Remarks to the draft of *Gas Release Programme. Draft for social consultation* of 13th February 2012

Reported by: **EFET – European Federation of Energy Traders**
Date: **13th February 2012**

No.	Remark refers to (page number, paragraph, item etc.)	Excerpt of the Gas Release Programme to which the remark refers	Content of the remark/proposed wording	Justification/remarks to proposal
1	Page 6, paragraph 1	9.4 bcm p.a for 2013 - 2015	The Gas Release Programme (GRP) envisages 9.4 bcm p.a. of gas being released through 5 auction rounds in 2012 for the calendar years 2013, 2014 and 2015.	Whilst we agree with the quantities of gas to be released under the GRP, we are concerned that holding auction rounds solely in 2012 for the following three calendar years, will not provide sufficient time for new entrants to establish a customer base sufficiently large enough to underwrite their acquisitions in the GRP. Whilst any gas not supplied to customers can be traded at the virtual point, it will also take time to establish liquidity in the wholesale market. PGNiG should therefore consider a rolling three year programme where in the auction rounds held in each year Y, 100% of the remaining Y+1 quantity is offered, 50% of the remaining Y+2 quantity is offered and 25% of the remaining Y+3 quantity is offered. Any unsold quantities from one round would be carried forward to the next round for each year. These rolling three year programmes would be held at least in 2012, 2013 and 2014, but could continue

				in future years subject to a review of their effectiveness of reducing PGNiG's market dominance. This could be achieved by way of a public consultation on whether to extend the end date of the Regulatory Agreement.
2	Page 6, paragraph 1 (see also our comments under point 11 below)	PGNiG subsidiaries – including DSO's, SSO's electricity producer and trading companies – will be entitled to participate therein	These PGNiG subsidiaries should not be able to take part.	If PGNiG subsidiary companies are not restricted these subsidiaries may have an incentive to outbid other new entrants for the overall benefit of the PGNiG Group and should therefore be excluded. We do not understand why infrastructure operators within the PGNiG group (DSOs, SSOs etc) should be allowed to take part when they are not gas trading entities of PGNiG currently known in Poland.
3	Page 6, paragraph 3, bullet point 4	Supply profile - flat	PGNiG should consider offering a GRP product that includes an element of swing, along side a flat product. The swing product could, for example, allow shippers to nominate between 85% and 115% of the tranche size each day, subject to an annual take or pay quantity equal to the tranche size x 365 days.	Offering a swing product along side a flat product would maximize the number of market participants willing to bid in the GRP auctions. It would also be advantageous to those new entrants intending to supply a portfolio of end user customers and would stimulate trading opportunities within day. Clearly any swing product offered would have a higher reserve price than a flat product.
4	Page 6, paragraph 6 bullet point 3	The starting price of gas shall include the cost of maintenance of mandatory stocks of gas, as required by law	If the price shippers pay for GRP includes PGNiG's cost of maintaining mandatory stock of gas, GRP shippers should not be required to hold	The mandatory stock holding obligations on shippers who acquire GRP gas should be clarified to avoid double counting. Our understanding is that the

			mandatory stocks themselves. Alternatively, if GRP shippers are required to hold mandatory stocks themselves, these should be deducted from PGNiG's obligation and the cost excluded from the GRP starting price.	new Gas Law only requires suppliers who sell gas to protected customers to maintain mandatory stocks not GRP shippers supplying industrial and business customers.
5	Page 10, section 3.3, paragraph 1, bullet point 1	The Regulatory Agreement shall constitute a voluntary commitment by PGNiG and the President of the ERO to comply with the rules set out in the GRP until 31/12/2015	To the extent the GRP is being undertaken on the basis of a voluntary commitment, the question has to be asked what happens to any gas allocated under the GRP if either the Regulator or PGNiG renege on its commitments. Shippers who acquire gas in good faith under the GRP and who use this as the basis for entering into binding contracts with end users and other counterparties should not be exposed to damages for non-performance in the event the rules of the GRP or commitments are not honoured.	The terms of the GRP sales contracts need to remain legally binding throughout their duration, regardless of whether the Regulatory Agreement remains in place or is amended throughout that time. All market participants shall be informed about content of the Regulatory Agreement (in English) without further delay and in advance of the start of the Gas Release Programme.
6	Page 13, paragraph 5	Gas released by PGNiG under the GRP will be delivered to the Virtual Trading Point	EFET welcomes this move and recognises the significant efforts being undertaken by Gaz System to establish the WWH later this year. Considerable care and attention needs to be given to the issue of force majeure arrangements applying at the virtual trading point, and the extent to which Gaz System, and/or PGNiG, shall be entitled to claim this in the event of a transportation failure or an unexpected cessation of supplies at an entry point. Linked to this will be the extent to which imbalance charges will	FM arrangements and imbalance charges should be clearly defined in advance, such that GRP shippers can replicate these arrangements in their onward supply contracts. EFET's Master Gas Trading Agreement may be helpful in this regard, and we would be happy to discuss this issue with you further should you wish to do so. We support the idea that the volumes from the Programme should be able to be sold on the OTC market and not necessarily under the rules of the Polish gas exchange. Details

			be applied to GRP shipper's portfolio in the event of FM being declared.	of the exchange are not known yet but full details of the costs and contractual arrangements should be published in English prior to the auctions. TGE might supervise the procedure as the potential operator of the gas exchange at the Polish Virtual Trading Point. Since easy access to the procedure is crucial for the success of the GRP, OTC rules seem to be sufficient rather than additional obligations to register on the gas exchange and post financial securities.
7	Page 14, section 4.3, paragraph 4, bullet point 1	Implementation of mechanisms limiting export of gas purchased under the GRP	There should be no restrictions or limitations on exporting gas acquired under the GRP other than those applying in Poland's Emergency Plan and Preventative Action Plan compiled in accordance with the Gas Security of Supply Regulation 994/2010. Limiting exports during normal market operations is an impediment to cross-border trade and contrary to the Third Energy Package. Gaz System are responsible for the secure functioning of the Polish national gas system, and can be expected to take balancing actions necessary to keep the system in balance, taking account of all entry and exit flows at any one time.	The control mechanism being proposed to limit exports is bureaucratic and not conducive to promoting day to day trading at the virtual point in a proper entry/exit system. Shippers that have contracted for exit capacity at a cross-border interconnection point can not be expected to wait for the approval of the Ministry of Economy every time they wish to export gas, as their decision to do this or not will change from day to day. It will also not be possible for the commodity exchange to distinguish which gas was purchased under the GRP if, as hoped, volumes traded daily at the virtual point significantly exceeds gas delivered under the GRP.
8	Page 15	An option to withdraw from the GRP by PGNiG should the process threaten the balance of its customers that have decided to continue cooperation with	This is not acceptable and is discriminatory as it gives those customers who remain with PGNiG a perceived advantage vis-à-vis security	PGNiG should not be allowed to withdraw from the GRP in the event they perceive their ability to supply their remaining customers is threatened. To

		their present supplier	of gas supply, which could discourage end users switching supplier. End users who contract for firm supplies with a registered supplier who is supplying them with gas acquired under the GRP should have the same degree of supply security as those end users who choose to remain with PGNiG.	the extent such a situation exists, this is likely to be as a result of a transportation failure or supply failure affecting all customers equally, and such situations should be managed through Poland's Emergency Plan and Preventative Action Plan.
9	Page 17, section 4.5, paragraph 7, bullet point 3	Rules for calculation of the indexation rate	The price of all gas released under the GRP should be based on a combination of prices in the German Gaspool and NCG market areas, along with a currency adjuster. Indexation should not include the prices of petroleum products as these are irrelevant to gas supply and demand in Poland. PGNiG is in the process of pursuing arbitration procedures with its suppliers to remove oil indexation from its own supply contracts and so should not be allowed to pass it through under the GRP.	Exactly how the indexation formula will work requires further consideration, but we would expect it to be based on an average of a combination of liquid short term prices published by relevant gas exchanges (such as EEX) and trade reporting publications (such as ICIS Heren). The starting price should exclude any margin for PGNiG, since this shall be achieved through the auction and is driven by demand. However, the discount may need to be greater than PGNiG's margin if the starting price is still above the price of gas in neighbouring wholesale markets. Each element of the starting price should be broken down and explained at least one month prior to the auctions commencing. If the supply profile is flat the starting price will need to be discounted accordingly as PGNiG's import contracts, on which the starting price will be based, include swing.

10	Page 18, section 4.6, paragraph 5	The maximum quantity of gas available for purchase by a single entity shall be limited to 25% of the total quantity offered in a single auction.	We agree with this restriction but think it should be applied at Group level. This will prevent a parent company using its subsidiaries to collectively secure a dominant position in the GRP, whilst individually any one subsidiary is capped at 25%. It also needs to be clarified whether this 25% cap applies year on year or in aggregate over the period bid for.	Such a rule is a standard feature of auction processes and is designed to prevent companies using or creating diverse corporate structures to secure a disproportionally large share of what may be a scarce resource.
11	Page 20, Section 4.9 paragraph 1	In case the customer terminates the supply contract with PGNiG or reduces the quantity of ordered gas as a consequence of the purchase of gas from another supplier who acquired it under the GRP auctions, PGNiG shall release all or part (proportionally to the reduction of the order) of exit capacity booked in the gas delivery point to which the customer is connected	This provision appears to be proposing the “rucksack” principle that is applied in a number of European counties, and is a welcome step. However, in order for this to be effective in practice, the exit capacity needs to be released promptly by PGNiG and transferred seamlessly and efficiently by the relevant TSOs and DSOs to the customer or new supplier, so as to ensure there is no potential for disconnect in supply to end customer.	The Regulator will need to be satisfied that the change of supplier process is capable of managing significant increases in the number of customers changing supplier once the GRP is launched, and be prepared to intervene immediately should problems arise. Furthermore ALL Polish gas clients of PGNiG willing to take part in the Gas Release Programme shall have a choice to terminate their existing supply contracts with one month’s notice and instead to source gas from the Programme. This increases the demand for the Programme and if all volumes are sold would limit obligation of PGNiG to continue supplying these clients.