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Supplementary Terms & Conditions of XXX for Incremental Capacity Contracts effective from July 05th 2021

These Supplementary Terms & Conditions of Business (set out herein ('STCs')) shall apply in addition to the General Terms & Conditions of XXX ('TSO') dated March 31st 2020 ('GTCs') and provide modifications and additions for marketing incremental capacity ('Incremental Capacity') as defined in Article 3 (1) of Regulation (EU) 2017/459 establishing a network code on capacity allocation mechanisms in gas transmission systems and repealing Regulation (EU) No 984/2013 ('NC CAM').

Section 1 General Background, Scope of Application

1. The TSO has planned and consulted projects for incremental capacity acc. to Article 27 et. seq. NC CAM based on the market demand assessment at the interconnection points mentioned therein. The German national regulatory authority Bundesnetzagentur ("Federal Network Agency") has approved these projects pursuant to Article 28 of the NC CAM and published the corresponding decisions. The incremental capacity will, be offered together with the available capacity ('existing capacity') as bundled standard capacity products at a harmonized offer level in the annual yearly capacity auction, in accordance with Art. 29 NC CAM.
2. These STCs apply to all entry or exit contracts that contain incremental capacities. If an entry or exit contract contains both incremental capacity as well as existing capacity, these Supplementary Terms and Conditions shall also apply to the existing capacity.
3. As long as no provisions that supplement or differ from the General Terms and Conditions of Service are concluded in these STCs, the provisions set out in the TSO's GTCs shall also apply to incremental capacity.

Section 2 Conclusion of Contract

1. An entry or exit contract for incremental capacity will be concluded between the TSO and a shipper ("Shipper") in accordance with section 1 paragraph 2 of the GTCs once the Shipper has been allocated Incremental Capacity, subject to the provision that, in accordance with sentence 3 of Article 17(21) NC CAM, the shipper will be allocated incremental capacity according to the offer level offering the largest amount of capacity that resulted in a positive economic test according to Article 22 (3) NC CAM.
2. The allocation results will be published by the TSO in accordance with Article 11 (10) NC CAM.

Section 3 Tariffs

1. The term “tariff” within the meaning of section 25 of the GTCs shall mean the future tariffs as determined in accordance with regulatory requirements or as approved by the relevant regulatory authority and shall include all other fees or charges or elements thereof specified in section 25 paragraph 1 of the GTCs, including auction premiums, minimum mandatory premiums pursuant to Article 33 of Commission Regulation (EU) 2017/460 of 16 March 2017 establishing a network code on harmonised transmission tariff structures for gas, and any future levies applicable during the relevant contract period as published in the TSO’s price sheet on the TSO’s website. “contract period” shall mean the period of time during which TSO’s and Shipper’s rights and obligations under the relevant entry or exit contract as set out in sections 3 and 4 of TSO’s GTCs are in effect.
2. For the purposes of auctions, the TSO will use its current specific capacity tariff as determined in accordance with regulatory requirements and as applicable at the time of each auction. In no event, however, shall the current specific capacity tariff of the TSO in accordance with sentence 1 of this paragraph be construed as constituting an agreement between the parties on the capacity tariff payable during the relevant contract period, and it shall not be deemed to provide any indication as to the level of the tariffs within the meaning of paragraph 1 above actually payable by and to be charged to the shipper during the relevant contract period. The specific capacity tariff payable during each contract period shall be agreed between the TSO and the shipper for the period from 1 October to 31 December in any relevant year and from 1 January to 30 September in any relevant year, respectively, based on the future tariffs as determined in accordance with regulatory requirements or as approved by the relevant regulatory authority. For the avoidance of doubt, the publication of new tariffs shall not be construed as a tariff change within the scope of sentence 1 of section 25 paragraph 3 and section 25 paragraph 4 of the GTCs. Notwithstanding sentence 1 above, any auction premium payable as a result of an auction shall be deemed to have been agreed between the TSO and the shipper in the framework of the auction.
3. In deviation from section 25 paragraph 3 of the GTCs, the shipper shall have the right to terminate any entry or exit contract following publication of the tariffs applicable during the respective contract period, which is calculated in accordance with section 3 paragraph 1 of the STCs, with effect for the contract period by giving at least 10 business days’ prior notice ahead of the start of that following contract period, provided the capacity tariff determined pursuant to section 3 paragraph 1 of the STCs above exceeds the maximum permitted tariff as stated for the contract period in question in annex 1 to the STCs set out herein (‘Shipper’s exceptional termination right.’) The shipper’s exceptional termination right pursuant to sentence 1 of this paragraph shall only apply for the respective contract period as defined in paragraph 1 above to which the published tariffs apply.
4. If the shipper has the right to terminate the respective entry or exit contract for any contract period under paragraph 3 above, the shipper may terminate that entry or exit contract for that entire calendar year or in part as measured in relation to the amount of capacity the shipper has booked thereunder. In case the shipper wishes to terminate an entry or exit contract in part as provided in sentence 1 of this paragraph, the shipper must reduce the booked amount of capacity uniformly for the respective contract period.

Section 4 TSO’s and Shipper’s Rights and Obligations

1. The TSO shall take all commercially reasonable measures necessary

- a. to ensure that the incremental capacity allocated to the shipper will be duly made available to the shipper by the start of the contract period, and
 - b. to coordinate the commissioning of the infrastructure required for the incremental capacity with adjacent network operators and to the extent necessary.
2. In determining whether a measure can be deemed commercially reasonable within the meaning of paragraph 1 above the parties shall in particular, without limitation, give consideration to the required public permits and/or approvals and the additional requirements, ancillary provisions and instructions (if any) imposed or given by the competent authorities as well as the applicable regulatory framework and the generally accepted principles for compensating owners and third parties holding rights of use as developed on the basis of the applicable case law.
3. If during the course of the network development project carried out under the responsibility of TSO it should become apparent that any incremental capacity allocated to the shipper cannot be made available at the agreed interconnection point by the start of the relevant contract period but only at a later date, then the booked entry and exit contracts will be reduced in accordance with section 18 of the GasNZV pro rata to the part of the existing capacity, provided that the entry or exit contract concerned contains both incremental capacity as well as existing capacity. Once the TSO has obtained reliable information about any such delay, the TSO shall notify the shipper thereof without undue delay in a text form specifying on which date the incremental capacity can be provided and to which extent the booked existing capacity can be provided at the beginning of the contract period of the entry or exit contract. For the time as the delay continues both TSO's obligation to make incremental capacity available to the shipper and the shipper's obligation to pay the agreed tariffs for the part of the entry or exit capacity, which is affected by the delay, shall be suspended. If the TSO is not responsible for the delay, the shipper shall be obliged to participate in the auctions at the relevant interconnection point as soon as possible in order to book capacity immediately after the initial marketing period of the incremental capacity in accordance with Article 11 paragraph 3, second sentence NC CAM, as appropriate to the size and the period of the entry or exit contracts affected by the delay. The obligation of the shipper is also considered fulfilled if the incremental capacity is assigned to a third party. Neither Party shall have any further claims or remedies against the other party in relation thereto.
4. In the event that any capacity to be provided at any other interconnection point upstream or downstream from the respective interconnection point operated by the TSO, is not available by the start of the relevant contract period, this shall not release the shipper from any of its contractual obligations. In particular, without limitation, the shipper shall continue to be obliged to pay the tariffs agreed under the relevant entry or exit contract. In this case, the shipper shall not be entitled to rescind the entry or exit contract in question or to terminate it in any other way. The upstream and downstream capacities at interconnection points within the meaning of this number 4 sentence 1 also include the capacities on the other side of the respective interconnection point at which bundled marketing takes place. In this case, the obligation of the shipper to fulfill the contract deviates from section 8 paragraph 6 of the GTCs.
5. In particular, without limitation, the shipper shall have no right under paragraph 3 and 4 above to invoke sections 313 (frustration of contract) or 314 (termination for cause of contracts creating continuing obligations) of the German Civil Code or section 31 paragraph 5 GTCs (Suspension or amendment of contractual obligations).

Appendix 1 of STC

Cross border interconnection points for new technical capacities and maximum tariff limits for the special right of termination regarding Section 3 Paragraph 3 of STC

Entry Points to be booked

- I. Netzkname | ID | EIC: xxx

- II. Netzkname | ID | EIC: xxx

- III. Netzkname | ID | EIC: xxx

The maximum permitted tariff of the respective contract period shall be determined in accordance with the tariffs set according to section 25 paragraph 1 of the GT&C including any mandatory minimum premium multiplied with the development of the consumer price index ("Gesamtindex") for Germany ("VPI") as published by the Federal Statistical Office ("Statistisches Bundesamt") of the respective contract period to the VPI of the year 2022. Reference is made to the tariffs applicable from 01.01.2022.