

**INTERCONNECTION BETWEEN THE SLOVAK AND UKRAINIAN GAS TRANSMISSION  
SYSTEMS**

**BINDING OPEN SEASON**



**SK-UA Interconnector**

**Binding Open Season Procedure**

(hereinafter referred to as the “**Rules of the Binding Open Season**” or the “**Rules**”)

## 1. Introduction

Eustream, a.s. (hereinafter referred to as “**Eustream**”) is a gas transmission system operator in the territory of the Slovak Republic. After extensive negotiations with the Ukrainian gas transmission enterprise Ukrtransgaz, Ukrainian state authorities and with a significant facilitating role of the European commission all parties agreed to implement a project of the new interconnection between the Slovak republic and Ukraine. This project has been successfully implemented and commissioned on 1<sup>st</sup> September 2014. In response to technical measures taken by Ukrtransgaz, which led to increase of available technical capacity, Eustream, in order to transparently offer such incremental technical capacity to the market, launches this Open Season Procedure.

This Open Season relates to an incremental uni-directional<sup>1</sup> capacity related to the expansion of the technical capacity at the interconnection point Budince (the “**Interconnection point Budince**”, or the “**IP Budince**”), between the Slovak Republic and Ukraine. This interconnection connects the gas transmission system of Eustream and the gas transmission system of Ukrtransgaz (the “**SK-UA Interconnector**” or the “**Interconnector**”), whereas Ukrtransgaz is an affiliated company of National Joint-Stock Company Naftogaz of Ukraine and is providing gas transmission services in the territory of Ukraine. The expansion of the SK-UA Interconnector is currently planned to be offered with a physical direction of an incremental flows from the Slovak republic towards Ukraine.

Eustream is conducting this Open Season Procedure in order to allocate its incremental exit transmission capacity of the IP Budince, to be offered as of 1<sup>st</sup> January 2015. Incremental technical capacity available until 1<sup>st</sup> January 2015 shall be offered by Eustream on a standard, first-come first-served principle.

The process of the Open Season Procedure consists of a binding phase only (“the “**Binding Open Season**” or the “**Binding Phase**”). The allocation procedure will be conducted by Eustream and the final transmission contracts will be concluded by and between Eustream and shippers. All interested parties are aware and accept the fact that all bids presented by the Applicants in the Binding Phase will be legally binding and irrevocable subject to rules applicable at the time of bid submission.

By submitting a Binding bid each Applicant is obliged to enter into a subsequent transmission contract with the allocated capacity. The contract template is in line with the operational order of Eustream and applicable regulations and can be provided to any Participant upon request. The Binding bids submitted by the Participants shall not be subject to securing transmission services in the area of operation of the

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<sup>1</sup> The incremental capacity shall be uni-directional on a interruptible (depends on the current pressure conditions at entry/exit points) basis from SK into UA, direction from UA into SK shall be explored post implementation of current open season.

adjacent operator. Eustream does not take any liability in securing services outside the scope of its transmission network.

Based on these considerations, Eustream hereby officially announces the invitation to bid on the Open Season Procedure for the incremental capacity of the SK-UA Interconnector. These Rules of the Binding Open Season serve solely for the incremental exit capacity of the IP Budince, i.e. for the transmission from the Slovak republic towards Ukraine, as of 1<sup>st</sup> January 2015. For transmission in the Ukrainian part of the SK-UA Interconnector the Applicants shall follow the standard procedure as defined in chapter 6.3. Supporting Adjacent Operator.

## 2. Definitions

Words and expressions used in this document shall have the meanings stated below:

"**Applicant**" shall mean Participant who submits a Binding bid with all necessary Annexes to Eustream in accordance with the Rules of the Binding Open Season.

"**Technical Capacity**" means the incremental volume of natural gas expressed in energy units that can be transmitted through the IP Budince per day in direction from the Slovak republic to Ukraine.

"**Open Season Procedure**" means the procedure between 4<sup>th</sup> November 2014 and 21<sup>st</sup> November 2014 through which Eustream offers the incremental exit transmission capacity of IP Budince to Participants and the Participants can on a binding basis apply for this capacity.

"**Participant**" shall mean the party whose registration has been accepted by Eustream in accordance with the Rules of the Binding Open Season.

## 3. How to participate in the binding Open Season Procedure

### 3.1. General rules

Parties that are interested in participating in the Open Season Procedure should proceed as follows:

1. Fill in Annex 1 (the "**Registration form**") with the company details. Return the document by registered post or courier (original) duly signed by authorized person(s) to Eustream correspondence address listed in Chapter 7 (Notices) as soon as possible, but not later than

17<sup>th</sup> November 2014. An advanced copy by fax or e-mail to [transmission@eustream.sk](mailto:transmission@eustream.sk), with subject matter "SK-UA Open Season", is recommended.

As an inevitable part of the registration process, Annex 1 shall be accompanied by the documents required for the Creditworthiness Assessment by methods set forth in Chapter 4. The minimum required set of documents shall include:

- Legal evidence in respect of the company, e.g. excerpt from the court registry of companies;
- Evidence of equity capital of the company, e.g. annual accounts with auditor's certificate (balance sheet, profit and loss account);
- Evidence of credit rating in place at that time including details about the rating agency (in case the bidder does not have a credit rating, then a statement to this effect is required).

Participants willing to bid for the incremental exit transmission capacity in the SK-UA Interconnector shall then:

2. Fill in a capacity nomination in Annex 2 (the "**Binding bid**"). Return the documents by registered post or courier (original) duly signed by authorized person(s) to Eustream correspondence address listed in Chapter 7 (Notices) not later than 19<sup>th</sup> November 2014. An advanced copy by fax or e-mail to [transmission@eustream.sk](mailto:transmission@eustream.sk), with subject matter "SK-UA Open Season", is recommended. The Binding bid shall be sent in a sealed envelope clearly marked "SK-UA Open Season". For the avoidance of any doubt, the physical delivery of the Binding bid to Eustream shall be 19<sup>th</sup> November 2014 at the latest. The Binding bid shall be accompanied by the following documents:
  - original of up to date excerpt from the court registry of companies (or similar evidence) of the Participant not older than 30 days before the date of submission of the Binding bid (not necessary if such excerpt from the court registry of companies not older than 30 days before the date of submission of the Binding bid has been already submitted during the registration process);
  - copy of the up to date constitutional documents of the Participant (or the notarized affidavit about no change in constitutional documents if already submitted to Eustream, in case of no update of the constitutional documents from the time of the latest submission);
  - if the Binding bid is not signed by a statutory body of the Participant in accordance with the foregoing documents, a notarized power of attorney (or similar evidence satisfactory to Eustream) issued to the signatory and which contains an authority to sign the Binding bid and all related documents (including the documents relating to financial security and transmission contract) on behalf of the Participant.
  - inevitable part of the Binding bid shall also be a financial security in accordance with chapter 4 below.

Registration form, excerpt from registry, Binding bid and financial security documentation shall be submitted (or translated into) English or Slovak language. Other documents may be submitted in the original language, unless explicitly requested otherwise by Eustream. In case of translated documents the official sworn translation shall be provided. Eustream may request further information from the Participant deemed necessary to perform creditworthiness assessment and/or for acceptance of the Binding bid. For the avoidance of any doubt only Binding bid submitted by means of Annex 2 shall be considered as valid.

Eustream will confirm the receipt of each Registration form and each Binding bid. Eustream shall analyze the obtained Binding bids on a non-discriminatory basis and notify each of the Applicants of the Allocation by 21<sup>st</sup> November 2014 at the latest. Such Allocation shall be considered as a confirmation of Eustream to sell capacities to the Applicant under the terms and conditions as stated in operational order of Eustream.

Unless otherwise provided in these Rules or as a result of any law or regulation, Eustream acknowledges that any data, information or notification to be prepared by Applicants and Participants in the Open Season Procedure that will be handed over to Eustream shall be considered as confidential. Eustream declares that such confidential information shall only be used in connection with this Open Season Procedure.

Unless otherwise provided in these Rules or as a result of any law or regulation, by the registration in the Binding Open Season the Participants agree to treat any data, information or notification exchanged with Eustream in the Open Season Procedure as confidential information.

The above confidentiality obligations of Participants and Eustream do not apply to any information, which at the date of the Participant's registration is in the public domain or subsequently enters the public domain without fault of the Participant and/or Eustream or which must be transmitted to a third party as a result of any law, decision of a Court or decision of a competent public authority. When disclosure is made to any third party appropriate safeguards shall be made as a prerequisite to such disclosure to prevent the said third party from making any further disclosure of such information without the consent of the Participant and/or Eustream.

Provided the registration documents are submitted to Eustream on time, Eustream shall verify their completeness in accordance with these Rules. If it is verified by Eustream that the submitted registration documents were received in full, Eustream shall notify the respective party thereof. The party becomes a Participant in the Open Season Procedure upon receipt of such notification of Eustream.

### 3.2. Regulatory issues

The Open Season Procedure is organized in a non-discriminatory and transparent way, complying with the relevant national and EU law and regulations, taking into account ERGEG Guidelines for Good Practice on Open Season Procedures as well.

Eustream cannot be held responsible for any misinterpretation or usage of the data contained in this document and Eustream does not accept any liability of any kind for acts, consequences, losses, etc., arising from the information or from inaccuracy, incompleteness, or omissions in the contents of this publication.

### 3.3. Information campaign

Eustream will provide all available necessary information in respect of the Open Season Procedure to all parties involved, provided by means of regular updates at Eustream website.

### 3.4. Timeline

Eustream is inviting the potential Applicants directly to the Binding Phase of the Open Season Procedure. The Binding Phase of the Open Season Procedure shall start on 4<sup>th</sup> November 2014 by start of the registration process. All Participants that have been registered by Eustream can submit Binding bids for their requested capacity. The Binding Phase will be completed upon conclusion of the transmission contracts with the Applicants after the evaluation process and allocation procedures are done.

Eustream will publish information and instructions in respect of the Open Season Procedure at its website [www.eustream.sk](http://www.eustream.sk).

#### Timeline of the Open Season Procedure:

	Date	
	4.11.2014	Start of the registration process
	until 17.11.2014	End of the registration process, submission of questions
	until 19.11.2014	Submission of financial security, submission of Binding bids

	until 21.11.2014	Evaluation and allocation process, publication of the results
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## 4. Security

The general principle of calculation of financial security of the Participant is as follows:

Together with the Binding bid, the Participant shall submit to Eustream the financial security in the form either of the following:

- a) an irrevocable, unconditional bank guarantee payable on first demand,
- b) a cash collateral.

In case of cash collateral the bank account number will be provided by Eustream upon the request of the Participant (should capacity allocation procedure by this Open Season fails due to any reason, all cash collaterals would be refunded in full immediately upon such decision is announced. For avoidance of doubt, in such event the costs associated with such financial security are borne by Applicants only, without right to any compensation). For the purpose of provision of the bank guarantee, only a bank having an external credit rating at least Baa3 Moody's grade or equivalent from S&P or Fitch shall be used. The financial security shall be valid for the whole period of the required transmission capacity plus additional two months. The validity of the bank guarantee could be shorter, however not less than 10 months, but the Applicant shall be obliged to renew such bank guarantee or provide a cash collateral in the required amount each time at the latest two months before its expiry so that ultimately the whole period of the required transmission capacity plus additional two months is secured (for avoidance of any doubt, each bank guarantee shall secure also this obligation of the Applicant to renew such bank guarantee or provide the cash collateral).

The amount of the financial security to be provided by the Participant shall be equal at least to the fee expected to be paid by the Participant for capacity during the two months of the highest capacity booking of the Participant's commitment requested by it in the Binding bid.

Eustream reserves the right to increase requested amount of financial security to be provided by the Participant in case of the Participant (i) with an absence of the investment credit rating or investment credit rating equal or below to Baa3 Moody's grade (or equivalent from S&P or Fitch) and (ii) no previous experience in natural gas transmission via network of Eustream. Such increase shall be limited to the fee expected to be paid by the Participant for capacity during the six months of the highest capacity booking of the Participant's commitment requested by it in the Binding bid

The fee for capacity shall be calculated on the basis of the methodology of Eustream as defined by Chapter 6. For avoidance of doubt the security already comprises the security requested as per

operational order to be provided in connection with the requests for capacity. This is without prejudice to the right of Eustream to request replacement security as per operational order in case the financial security provided by the Participant is used for satisfaction of its due obligations.

## 5. Allocation of capacity

Eustream will allocate the capacity in the following way:

### 5.1. Offered capacity

Eustream offers entire Technical Capacity in the following amount to be allocated to the Applicants during the Open Season procedure (hereinafter referred to as "**Offered Capacity**"):

Exit point SK: Budince

Daily capacity offered in the Open Season: 46 800 MWh (interruptible, depends on the current pressure conditions at entry/exit points)

Available from: 1<sup>st</sup> January 2015

### 5.2. Lot size, duration of lots

- a. The Offered Capacity is being offered in lots. One lot of the Offered Capacity (hereinafter defined to as "**Lot**") means transmission capacity of 5 200 MWh/day.
- b. Lots shall be booked by Applicants for a period of time determined in accordance with this paragraph b. (hereinafter referred to as "**Lot duration**").

Required Lots shall be in Annex 2 specified in groups ("**Group Lot**") with the ending dates.

As per Annex 2, for each Group Lot the Applicant shall specify only the following starting date of the Group Lot: 1<sup>st</sup> January 2015.

As per Annex 2, for each Group Lot the Applicant shall specify one of the following ending dates of the Group Lot: 31<sup>st</sup> December 2015, 31<sup>st</sup> December 2016, 31<sup>st</sup> December 2017, 31<sup>st</sup> December 2018, 31<sup>st</sup> December 2019.

- c. As per Annex 2, the Applicant must specify:
  - Number of Lots in each Group Lot
  - For each Group Lot the ending date in line with Article 5.2.b above



- d. The maximum amount of Offered capacity in Lots which one Applicant or its affiliate can submit is limited by the Offered Capacity. Only lots within the total size of Offered Capacity shall be taken into account. If Binding bid of the Applicant exceeds this limit, it shall be reduced to the aforementioned limit.

Without prejudice to d. above, due to the fact that Eustream and Ukrtransgaz investigate further possibilities for capacity increase, each Participant can by means of a statement annexed to the Binding bid inform Eustream on the number of Lots such Participant would prefer to book if the Offered capacity was not limited. Such statement would have an inforamatory purpose only (for prospective considerations) and would not have any implications on capacity allocation under these Rules.

### 5.3. Contracting

- a. Eustream offers solely the Offered Capacity (i.e. the incremental exit capacity of the IP Budince).
- b. Applicants booking the Offered Capacity are responsible to find their Shipper counterparty or to secure transmission capacity on the adjacent Ukrainian transmission network.
- c. If applicable, Applicants shall book capacity in the adjacent Ukrainian transmission network separately. Eustream is not liable to any party in case of a failure to book the capacity in the adjacent Ukrainian transmission network or for transmission services of the adjacent transmission network operator.
- d. Eustream shall offer the capacity of IP Budince not allocated under this Open Season Procedure in a standard way according to the procedure set by the national regulations and its network code.
- e. In case of delay of commissioning of the incremental capacity of the SK-UA Interconnector Eustream shall have the right to correspondingly postpone the starting date of the concluded transmission contracts without being liable and without paying any compensation for any consequence arising from such delay. In such case Eustream shall inform Applicants in due time and keep Applicants informed on new estimated date of commissioning. Such postponement will not invalidate the tariffs for the access to the transmission network and natural gas transmission agreed in the corresponding transmission contracts set according the Article 6 herein.

- f. In case (and only in such case) of a postponement of the starting date of the concluded transmission contract/s due to delay of commissioning beyond 31<sup>st</sup> March 2015 (the “**Long stop**” date) the affected shipper/s would have the right to withdraw from its/their transmission contract/s without any liabilities and/or compensations for Eustream and shipper/s.

## 5.4. Capacity allocation in case of overbooking

General rules for the situation of overbooking:

Shall the aggregated volume of the total capacity requested to be booked in accepted Binding bids for any period exceed the relevant Offered Capacity as detailed in Chapter 5.1. Eustream will apply the following pro rata rules for allocation of capacity amongst the Applicants within the respective period:

- a) For the purpose of allocation, Eustream shall split Offered Capacity into two (2) equivalent parts,
- b) Eustream shall allocate first part of the Offered Capacity to the capacities requested in Binding bids starting from the Lots with the longest Lot duration. Shall the capacities requested in Binding bids in any period in respect of the Lots with the same Lot duration exceed the relevant part of the Offered Capacity then pro-rata principle of allocation will be applied,
- c) Procedure as per 5.4.b) will be mutatis mutandis repeated for the rest of the Binding bids in descending order of the Lots durations,
- d) After application of rules as per 5.4.a), 5.4.b) and 5.4.c), Eustream shall allocate second part of the Offered Capacity to the capacities, or parts thereof requested in Binding bids not allocated under 5.4.b) and 5.4.c) based on pro rata principle without any prioritization.

For avoidance of any doubt, the reduction will be done only for the booking period when the capacity demanded in the accepted Binding bids exceeds the relevant Offered Capacity and the capacity for the remaining time periods will not be reduced. Eustream is ready to answer any queries relative to the described allocation principles upon request to any Applicant.

The allocation and publication of results shall be done and notified by Eustream till 21<sup>st</sup> November 2014 (“**Allocation**”). An Applicant whose capacity booking will be reduced compared to capacity in its Binding bid shall conclude the transmission contract for the reduced capacity.

## 6. Tariffs and access to the system

All rules for access to the SK-UA Interconnector, as well as for setting the respective business terms and conditions, including transmission tariffs are in full compliance with the valid regulatory framework of Slovakia.

### 6.1 Tariffs payable for access to the transmission network and gas transmission

Gas transmission is a fully regulated activity in the Slovak Republic and tariffs for access to the transmission network and transmission service are determined by the National Regulatory Authority - Regulatory Office for Network Industries (“ÚRSO”). Tariffs for gas transmission in the Slovak Republic are structured in a fully de-coupled entry/exit model (please consult the currently valid price decision of ÚRSO No. 0001/2014/P published at [www.eustream.sk](http://www.eustream.sk)).

Tariffs for the offered incremental capacity will be equal to the tariffs for the existing capacity products at exit point Budince. Tariffs for access to the transmission network and gas transmission (as valid for the year 2015) for the IP Budince are as follows, whereas for all contracts the tariffs are subject to escalation in line with currently valid price decision of ÚRSO No. 0001/2014/P:

Tariff group (booked daily capacity)	Initial tariff rate at the exit point Budince $(P_{0en(n)(m)(t)})$ (EUR/(MWh/d)/y)
1. $T_{en1/ex1}$ (up to 18 200 MWh/d)	227.63
2. $T_{en2/ex2}$ (over 18 200 MWh/d including, up to 416 000 MWh/d)*	231.19

\* please note that the final tariff for the capacity group No. 2 is to be calculated from the initial tariff, reflecting the daily capacity factor (please consult the formula under Chapter II. of the price decision of ÚRSO No. 0001/2014/P).

Rate of tariff of gas for operational needs (calculated as percentage rates from the physically transmitted gas quantity):

<b>Exit point Budince</b>
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Tariff rate at the exit point (%)	0,70
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For all further terms and conditions of the tariff-setting methodology, the respective provisions of the price decision of ÚRSO, including the tariff for the IP Budince, apply as applicable (document is available at [www.eustream.sk](http://www.eustream.sk)).

Tariffs for each Group Lot shall be set separately on the following basis:

- The Time factor  $I_y$  (please consult the price decision of ÚRSO) shall be determined for each Group Lot.
- Tariff Group capacity classification shall be set on the basis of each Group Lot. In case that the Group Lots do overlap at certain time period then sum of such overlapping capacities shall be used for Tariff Group capacity classification at such time period and at such time period only.

Eustream is ready, upon request of a Participant, to calculate the applicable tariff for a capacity for which the Participant is interest to place in his Binding bid (within the timeframe for questions as per Chapter 3.4.).

## 6.2. Terms and conditions of bidding

Each Binding bid shall be valid until 31<sup>st</sup> March 2015. The concluded Transmission contracts in accordance with these rules shall be valid for their contractual term without prejudice to Chapter 5.3. (f). The financial security shall be valid for the whole period of the required transmission contract plus two months without prejudice to Chapter 5.3. (f).

Each Binding bid shall contain a commitment that the Applicant will accept all terms and conditions specified in these Rules without reservation. The Applicant may not modify or withdraw the Binding bid(s) submitted by it. The Binding bid shall contain an expressed commitment that it is irrevocable, unconditional and binding subject to open season rules at the time of bid submission.

If the Applicant fails to comply with any of the above commitments or with the terms and conditions of these rules, Eustream shall have the right to refuse such Binding bid.

In particular, Eustream shall have the right to refuse a Binding bid if:

- it is not submitted in full, at latest at the date specified in the Rules;
- it does not comply with the terms and conditions specified in the Rules;
- it does not contain direct reference to the binding nature of it as it is set out above.

Eustream shall notify the Applicant in case its Binding bid is refused. If a Binding bid is refused by Eustream, then the Applicant is no longer bound by it.

### 6.3. Supporting Adjacent Operator

These Rules of the Binding Open Season serve solely for the incremental exit capacity of the IP Budince. This Open Season is recognized by Eustream's partner at IP Budince, the Ukrainian transmission enterprise Ukrtransgaz. Request for transmission services in the territory of Ukraine has to be made separately with Ukrtransgaz and does not form an integral part of this Open Season.

For queries relative to access to transmission services of Ukrtransgaz, please contact following contact person, or refer to [www.utg.ua](http://www.utg.ua):

Contact person: Anton Kolisnyk

Phone: +38 (044) 461 2234

Mobile: +38 (066) 352 7460

E-mail: [kolisnik-av@utg.ua](mailto:kolisnik-av@utg.ua)

## 7. Notices

Unless expressly otherwise provided for in this document, all notices or other communications to be given or made hereunder to Eustream shall be in writing, shall be addressed for the attention of the person indicated below and shall be delivered personally or sent by prepaid post or by fax. All notices given by fax shall be confirmed in writing delivered or sent as aforesaid but the failure to give such confirmation shall not invalidate the original notice. The language of all notices shall be the English language. The address for service of Eustream and its respective fax number shall be:

**For Eustream:**

Address: Votrubova 11/a, 821 09 Bratislava, Slovak Republic

Fax No.: +421 2 6250 7152

Phone No.: +421 2 6250 7155, +421 2 6250 7120

Attention: Marek Lendvorský, Milan Sedláček

E-mail: [transmission@eustream.sk](mailto:transmission@eustream.sk)

All communication addressed to Eustream shall be effective upon actual receipt.

## 8. Other provisions of the Rules

Eustream reserves the right to amend the terms and conditions of the Rules and the Open Season Procedure. In case of such amendment, each Participant shall be informed in a non-discriminative way. Eustream does not assume any responsibility vis-à-vis any Participant for any consequence arising from such amendments. Eustream reserves the right to ask for supplements from any Participant, if needed. Eustream reserves the right to accept no bid and/or to withdraw from the Open Season Procedure without giving any reasons thereof and without being liable for any consequence or paying any compensation therefore.

Eustream shall have the right to declare the bidding process frustrated without giving any reason thereof and without being liable for any consequence or paying any compensation therefore.

All costs and expenses incurred related to the bidding process and preparation of bid will be solely borne by the Applicant.

As previously mentioned, these Rules of the Binding Open Season serve solely for the incremental exit capacity of the Slovak part of the SK-UA Interconnector. For bids in the Ukrainian part of the SK-UA Interconnector the Applicants shall follow the standard procedure as in chapter 6.3. Supporting Adjacent Operator.

## 9. Governing law, dispute resolution

The relevant laws of the Slovak Republic in force will govern these Rules and any issue not regulated in the Rules. All disputes arising from or related to the bidding process shall be settled exclusively by the Arbitration Court of the Slovak Chamber of Commerce and Industry. The place of arbitration shall be Bratislava; its language shall be the English language. The number of arbitrators shall be three (3). The resolution of the Court of Arbitration shall be final and enforceable.

## 10. Miscellaneous

The following Annexes are an integral part of the Open Season Procedure and shall be published at the Eustream website in due course:

Annex 1: Registration form

Annex 2: Binding bid (Binding capacity request, to be provided to registered Participants only)