

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,
- 5 % the rest of predicted yearly sale, starting with 2014 in two year contract,
- 5 % the rest of predicted yearly sale, starting with 2015 in one year contract,

Please, give us a comment: The aggregate share of released gas should correspond to that share of the market whose customers will effectively be able and likely to choose between suppliers. Customers in the industrial and power segments consume about half of the natural gas consumed in Poland. Assuming that the transportation and balancing systems are designed such that these customers will effectively be able to choose between suppliers and that about half of these customers will choose a new supplier for again half of their consumption, an aggregate percentage of 15% of Polish demand seems a reasonable share to be released under the Gas Release Program (GRP). After each stage of the GRP an evaluation should take place and the learnings should be reflected in the design of the next stage of the GRP including the share of the gas to be released.

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: The location at which the title transfer occurs depends on the ability of the buyer of the released gas to transport it to its customer and to balance potential variations between the customer's offtake and the buyer's supply. If a fully functioning, non-discriminatory, transparent entry / exit transport system with a virtual point (hub) is in place, then the gas should be released by the incumbent at the virtual point. If this is not the case, one should consider imposing on the incumbent the obligation to ship the gas to the exit point (as determined by the buyer of the released gas). This could be achieved by, e.g. a guaranteed back-to-back transportation contract with transportation capacity corresponding to the released gas.

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: Generally, all of the above listed gas contract durations should be products offered in an open market environment (with the exception of half-yearly contracts which can be achieved by combining two quarterly contracts). However, in a first gas release program the product structure should be kept simple and gas contracts with one year duration are initially advisable.

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 See below mln m³

maximum See below 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 N/A

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: Regarding 1d: under the gas release program basic packages (lots) of gas should be released. Each lot should have a size, which would enable professional industrial customers to procure their gas directly under the terms of the GRP.

Regarding 1e: A minimum number of participants in the GRP should not be defined. Any new participant in the Polish gas market would contribute to market opening. However, attention should be given to the design of the terms of the gas release program and the transportation and balancing terms to attract numerous participants to the gas release programs. Indications of non-participation from potential market parties during the design stage of the GRP should be taken seriously.

Regarding 1f: Given the early stage of our exploration activities, it is currently too early for us to comment, whether we'd participate in the GRP.

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

It is important to distinguish between regulated prices, where the regulation has the objective to keep prices at a different price level from that one, which would be the result of demand and supply in a competitive environment ("regulated prices"), and regulated prices which protect end-consumers against abusive pricing ("price control").

Price control will likely be required until no one player has a dominant position in a given market. This can be the case until well beyond the time that the Polish gas market has become competitive. The role of price control is best conducted by the competition authorities, because they have the means to assess and address abusive market behavior.

Regulated prices at a different level from that one, which would be the result of demand and supply in a competitive environment, lead to market distortions and should be avoided. Regulated prices should be abandoned or phased out step-by-step until prices reflect market prices, i.e. the price for marginal supplies such as additional imports. Only once gas prices are no longer regulated can a level playing field between the incumbent and new entrants be established and a GRP be effective.

Once gas prices are no longer regulated and gas is released at a price which reflects the average gas procurement cost of the incumbent, participants in the GRP should be able to make attractive and competitive offers and still earn a margin on the purchase of GRP gas and the resale of the gas to end-consumers or other market participants. In such a case the GRP will accelerate the market-entry of new parties and will have the desired impact on competition.

Buyers of gas in the GRP must be released from any obligation to submit tariffs for approval and must be free to market the gas where and to whom they elect, including via export of gas.

If a regulated prices continue to exist during the GRP, an unintended consequence of the GRP could be the export of the released gas instead of an increased share of consumers being supplied by new market entrants in the Polish gas market.

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: We support frequent dialogue between market participants and URE and other government authorities on the development of the road map to gas market opening and during its implementation. This ensures that good legislation and regulation is being developed and that potential unintended consequences of measures are mitigated early in the process. In this context we support further gas market surveys.

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: The GRP will be a key element of a road map to market opening. Infrastructure which connects the Polish gas market to neighboring markets and the global LNG market will benefit from an increasingly open Polish gas market as pricing will become competitive and infrastructure utilization will increasingly be determined by market fundamentals, i.e. the entry points at Lasow, Cieszyn and the LNG terminal capacity will be utilized if price signals in the Polish gas market incentivise gas imports into the Polish market or exports from Poland.

An open market framework will facilitate and attract investments in Poland including investments in the development of unconventional gas resources and related infrastructure such as gathering lines.

Gas Release Program. Dissemination of information.

4a. What way/method should be choose 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.....)

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

Please, comment your proposal: The announcement of the GRP should be made by the entity which conducts the GRP. It can be expected that the media will sufficiently communicate such an announcement to all interested market parties.

In this context the identity of the entity which will conduct the GRP should be carefully considered. The incumbent should be required to release a certain share of the volumes under its supply portfolio, but remain the contractual partner under its (long-term) supply contracts. If the gas comes out of the supply portfolio from PGNiG, then PGNiG can release the gas. The GRP becomes significantly more complex if one contemplates reassignment of import contract rights to the buyers under the GRP. This would require the “sign off” of the supplier, which is unlikely to be given.

The information about the GRP should be made available to the market as early as possible to allow market parties to prepare. A minimum period of 6 months before the gas release auction seems appropriate.

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:

:

Energy Law Act

Please, specify Our understanding is that the terms under the Energy Law Act which address the Gas market are likely to be replaced by a new Gas Law which also intends to implement the legislative measures under the EU 3rd Energy Package. We look forward to reviewing and commenting upon a proposal for the new Gas Law.

Regulation concerning detailed conditions of gas system functioning

Please, specify : Please refer to our introductory letter and our response to question 4b.

Tariff regulation

Please, specify See above, gas price regulation by URE should be phased out. The Office of Competition and Consumer Protection has a role in controlling the abuse of dominant market positions and also with regard to price setting policies by dominant players. This should allow gas prices in Poland to better reflect gas supply alternatives via pipeline imports, LNG or domestic production.

Public Procurement Law

Please, specify No comment to make.

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 will be one important measure contributing towards an open market in Poland. A road map to achieve substantial development of the wholesale market in Poland should also include the following measures:

1. Establishment of a non-discriminatory third party access transportation regime (a fully functioning entry / exit transport system) with a virtual point (hub) to enable title transfer between suppliers and their customers on one single market place. The transportation terms should be aligned with the terms of neighboring countries to facilitate cross-border trade.
2. A non-discriminatory balancing regime which enables new entrants to balance varying offtakes of their customers without discriminatory or excessively onerous penalties.
3. Removal of a number of operational barriers to market entry such as different gas days, quality definitions, etc.
4. The phasing out of cross-subsidized regulated prices or, at a minimum, raising regulated prices to the level of market prices in neighboring countries.
5. Removing barriers to import and export of gas from and to neighboring markets.
6. Step-by-step reduction of the domestic market obligation (or supplier of last resort obligation) of the incumbent, starting with relieving the incumbent from the obligation to supply large, professional customers such as large industrial or power customers.
7. Effective infrastructure interconnection with neighboring gas markets.
8. The designation of so-called 'market makers' who commit to offer a set of gas supply products at any given point in time which can be traded at an exchange.

Much of the aforementioned can be achieved through full implementation of the EU Framework Guidelines and Network Codes currently being developed by ENTSO-G and the Agency for Cooperation of Energy Regulators.

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 will be one important step towards an open market in Poland. Other steps include the steps mentioned in our answer to question 6.

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: Imposing the obligation on a legal entity to auction off or otherwise release gas from its own portfolio to other market participants is a significant measure and should be justifiable under exceptional circumstances only. A gas release program should not be part of a regulatory regime and hence it should not be enforced by the URE. The Polish gas market has a monopolistic market structure in which one participant holds a dominant position. The Office of Competition and Consumer Protection typically should be empowered to take measures to address monopolistic market structures. Whether there is a need to implement the GRP on a new legal basis is beyond our knowledge. In other countries, GRPs have been agreed between the incumbent and the competition authority.

Please also refer to our answer to question 4b with regard to the entity which should conduct the GRP.


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:

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.

Axel Scheuer ExxonMobil International Ltd. (for and on behalf of OPPPW) Ermyrn Way, MP 42 Surrey KT22 8UX United Kingdom	Poland, Warsaw, 30 September 2011	
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Telephone: +44 7 590 601 602		
<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>

Thank you for Your cooperation!