the highest annual capacity booked multiplied with the supplement fee. Furthermore, FGSZ will consider extending the submission time of the financial securities up to 30 days.

3. The amount of the penalty set out in point 4.1 of the capacity booking contract shall be payable within 15 days following the issue of the debit note. The amount of the penalty may be very high, and the payment deadline is unreasonably short.

A: FGSZ will consider the extension of the deadline of penalty payment set out in point 4.1 of the Capacity Booking Contract.

4. Determination of the positive economic test

The method to determine positive economic test for both capacity levels is not clear, but it is an important decision-making factor regarding the bidding process. Given the criteria described in the rule book we were unable to reconcile the supplement amount calculation methodology.

(We assumed that the indicated supplement results in PVUC being equal with PVAR but with the current supplement amount PVUC is significantly higher than PVAR.)

Parameters applied in our calculation based on the rulebook:

- 90% of the offered capacity is continuously booked for 15 years
- calculated with the discount rate of 7.9% for the year of 2020 (resulting that 2021 is the first year in the calculation)
- supplement shall be escalated by 1% from the Gas Year of 2021/2022
- Amount of supplement:

First capacity level: 316.59 HUF/kWh/h/y, PVAR= 16 371 913 548 HUF

Second capacity level: 829.88 HUF/kWh/h/y, PVAR= 55 827 841 131 HUF, from the Gas Year of 2021/22.)

A: The Rulebook contains all necessary information for Shippers to make calculations for their own reference.

The success criteria proposed in the first version of the Rulebook is that the value of PV_{AR} to be met, which can be fulfilled with in average of 90% capacity booked during the 15 years period (annual bookings may differ).

5. Pursuant to point 7.1 of the contract FGSZ Zrt. does not bear any liability towards the system users, if the Serbian or further upstream part of transmission corridor has not been built, it cannot be properly used, or it has been built with delay.

It is unreasonable and not fair for the system users to pay the full capacity fee, even if they cannot use the pipeline for a reason that is not attributable to them.

A: FGSZ can take responsibility only for the availability of its own capacity within its own terms and conditions set out in the Rulebook and its attachments.

6. Transportation tariff shall be fixed without floating commodity charge or at least have a cap; long term booking is feasible only on condition of fixed tariff.

A: MEKH published the new Reference Price Methodology on 31.05.2019 applicable for FGSZ, which set out homogenous entry and exit tariffs in Hungary. Following this applicable methodology, a tariff with two elements (regulated floating and fixed supplement) was worked out in the current Rulebook.

7. Number of offered gas years shall be 20 instead of 15.

A: It is a general internal expectation of the public limited company owner of FGSZ that infrastructure investments shall be returned within 15 years.

8. The second level of capacity booking (8.5 bcma) should be available in full starting from 01.10.2021.

A: FGSZ will accelerate the technical, regulatory and financial process, but cannot ensure the readiness of the second capacity level (8.5 bcma) infrastructure by 01.10.2021. Furthermore, to inform the Bidders FGSZ will work out that set of references which shall be integrated into the Open Season Rulebook about the availability of the second capacity level earlier than it was set out originally in the Rulebook. FGSZ will also elaborate the rules of allocation of the excess capacity should the second capacity level be ready before 01.10.2022.

9. We kindly ask FGSZ to consider possibility to provide Bidders with rating exemption for both bidding and contract signing stages in case if bidders meet the following conditions.

Bidders having own or parent's company credit rating on a level of Standard & Poor's long-term rating of BBB- or better; Fitch rating of BBB- or better; Moody's long-term rating of Baa3 or better shall be exempted from the requirement of providing of financial security of the bid and performance of contracts. For all non-exempted cases, FGSZ shall:

- extend the period envisaged by the Business Code for a financial security replacement and settlement of disputes;
- for capacities booked for 5 years or longer decrease the size of the contract performance guarantee to one time the highest annual capacity fee;
- accept corporate guarantee as alternative to financial security of the Bid and financial security of performance under capacity booking contract.

A: FGSZ will consider the reduction of the amount of financial security for the Contract down to three times the highest annual capacity booked multiplied with the supplement fee. Furthermore, FGSZ will consider extending the submission time of the financial securities up to 30 days. However to cover the risk of the investment, FGSZ still prefers to accept bank guarantee and cash deposit only.

10. Should there be any overbooking for any of the Gas Years, the principle of priority allocation to the highest ranked Bids should be used instead of pro rata allocation principle. Pro rate principle may be only applied in case of overbooking due to submission of 2 or more similar highest ranked Bids.

A: The Hungarian Energy and Public Utility Regulatory Authority set in its decree H805/2019 and H2703/2019 that FGSZ must apply capacity allocation rules taking into consideration the national security of supply and the avoidance of the foreclosure of the downstream supply markets. FGSZ believes that the pro rata allocation method ensures this purpose.

11. “To avoid foreclosure of downstream supply markets, any single Bidder – including its affiliated companies – may submit a Bid for maximum 50% of the offered capacity. If any single Bidder or affiliated Bidders present a capacity demand that exceeds this limit individually or on the aggregate, then the Bid of the Bidder(s) concerned and the Bid(s) of its affiliated companies shall all be deemed to be invalid.”

In our understanding application of such a significant limitation due to competition reasons cannot and should not be made without proper reasoning and justification.

A: FGSZ will consider applying an allocation limitation of 50% of the offered capacity related to any single Bidder or affiliated Bidders instead of Bid limitation. and adjust the amount of allocated capacities taking into consideration the 50% group level limitation ex post.

12. It was suggested:

a. providing network users with alternative option to make the payments under capacity booking contracts in Euro,

A: FGSZ is not in the position to accept this suggestion. The set of rules regarding the use of the network provide that FGSZ is regulated by the 8/2016 MEKH Decree, other payment terms including the currency is set out in the chapter 4d. of FGSZ’ General Terms and Conditions (GTC). Based on the above the transportation tariffs are defined in Hungarian Forint. The method of payment is bank transfer to the account indicated on the invoice/account bill in Hungarian Forint. Those set of terms are out of FGSZ’ provision. The GTC is applicable as a standard, therefore it cannot be modified individually.

b. payment for capacity booking shall be made within one month following the month of the transportation,

A: FGSZ is not able to accept the suggestion. The set of rules regarding the payment terms capacity payment is set out in the chapter 4d. 11.1. of FGSZ’ General Terms and Conditions (GTC). Based on the above the long term annual, quarterly and monthly capacity products shall be paid by the Network Users monthly in advance before the subject month. The GTC is applicable as a standard, therefore it cannot be modified individually.

c. increasing the period of payment.

A: The suggestion does not require additional provision. Based on the chapter 4d. 11.1.1. of FGSZ' GTC the invoice is issued to the Network User within 5 days after the subject capacity auction, but earliest on the first day of the month before the accounting period (subject gas month). In practice, for example the December month invoice in case of annual product is issued to the Network User on the 1st of November and the deadline of payment is 1st of December.

13. There is no explicit liability of FGSZ in respect of quality of gas delivered to exit points. In accordance with established practice, FGSZ shall be liable for delivery of gas not compliant with the gas quality specification, as well as other breach of its obligations related to the take over and delivery of gas at the exit points, and shall compensate to User direct documented losses, including losses under gas supply agreements with third parties in the form of discounts granted or damages or penalties incurred by the User as a result of such breach by Company of its obligation.

A: Based on the Hungarian regulation (Implementing Regulation on Act XL of 2008 on Natural Gas Supply. 66/A.§ and Business Commercial Code chapter 2.2.5.3 and chapter 3.1.5) it is the Network User's responsibility to provide the gas quality as per specification. The Transmission System Operator (TSO) acts based on the Business Commercial Code point 1. chapter 3.1.5. in case of the gas quality as per specification is not met. Based on the above FGSZ is not liable for gas quality towards the Network User. It is the Network User's responsibility to provide the gas quality as per specification even towards other Network Users.

14. FGSZ shall prepare the delivery and acceptance protocol corrected with data allocated in the re-allocation procedure by the 5th day of the calendar month following the gas month. The delivery and acceptance protocol shall contain data on the quality of natural gas delivered at the exit points for the previous month expressed in kWh and, for information purpose, expressed in cubic meters at 20 °C.

A: FGSZ provides monthly final delivery and acceptance protocol for the Network Users on its Information Platform until the 5th working day after the subject gas month. There is opportunity for correction until the 15th day after the subject gas month, which will modify and generate the final delivery and acceptance protocol.

Furthermore, FGSZ would like to indicate that the base of the settlement as per EU Interoperability Network Code is at m³ and the energy content is expressed on 25/0 °C GCV at reference condition 0 °C, 101325 Pa. FGSZ can only indicate data expressed in cubic meters at 20 °C for information purpose only. The latter shall be agreed between FGSZ and the connected TSO.

15. The annual maintenance/ interruption plan and all the current information related to troubleshooting also affecting Network Users for the current Gas Year shall be provided for consultations to the Network Users by 31 October of this Gas year. The final annual maintenance/ interruption plan agreed by the Network Users shall be published by FGSZ on its website by 31 December of this Gas Year. Maintenance operation shall be fall within a period commencing on 1st May and ending on 31st August of that Gas Year and shall not exceed 14 days cumulatively.

A: There is opportunity for Network Users for consultation regarding FGSZ' annual maintenance/interruption plan by 15th December before the subject calendar year. The terms and conditions of the consultation and publications are set out in the Implementing Regulation on Act XL of 2008 on Natural Gas Supply. FGSZ will always consider suggestions made during the consultation period and as per the respective regulations, guided by the overall functionality of our system

16. *“In the event of any potential failure between the meeting point and the entry/delivery/border delivery point, the Contracting parties shall jointly inspect the circumstances and take any necessary measures, with the involvement of an independent expert, as required.”* (FGSZ's General Terms and Conditions)

It is proposed to extend the range of expert determination to the following matters:

In the event that Parties are unable to agree upon any dispute that arises in relation to (a) the measurement of quantities or quality of gas, (b) the interruption or application of technical standards, (c) the detailed computation of payment, (d) any other subject matter where expert determination is expressly required or agreed on by the Parties.

A: This suggestion is out of the scope of the subject Open Season procedure. Measuring errors/discrepancies are handled in chapter 3.1.6.9. of FGSZ Business Commercial Code and in the chapter 8.3. of the General Terms and Conditions regarding capacity framework contract

17. It is suggested that FGSZ shall provide the opportunity for consultation of all contractual terms and conditions with respect to the subject Open Season, including Rulebook, Capacity Contract, General Terms and Conditions and Business Code.

All the rules and conditions applicable to the capacity bookings and transportation services provided by FGSZ to the Shippers on the basis of upcoming Open Season on long-term basis shall be frozen for the duration of booking and shall not be amended unilaterally by FGSZ without Shippers' concern during the term of valid contract.

A: The Business Code and General Terms and Conditions are subject for consultation before any modification would be applied based on the respective regulations (Act XL of 2008 on Natural Gas Supply). MEKH approves the Business Code and the General Terms and Conditions in its supervisory role, which is a guarantee for the Network Users, that they will not contain any provision which would violate the respective law and the legitimate interest of the Parties.

18. English translation of some of the documents (e.g. rules of nomination/re-nomination specified in the Business and Commercial of the Hungarian Natural Gas System) shall be available. Furthermore liability of FGSZ in case of delay in commissioning or incomplete commissioning of the incremental capacities for both offer levels is not expressly stipulated by the Open Season documentation. FGSZ shall be liable and obliged to compensate damage caused in case starting date for providing of transportation services was breached due to delayed commissioning of the infrastructure.

A: FGSZ is not in the position to provide English translation for all technical documentation as per respective regulation.

In case of the contracted capacities are not available by the contractual period, the liability of FGSZ is set out in chapter 5. of the Capacity Contract:

“FGSZ Zrt. may collect the capacity fee from the beginning of commercial operation, in accordance with the procedure of invoicing as regulated in the GTC. If, for any reason imputable to FGSZ, the capacity booked hereunder has not become available to the Network User following the starting date of the services set out in the capacity booking contract, FGSZ shall pay the transmission operator’s nomination imbalance surcharge as specified in the Price Application Decree as penalty, in accordance with the GTC.”