

NATURAL GAS Market Survey – questionnaire for legal persons and legal entities

Closing date: 30th September 2011

Introduction

The development of the Polish gas market is not satisfactory. The deficiency of well – established wholesale gas market structure, able to generate price market signals and to create real conditions to change gas supplier is an obstacle to build up an efficient retail market. As a consequence, the monopolized gas market can not be released from an administrative gas price regulations due to not fulfilling conditions determined in article 49 of the Polish Energy Law Act.

All above-mentioned conditions and also the acceptance of *The State Energy Policy until 2030 and Action Plan for years 2009-2012* by The Council of Ministers that entrusted the President Of Energy Regulatory Office, with the preparation of The Road Map of gas prices release, require intensive actions oriented to built liquid and transparent wholesale gas market which is able to create market price of natural gas .

One of the ways of accelerating the process of demonopolization of gas market in Poland is to initiate development of competition through the Gas Release Program. Such Programs were applied in many European countries and are recommended by Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 *concerning common rules for the internal market in natural gas repealing Directive 2003/55/EC* (point 33 of Preamble). The Gas Release Program consists in releasing on wholesale market the part of natural gas which belongs to entity with monopolistic or dominant position altogether with transmission and storage capacities. By executing such Programs it is possible to change the gas market structure without violating its long – term contract obligations.

Taking into consideration all the above-mentioned conditions and also the criteria of assessing the competitive gas market defined in article 49 of the Polish Energy Law Act, the President of Energy Regulatory Office - after consultations with gas market users and according to their preferences and expectations - will prepare proposals to include in the Gas Release Program. The present *Survey* is a part of preparation of abovementioned Road Map of gas price release, and the results will help to prepare market oriented recommendations of actions with detailed schedule of implementation.

The *Survey* is based on the assumption that obligatory – national and EU regulations – are applied in the function of pro-competitive development of the gas market, and that completing the Program successfully demands earlier preparation and publication to assure the participation of all interested parties in the Program.

The questionnaire is available to download from the Regulator's website: www.ure.gov.pl.

All questions related to the questionnaire might be directed to Mrs. Marzanna Kwiecień by phone +48 22 66 16 458, email address: marzanna.kwiecien@ure.gov.pl or to Mrs. Anna Podlasin by phone + 48 22 66 16 226, e-mail address: anna.podlasin@ure.gov.pl

In any cases related to the Survey please give us a reference number as follows: "Gas Market –Survey".

Fulfilled questionnaire should be sent by post to the address: The President of Energy Regulatory Office, Chlodna Street 64, 00-872 Warsaw, Poland, and by e-mail: dpk@ure.gov.pl

The participation in the survey consists in giving answers for enclosed questions. Also, giving detailed answers is crucial for proper assessment and thus an appropriate actions related to further liberalization of Polish gas market might be designed. If - in your opinion - some questions are insufficient or not related to your activity, please make a note in a questionnaire and comment. Moreover, if – in your opinion - some issues should be added or were passed over, please give us a comment and ERO will make an effort of taking all of them into consideration.

IMPORTANT: If, in filled questionnaire there are some information that should not be published because of confidentiality, two versions should be sent: (CLASSIFIED) and (OPEN) where all trade secrets and confidential information are erased.

Thank you for your cooperation!

Gas Release Program. When and how much?

1a. *Gas Release Program* consisting in public auction of natural gas and carried out by PGNiG in 2012 on the basis that are accessible for all interested parties, should contain:

Please, propose:

5 % predicted yearly sale, starting with 2013 in three year contract,

10 % the rest of predicted yearly sale, starting with 2014 in two year contract,

15 % the rest of predicted yearly sale, starting with 2015 in one year contract,

Please, give us a comment: The Gas Release Program (GRP) should be staged to reflect the pace of gas market development and competition in Poland, which will be driven by regulatory and legislative initiatives both in Poland and the EU. It should be ambitious in its outlook, in line with Poland's aspiration to create a competitive gas market environment to facilitate the exploration and production of unconventional gas and fuel economic growth in Poland. The suggested percentages above should be cumulative and any gas not released in one stage should be rolled forward into the next stage. In the first stage we would expect participation to be mainly from existing suppliers and large industrial customers. However, in the second and third rounds, as Poland starts to implement the measures to laid out in binding EU guidelines and network codes, we fully expect new suppliers and traders to participate, and for the gas released to be used to supply medium and small business customers

1b. Should natural gas within *Gas Release Program* be offered:

at determined entry point to transmission system? Yes / No

at virtual point? Yes / No

at the other system point? Yes / No

Please, give us a comment: Releasing gas at the virtual point will foster greater competition and liquidity in Poland and represents the best way of attracting new market entrants. However, a virtual point can only be established once a functioning entry/exit transmission system is in place, so this should be seen as a priority for URE and the Ministry. EFET is confident that with clear governmental and regulatory commitment, a fully functioning entry/exit system and virtual point can be implemented prior to the first stage of the GRP. However, to the extent a virtual point is not in place for the first stage, it may still be worthwhile continuing with this stage based on gas being released at an entry or exit point determined by the buyer. However, we would not wish to see the second or third stages proceeding on this basis, and were this to happen we doubt it would lead to a successful outcome, as new suppliers are unlikely to participate. If gas is released based on entry or exit points determined by GRP buyers, it is vital they are also able to secure an equivalent amount of capacity necessary to transport gas within the system. A number of European gas release programmes have failed because buyers have been unable to secure the capacity necessary to transport the gas they secured to its ultimate destination. URE should be mindful of this when designing the GRP.

1c. Should, in the framework of *Gas Release Program*, purchase of natural gas be preferred in terms of:

daily contracts Yes / No

monthly contracts Yes / No

quarterly contracts Yes / No

half-yearly contracts Yes / No

early contracts Yes / No

sustained contracts (which one)

Please, give us a comment: Yearly contracts are sufficient to stimulate competition and liquidity in the first instance. Once a virtual point is in place, and as competition takes hold, suppliers will be able to disaggregate yearly products into daily, monthly and quarterly products to meet the needs of market participants. However, including them as a feature of the GRP is unnecessary and is likely to complicate and delay the process.

1d. In your opinion, what minimum and maximum quantity should be offered in a basic package (mln m³) in public auction to assure participation of interested parties/entities in the *Gas Release Program*?

minimum mln m³

maximum mln m³

1e. Should minimum number of participants be determined taking into account the purpose, which is substantial increase of participants on the wholesale gas market? If yes, please give us a number?

yes

no

number

1f. Will you be interested in taking part in *Gas Release Program* designed in such way and buy natural gas?

for further resale Yes / No

as end-users Yes / No

Please, give us a comment:

1d) Rather than set a minimum and maximum quantity offered under the GRP we believe it should be based on a defined number of lots, each of a standard size. The GRP should be conducted in energy units, not volume units, and from our members perspective this lot size should be approximately 100 GWh/annum.

1e) Defining a minimum number of participants would be counter-productive. If set too high this could exclude a small number of large players participating. Bearing in mind the current dominance on the incumbent, any new market entrant should be welcomed however small and will ultimately contribute to the advancement of competition. Rolling forward gas not released in each stage of the GRP to the next stage will ensure that the potential success of the GRP will be maintained throughout its life, regardless of how successful each individual stage is.

1f) EFET represents over 100 energy trading companies in Europe who are dedicated to stimulate and promote energy trading throughout Europe. A number of our members are already licensed to supply and import gas in Poland and considerably more are interested in doing so once the conditions for market entry improve. In our previous responses to the consultations on the IRiESP and Yamal Network Codes EFET highlighted a number of operational issues, such as measuring gas in kWh and adopting a 06:00 – 06:00 gas day, which hamper market entry. It is important therefore that these issues are also resolved prior to the GRP commencing, in order to maximize its chances of success.

Gas Release Program. Price release problem.

2a. Should Regulator release natural gas prices immediately, after public auction being conducted in the frames of *Gas Release Program* and discharge enterprises from the obligation to submit tariffs for approval for selling natural gas for:

- | | |
|--------------------------|-----------------------------------------------------------------------|
| wholesale customers | <input checked="" type="checkbox"/> Yes / No <input type="checkbox"/> |
| large gas customers* | <input checked="" type="checkbox"/> Yes / No <input type="checkbox"/> |
| medium gas customers* | <input checked="" type="checkbox"/> Yes / No <input type="checkbox"/> |
| small gas customers* | <input checked="" type="checkbox"/> Yes / No <input type="checkbox"/> |
| households gas customers | <input type="checkbox"/> Yes / No <input checked="" type="checkbox"/> |

*on the assumption that the use of gas accounting to: large gas customers – over 25 mln cu m/year, medium gas customers - over 1 mln cu m/year to 25 mln cu m/year, small gas customers – up to 1 mln cu m/year.

Please, give us a comment: Suppliers and traders that secure gas in the GRP should be free to re-sell that gas subject to commercially agreed bilateral contracts with customers or gas exchanges, unhindered by any requirement to submit the prices and/or terms for ex-ante approval by URE or the Ministry. Such contracts should allow for export of gas to neighbouring markets where the supplier has secured exit capacity from Poland to enable this. During the expected timescale of the GRP we would not expect the household market to be fully liberalised and free from price regulation. Therefore, we would not expect suppliers that buy gas under the GRP to be targeting this market, but to the extent they are we accept there may be a need for some form of regulatory scrutiny and assurance.

2b. Should natural gas prices be released, after a real introduction of natural gas into the market and on the basis of separate Gas Market Survey, conducted:

after a year Yes / No

after two years Yes / No

after three years Yes / No

if, its results confirm fulfillment of the competitive gas market criteria, defined in art. 49 of Energy Law Act.

Please, give us a comment: Surveys of how gas market competition is developing are an important tool for monitoring progress and keeping stakeholders abreast of developments. These should be published at least annually and prevailing gas prices are an important part of such a survey. Following each stage of the GRP, aggregated information should be published about the number and average price of the lots sold, along with the number of successful and unsuccessful participants. Once a virtual point is established, market participants should quickly come to regard this as their delivery point of choice in future gas transactions. As liquidity increases the prices of gas agreed in those transactions should become more transparent, for example through trade publications, and act as a benchmark against which to compare regulated tariffs and gas prices in neighbouring markets. This is another reason why conducting the GRP at the virtual point represents the best, and our preferred, option.

Gas Release Program. The impact on developed infrastructure use.

3. What will be the impact of *Gas Release Program* on the use of developed transmission capacities at Lasow and Cieszyn entry points and the launch of LNG Terminal located in Swinoujscie in 2014?

positive

negative

neutral

Please, give us a comment: If conducted efficiently and in conjunction with the implementation of measures in the 3rd Energy Package, the GRP will have a positive impact on the use Polish entry capacity (and virtual exit capacity) and the launch of the new LNG terminal at Swinoujscie. This is because the GRP has the potential to be a significant step towards increasing gas market competition in Poland, which is the best environment for maximising the efficiency and flexibility of gas flows into (and out of) Poland. Competitive and liquid gas markets create the best environment for signalling and rewarding investment in gas infrastructure and ensuring end-user prices efficiently reflect underlying Polish gas supply and demand fundamentals. As gas markets open, and capacity is made freely available to market participants to flow gas between neighbouring markets, Polish production and LNG imported into Poland will be able to contribute towards satisfying the wider European demand for gas, thereby underpinning investor revenue streams and confidence.

Gas Release Program. Dissemination of information.

4a. What way/method should be chosen to announce *Gas Release Program* and make project the most effective (choose more than one)?

announcement made by PGNiG (website),

mass media eg. polish and foreign newspapers

announcement on the Regulator's website

announcement on the ACER's website

announcement on the EFET's website

other ways (please, specify.....)

This somewhat depends on which organization will run the GRP. Obviously the gas released will originate from PGNiG's overall gas portfolio. However, careful consideration should be given as to whether PGNiG should run the GRP and about the contractual arrangements that are put in place between PGNiG and buyers of gas under the GRP.

We would envisage that the Office of Competition should require PGNiG to conduct a GRP. Such a ruling by the Office of competition could include the following elements:

- the volume to be released,
- requiring PGNiG to form an entity which will conduct the GRP (potentially via a joint venture with the Polish power exchange), and
- asking URE to develop the details of the GRP and extensively consult on them with stakeholders.

The GRP itself would then be conducted by the newly formed entity based on the detailed terms as developed by URE. Our experience with other gas release programmes in Europe shows, that separation of roles and responsibilities can be effective. The establishment of a new entity with the power exchange adds the experience with auction processes of the exchange to the GRP.

Finally, details of the GRP should also be announced in the main European gas trade publications published by ICIS Heren, Platts and Argus

4b. When this information should be announced, to make the Program most effective:

A minimum of 6 months in advance of each stage

Please, comment your proposal: Six months should provide adequate time for new market entrants to secure licenses they may need to be able to participate in the GRP, and to prepare their applications. Also, anything less than 6 months creates the risks that end-users will have already entered into supply agreements for the forthcoming year, which would reduce participation in the GRP. That said, depending on how the pricing arrangements are structured under the GRP, a shorter period may be necessary, for example if buyers are required to submit fixed price offers.

Gas Release Program. Restrictions and formal prerequisites of realization

5. What legal barriers might be faced with while implementing the *Gas Release Program* from binding/valid regulation, on the assumption that the gas purchase is realized on the territory of Poland which implicates that a buyer is not binded by *the act of 16 February 2007 on stocks of crude oil, petroleum products and natural gas, the principles of proceeding in circumstances of a threat to the fuel security of the State and disruption on the petroleum market*; and regulation of Council of Ministers of 24 October 2000 on the minimum level of diversification of gas supplies from abroad:

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Energy Law Act

Please, specify Whilst we are not experts on Polish energy law we anticipate that legislative changes will be necessary. However, we would expect these changes to be fully or partially satisfied by changes included in the forthcoming Gas Law implementing the measures contained in the 3rd Energy Package.

Regulation concerning detailed conditions of gas system functioning

Please, specify The 3rd Energy Package envisages binding EU wide guidelines and network codes being applied in all Member States to promote competition and cross-border flows. Implementation of these will be important milestones for the the development of gas market competition in Poland. It is important for the the GRP to recognise these developments and be carried in conjunction with them, as detailed in the Road Map for achieving an open and competitve gas market in Poland.

Tariff regulation

Please, specify Tariff regulation will have a crucial influence on the success of the GRP. Whilst regulated tariffs are set at levels which do not properly reflect gas supply and demand fundamentals they risk undermining the ability of GRP buyers, whose supply offerings will be driven by such fundamentals, to compete. Also, regulations will need to be changed so that buyers of gas under the GRP no longer need to agree their tariffs/prices ex-ante with URE. Over time we expect URE to phase out tariff regulation in all sectors of the gas market and plans for how and when they do this should be included within the Road Map.

Public Procurement Law

Please, specify

other (please, specify):

6. Should other than *Gas Release Program* methods be considered to achieve substantial development of wholesale gas market in Poland?

Yes / No

If yes, please give an example/examples.

The GRP is an important element in achieving substantial development of the wholesale gas in Poland, but is by no means the only element. Other measures that will play a crucial part in this are principally expected to be defined in the binding EU wide network codes and guidelines arising from the 3rd Energy Package. These are currently being drawn up by the European Commission, ACER and ENTSOG and we would encourage the Polish Ministry of Economy, URE and Gaz System to play a full and active part in this important work.

7. Does realization of natural gas public auction carried out by PGNiG in the frames of *Gas Release Program* consulted with the Energy Regulatory Office and the Office of Competition and Consumer Protection in organizational and legal conditions of 2011, might assure development of competition and demonopolize gas sector in Poland?

Yes / No

Please give us comment: The GRP alone will not assure development of competition and demonopolization of the gas sector in Poland. If conducted efficiently and in conjunction with the implentation of measures in the 3rd Energy Package, the GRP will make a significant

contribution towards these goals. However, there are many examples of gas release programmes in Europe which have failed to achieve their desired effects. EFET would be happy to share its experiences of these with you in more detail, so to ensure the Polish GRP does not experience the same pitfalls.

8. Should realization of *Gas Release Program* be implemented on the basis of administrative decision of the President of Energy Regulatory Office or the President of Office of Competition and Consumer Protection after implementing necessary legal basis?

Yes / No

Please give us a comment: We are not qualified to determine which office of state is best placed to implement the GRP. That said, to the extent the GRP is being pursued to reduce the dominant role of the incumbent supplier, and increase competition, our inclination is that the Office of Competition and Consumer Protection is most suitable, unless URE has concurrent powers. Whichever office of state takes the decision to require PGNiG to participate in the GRP, it goes without saying that it should have the necessary legal authority to do so, in order to avoid any subsequent legal challenge. The decision should also provide for the detailed terms and conditions of the GRP, and how it is run, to be set by URE, following proper consultation with interested stakeholders.

9. Would you like to make an additional comment on the realization of *Gas Release Program* or issues related to liberalization of gas market in Poland planned for 2013-2014?

Yes / No

Comment: The questionnaire makes no reference of how gas released under the GRP should be priced. Whilst this is probably an issue for consultation at a later date, at this stage it is important to recognize that this will have a crucial impact on the ultimate success of the GRP. In order to attract new entrants and enhance competition, gas released under the GRP needs to be priced in such a way as to ensure the buyers of that gas are able to resell it to end-users, and other market participants, competitively. In doing so they should reasonably be able to expect to make a margin from resale and not expect to be exposed to the risk of making a material loss.

IV. CONTACT DETAILS

Please, give us a name, surname address, telephone number, fax number of person responsible for fulfilling the survey, in case of a need of additional information and explanation.

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<i>name, surname address, telephone number, fax number of person responsible for fulfilling the survey</i>	<i>country, city, date</i>	<i>Signature of authorized person</i>
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Thank you for Your cooperation!

