

# EFET

## European Federation of Energy Traders

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## Guidance Notes

to the

## Spanish AOC Appendix (Version 1.0) to the EFET General Agreement concerning Delivery and Acceptance of Natural Gas

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Please note that the Spanish AOC Appendix is designed to provide trading terms at the existing Spanish Virtual Trading Point ("*Almacenamiento Operativo Comercial*" or "AOC"), therefore it will need to be revised as and when the regulation for the new gas hub, which is under discussion at the time of publication of the AOC Appendix, becomes available.

### Introduction

At present, gas in the Spanish market is negotiated through bilateral OTC trading and nominated through an electronic platform developed by ENAGAS (the so-called MS-ATR) with more than 30 active traders. Gas is traded wholesale at the international interconnections or beach entry points, the virtual balancing point (AOC) and the virtual storage point comprising

the Spanish underground storage sites in operation.

There is at present no organized gas hub to provide a price reference for gas in Spain. However, in April 2010 the CNE published a road map, further detailed in the "Report on the Spanish Energy Sector" published in March 2012 to develop a gas hub in Spain. The analysis concluded that the current conditions experienced in the Spanish Market are enough for the development of the hub, with similar services to the ones offered in other gas hubs in Europe.

On 2013 the CNE set up a working group which has led to a proposed amendment of Royal Decree 949/2001 to adapt the Spanish regulation and facilitate the creation of an organized wholesale gas market (hub). Specifically, the main point of the proposal is the definition of a contracting model with unbundled entry/exit capacity booking (no feasibility analysis is required). In addition, the proposal and its subsequent developments, are structured in a manner consistent with regulatory developments that are taking place at European level ("gas target model"), with market mechanisms both for the allocation of capacity, balancing and congestion management.

Once the regulation for the new hub is finalized, this AOC Appendix version 1.0 which governs trading at the current AOC, will need to be revised accordingly by EFET and its member companies as some of the provisions or amendments to the EFET General Agreement may no longer be required.

### **Explanation of Specific Provisions in the AOC Appendix**

1. Clause 4: Nominations
  - 1.1 Currently, the Enagas MS-ATR platform operates a single matching system, where only one of the parties enters the nomination and the other party has to confirm such nomination (but cannot change it), and if not confirmed, then the nomination is deemed to be equal to zero. From a legal point of view, Seller should be the Party responsible for entering the nomination in the MS-ATR as part of its obligations to deliver and make the gas available to the Buyer. However, the market practice in Spain appears to be that the initiating party of a trade, whether the Seller or the Buyer, has to enter the nomination in the MS-ATR. Therefore, for purposes of determining which party is the defaulting party in the event of failure to deliver/take, the AOC Appendix expressly sets roles so that, unless otherwise agreed in a confirmation, the Seller is the party with the obligation to enter the nomination in the MS-ATR. The Buyer has the obligation to confirm if the nomination is correct. The MS-ATR system logs all the nominations entered by either party, whether confirmed or not confirmed, which facilitates the identification of the party at fault when the final nomination does not equal the contract quantity.

1.2 Clause 5: Force Majeure

1.3 In Spain, there is no balancing information intraday therefore there is some flexibility for the shippers since there is no daily cash-out with the TSO, without prejudice to penalties for daily imbalances that may apply. The TSO is thus granted broad powers in the network code to intervene and, if required, restrict shippers nominations and therefore parties are not able to fulfill delivery /take obligations in circumstances where there may not be formal force majeure declaration or similar event that would fall within the more narrow EFET Transportation Failure definition. As a result, there is a need to amend the standard EFET Force Majeure, by replacing the Transportation Failure with a broader exemption of the parties' delivery and take obligation in those instances where there is physical curtailment due to the unavailability of the AOC. It is expected that the new gas hub in Spain will involve a review of some of the current network code provisions and, reduce the powers for TSO intervention to strictly defined emergency situations. Depending on the outcome of such review and the firmness of the new gas hub, Clause 5 of the AOC Appendix may need to be reviewed to narrow it down or simply revert to the EFET standard Force Majeure provision.

1.4 Clause 6: Remedies for Failure to Deliver or Accept the Contract Quantity

1.5 Since at present there is no organized gas hub to provide a daily price reference for gas in Spain, it is not possible to apply the standard replacement cost remedy in the EFET. Therefore, a temporary solution has been provided so that when (i) there is replacement gas purchased or sold by the non-defaulting party then such replacement price is invoiced to the defaulting party and (ii) when there is no replacement gas purchase or sold, then the parties will apply a percentage of the contract price previously agreed in the confirmation to invoice the defaulting party. Once there is an organized hub in place, with a published daily reference price, this temporary provision will not be required and the EFET standard remedy for failure to deliver/take can apply.

1.6 Clause 8: Taxes

1.7 The EFET standard definition of Taxes has been amended to expressly include transportation tolls, charges and losses (*peajes, canones y mermas*), typically charged to shippers in the Spanish gas transport system, in order to void any doubts regarding these being comprised in the Tax definition. The allocation of these Spanish taxes, as well as any increase, will then be as per the EFET standard Tax provision, with any taxes up to title passing at the delivery point being for Seller's account. However, given that these tolls, charges and losses are updated every year (however, a quarterly update is set up in the legal

framework and may be applied by the Ministry if deemed necessary), a specific election has been included in the confirmation templates for AOC Transactions to facilitate the change of the standard EFET tax allocation with respect to new Spanish tolls, charges and losses so that for example, in transactions for longer supply periods, the Seller can always pass through any such increase of tolls, charges or losses to Buyer.