

Anlagenkonvolut 2:

Protokolle der Arbeitsgruppe (Working Group OPAL)

1st Meeting of WG on OPAL
18 March 2013, 3:00-6:00 pm
Brussels, DG ENER, rue de Mot 24, 8/84

Participants:

Russian delegation:

Ministry of Energy:



Gazprom:



EU delegation:

EC:



BNetzA:



Minutes:

Participants recalled the historic background to the OPAL decision. The Russian delegation underlined that the business case for the OPAL pipeline, from the beginning, [REDACTED]

[REDACTED]. The EU delegation indicated that physically OPAL is linked to the existing Czech system and has the potential to supply the Czech market, which is a condition for considering OPAL as an interconnector. The German delegation agreed and pointed out that there are several exit points on Gazelle in the Czech Republic. The EU delegation recalled the dual objective of its exemptions policy: on the one hand, to remunerate investors for the investment risk they take, and, on the other hand, to promote competition. The rationale for the conditions attached to the OPAL exemption decision is to be seen against this background. The German delegation highlighted the willingness of all participants to find a compromise taking into account the objectives of exemptions, Russian concerns as well as the current under-utilisation of OPAL

Participants then discussed various options for a way forward:

1. Handing back the exemption decision: Gazprom representatives emphasized that it [REDACTED]

2. Change in delivery point from Waidhaus to Greifswald: Gazprom representatives indicated [REDACTED]

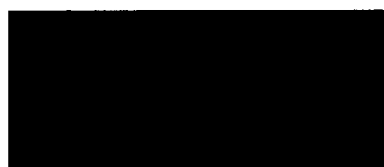
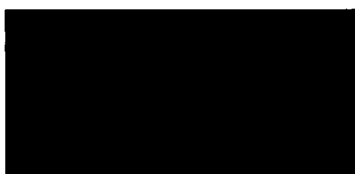
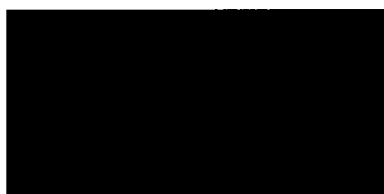
3. Reduction of the gas release: The EU delegation inquired, subject to formal review of the exemption decision based on the official application explaining alleged changes on the Czech market, whether Gazprom would be interested in changing the modalities of the gas release programme (i.e. smaller volumes, potential participation of Gazprom's affiliated companies). Gazprom explained that [REDACTED]

4. Alternative conditions with an equal pro-competitive effect on the Czech market: Participants discussed the option of making capacity release procedure, as an alternative to gas release procedure. The Group looked at alternative sources of gas that could be delivered to the Czech Republic if capacity were released without accompanying gas volumes. Participants exchanged views on the amount of capacity that would have to be released. For discussion purposes Gazprom proposed [REDACTED]

[REDACTED] In first reaction to the capacity release proposal, the EU delegation underlined that in principle the gas release programme (offering both the commodity and capacity) is better for competition than its equivalent in terms of capacity releases (only the capacity). This option will need to be

analysed depending on the quality and the duration of capacity products required to have a pro-competitive impact on the Czech market. The possible allocation procedure as well as Gazprom's participation in such capacity allocation has been discussed. The EU representatives indicated that further discussions between the EU and the BNA should be held to analyse this option. Participants agreed to proceed with exploration of this option.

Participants agreed to have a next meeting in the second week of April. The exact timing and location remain to be fixed.



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2nd Meeting of WG on OPAL
22 April 2013, 1:00-15:30 pm
Brussels, DG ENER, rue de Mot 24, 8/84

Participants:

Russian delegation:

Ministry of Energy:



Gazprom:



EU delegation:

EC:



Minutes:

- Participants agreed the minutes of the first meeting of the WG of 18 March 2013.
- Participants took note of the correspondence of BNetzA explaining their absence and of the response of the Russian side. Participants agreed to send copy of the minutes of this second meeting of the WG to BNetzA.
- Participants discussed the changes in the competitive situation in the Czech market. Gazprom presented factual data illustrating decreasing market share of RWE and increased number and market shares of alternative suppliers. It was understood by the participants that the size of the Czech market today (9 bcm/a) is smaller than was assumed in the

existing exemption decision (12 bcm/a) which foresees a 3 bcm/a gas release. The participants discussed the possibilities for third parties to enter the Czech market, including availability of entry capacity into the Czech market and quality thereof. The EU side indicated that, to the extent firm entry capacity from Gaspool and/or NCG and/or CEGH into the Czech market is available, this should be taken into account positively for assessing the competitive situation in the Czech market and potentially reviewing the conditions attached to the existing OPAL exemption decision. It was agreed that the Russian side would provide further detailed data on availability and quality of the aforementioned capacity.

- Participants discussed in further detail the following options for a way forward:

(1) *Change in delivery point from Waidhaus to Greifswald:* Gazprom reminded that it [REDACTED]

[REDACTED] EU side indicated that on the basis of feedback it had received from EU buyers, the latter could be open to negotiate a change of delivery point on the aforementioned basis and asked the Russian side to actively pursue this option further, accepting that any solution should be commercially neutral compared to the conditions in the initial contracts.

(2) *Handing back the exemption decision:* Gazprom reminded of [REDACTED]

[REDACTED] The EU side reconfirmed that unbundling issues could be solved in a pragmatic way. As regards tariff regulation, the parties agreed to seek further information from BNetzA on what the rate of return could be under a regulated regime and whether it could be assured for the pay-back period. Participants also discussed the option of handing back only the exemption from TPA while maintaining the tariff and unbundling exemptions.

(3) *Alternative conditions with an equal pro-competitive effect on the Czech market:* Participants discussed the option of making capacity release procedure, as an alternative to gas release procedure further. Participants agreed that this option could offer the most straightforward solution provided that sufficient capacity is released and the quality is proper.

- Parties agreed to produce a common statement for the press.
- Participants agreed to hold the next meeting in Moscow on 23 May, with the aim to come to conclusions and concrete recommendations. The teams on both sides shall prepare the meeting to that effect. The future of the WG shall be discussed on the basis of the outcome of that meeting.



3rd Meeting of WG on OPAL
10 June 2013, 1:00-2:00 pm
Brussels, DG ENER, rue de Mot 24, 8/84

Participants:

Russian delegation:

Ministry of Energy:

[Redacted]

Gazprom:

[Redacted]

EU delegation:

EC:

[Redacted]

BNetzA:

[Redacted]

Minutes:

- The Working Group takes note of Gazprom's expert report on the Czech market indicating that the competitive situation on the Czech market has improved and that pipeline capacity, other than OPAL, is available for suppliers other than Gazprom to enter the Czech market, including from hubs. The EC shares the analysis on some points, for example that the initial prognosis of consumption of the Czech Republic which was the basis for the 2009 decision (increase from 9 bcma to 12 bcma from 2007 to 2017) does not correspond to the current dynamics of growth of Czech gas consumption. BNetzA and the EC indicated that they need more time to analyse the report.

- The Working Group takes note of BNetzA's concept for a possible solution replacing the existing conditions (the gas release programme and capacity cap). Gazprom states that it is open to discuss this concept as long as it permits Gazprom Group to book capacity needed for fulfilment of its contractual obligations and there is a need to understand better the details of the concept. It is agreed that BNetzA and Gazprom will have further bilateral discussions to that effect ahead of the next Working Group meeting, with the aim to enable Gazprom to react to the proposal. The EC will analyse the BNetzA proposal.

- The next meeting of the Working Group is scheduled on *24th June 2013*



4 Meeting of WG on OPAL
24 June 2013, 1:00-2:00 pm
Brussels, DG ENER, rue de Mot 24, 8/84

Participants:

Russian delegation:

[Redacted]

Gazprom:

[Redacted]

EU delegation:

EC:

[Redacted]

BNetzA:

[Redacted]

Minutes:

The Working Group discussed the capacity analyses and further steps in terms of procedure.

On the capacity analyses, BNetzA and the EC will send additional questions/clarifications by the end of this week. It was agreed that Gazprom will extend the current capacity analysis by the independent consultant with further elements, including the analysis how the capacity is offered to the market, if it is auctioned and if it is coordinated. Moreover it should cover 15 years (up to 2027). Further competitive assessment of the Czech market development, including information on how it developed since 2009, including assessment of the both upstream and downstream (wholesale and retail markets). To what extent the additional gas would be available to match capacities offered. New, extended study could be provided by mid-July. It was agreed that the study provided by Gazprom can be market-tested and shared with the Czech Regulator and the interested market participants.

It was agreed that BNetzA, OPAL operator and Gazprom will have further discussions on the term sheet proposed by BNetzA regarding a possible solution replacing the existing conditions (the gas release programme and capacity cap). Such discussions will take time till mid-July.

Following the submission of new, extended study and the results of the discussions concerning BNetzA proposal, the DG ENER will continue the discussions with other involved Commissions services and the Czech Regulator. The next meeting of the Working Group is scheduled for the last week of July.

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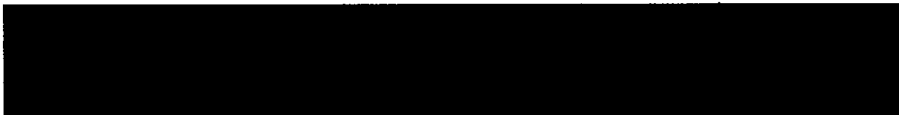
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5th Meeting of WG on OPAL
22 July 2013, 1:00-3:00 pm
Brussels, DG ENER, rue de Mot 24, 8/84

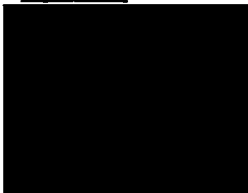
Participants:

Russian delegation:

Ministry of Energy:

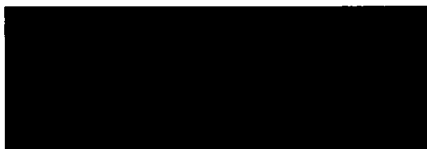


Gazprom



EU delegation:

EC:



Bundesnetzagentur



OPAL Operator



Minutes:

BNetzA informed Working Group about previous bilateral discussions with Gazprom in Bonn. BNetzA had the impression that Gazprom would be willing to accept basis concept of BNetzA proposal, in particular partial access regulation of OPAL. BNetzA pointed out that [REDACTED]

[REDACTED] Other measures to enable the operator to guarantee FZK are also possible and very welcome. BNetzA is in particular in favour of infrastructure measure proposed by the operator.

Gazprom highlighted that the concept of BNetzA proposal could serve as a basis for the settlement but there are two unresolved issues: [REDACTED] and the partial exemption as proposed by BNetzA. After internal consultations [REDACTED]

[REDACTED] Gazprom pointed out that given the current situation at [REDACTED] and the full exemption with strict conditions is the only way to guarantee the long term legal stability and enforceability of the solution.

Given the current status of discussions, BNetzA pointed out that implementation of any solution before 01.10.2013 is unrealistic. If a settlement agreement is signed by 1 October 2013 and recommended by the WG, the intention of the WG is to support the implementation of the agreed solution already before it is formalized.

The extended analysis submitted by Gazprom on 18 July was welcomed by the WG. The EC and BNetzA will send updated list of questions and comments by the end of this week. Gazprom will provide answers as soon as possible, preferably before the end of July. Gazprom agreed that the Commission can market test the extended analysis provided.

It was agreed that the EC will send substantive and procedural comments to the current draft proposal by BNetzA and Gazprom's proposed amendments to the proposal next week, preferably taking into account additional information received from Gazprom. This should be followed by a next round of discussions between Gazprom and BNetzA, also involving OPAL operator where needed, to be finalized by 12 August.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

6th WG OPAL
16 September, 11 am – 3 pm, Brussels
Minutes

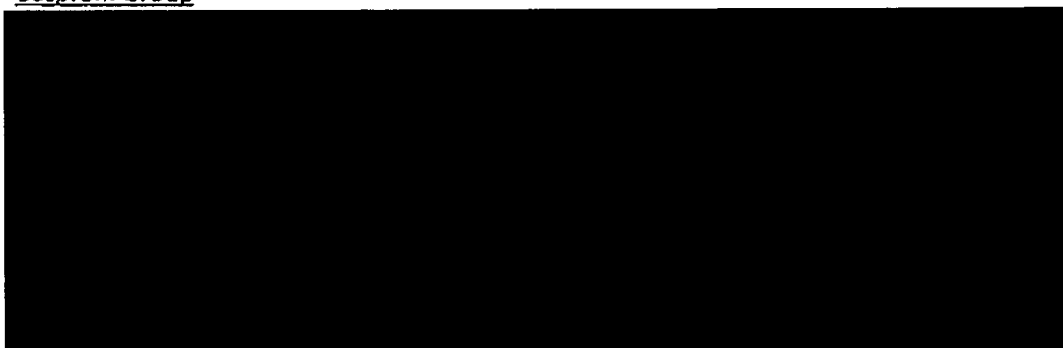
Participants' list

Russian delegation:

Ministry of energy

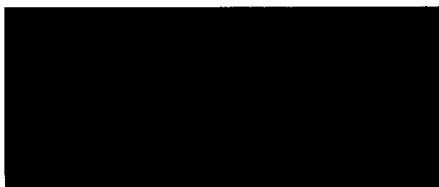


Gazprom Group



EU delegation:

EC:



Bundesnetzagentur



Upon invitation:

Wintershall



OPAL Operator



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Minutes

Participants agreed to recommend jointly the conclusion of the Settlement Agreement based on principles laid down in the attached Term Sheet.

Participants invited the parties (OPAL Gastransport, BNetzA, Gazprom and Gazprom Export) to use their best endeavours to finalize and sign the Settlement Agreement before the end of October 2013. OPAL Gastransport will provide first draft before the end of this week (by 21 September 2013).

BNetzA will notify the signed Agreement without delay to the Commission with a view to have the Commission adopt a formal Decision. On the basis of that notification, the Commission will immediately write to BNetzA with the aim to enable BNetzA to provide comfort to the operator as regards the efficient use of the OPAL pipeline pending the adoption of a formal Commission decision on the notification.

([REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

([REDACTED]

OPAL Exemption Decision Amendment
Term Sheet (Status: 16.09.2013)

Utilisation Concept

- Utilization of 50% of OPAL Gastransport GmbH & Co. KG capacities by Gazprom is based on the exemption of the transit capacities from the regulated regime (Entry capacity Greifswald and Exit capacity Brandov are utilized as bundled capacity – „exempted capacity“, "[15.864.532] kWh/h)
 - No change concerning the current regulated capacity at entry Greifswald ([4.586.738] kwh/h)
 - Network access resp. utilization of the remaining 50% OPAL Gastransport GmbH & Co. KG capacities ([15.864.532] kWh/h) are based on the general capacity allocation rules within the regulated framework, especially German Gas Network Access Ordinance / Gas Grid Code, whereas tariffs remain exempted from regulation („partially regulated capacity“):
 - Duration of capacity contracts: in accordance with the regulatory framework, i.e. 65% long-term, 15% mid-term, and 20% short-term, related only to the partially regulated capacity (in relation to total capacity of OPAL Gastransport GmbH & Co. KG capacities: 82.5% [=50% + 32.5%] long term bookable capacity
 - Long term means
 - for the „partially regulated capacity“ 15 years ahead
 - for the „exempted capacity“ remaining period according to the exemption decision (= 22 years from putting OPAL into operation in 2011, i.e. more than 15 years)
 - Partially Regulated Capacity products: separate capacities in Greifswald and Brandov auctioned as:
 - DZK: "firm dynamic allocable capacities", i.e. firm capacity for transit to Czech Republic (Brandov) and – at the same time – interruptible access to market area GASPOOL
 - FZK: "firm free allocable capacities", i.e. firm access to market area GASPOOL
- Entry Greifswald: only DZK ([15.864.532] kWh/h)
 - Exit Brandov:
 - (a) FZK in the amount of [1.891.830] kWh/h (1,5 bcm/a) [REDACTED]
- Precondition: [REDACTED]
- [REDACTED] alternative solution(s) for offering FZK to the market up to 3 bcm/a [3.783.659 kWh/h], which may include a technical solution. If and when OPAL Gastransport GmbH & Co. KG has established such alternative solution(s), [REDACTED]

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If FZK offer is not allocated at the auction(s), [REDACTED]

(b) DZK in the amount of [13.972.702] kWh/h ([11.3] bcm/a)

(c) Only DZK is offered long-term. FZK is offered as mid-term and short-term products.

- Allocation mechanism: auctioning via PRISMA-Platform, including through extra auction immediately after signing the Settlement Agreement, if provided by PRISMA
- Non-discriminatory and transparent tariffs will be a start-up price for auctions based on the conditions of the exemption decision (i.e. same price as for „exempted capacity“, with justified differentiation of products – DZK, FZK etc.)
- No restrictions on participation in auctions (including first bidding round)
- Taking into account the tariff exemption, the risk of utilization after expiry of the exemption lays with the operator
- Rules for partially regulated capacities follow always (with the exemption of tariffs) the regulated regime as amended from time to time, i.e. in the future Network Code on Capacity Allocation Mechanism (CAM) and the prevailing congestion management (CMP) rules will apply
- [REDACTED] the parties will enter into negotiations with a view to find an acceptable solution within a six month period, respecting the balance of interests underpinning the Settlement Agreement.

Legal execution

- Recommendation of Working Group to draft binding agreement on the basis of Term Sheet
- Drafting of a public-law Settlement Agreement based on German administrative law (no legal agreement on the basis of the Term Sheet)
- Language: German, English and Russian (German prevails)
- Settlement Agreement is to be signed by the following four parties who are participants in the administrative procedure:
 - Bundesnetzagentur (Ruling Chamber 7: 1 Chairmen, 2 Vice Chairs)
 - OPAL Gastransport GmbH & Co. KG (operator)
 - OAO Gazprom
 - and OOO Gazprom Export
- Through the Settlement Agreement as approved by the Commission the exemption decision of Bundesnetzagentur would be directly (uno actu) modified in accordance with the above as well as through the removal of the gas release clause and the capacity cap requirements. The Settlement Agreement including this modification will be subject to the European Commission's formal approval.
- [REDACTED]
- Public announcement of the amendment will be made by Bundesnetzagentur once the Commission has issued a formal Decision.

DKK 2-10-15 *mm* *20*