

TO: Mr Krzysztof Tchórzewski, Minister of Energy
Mr Tomasz Dąbrowski, Undersecretary of State
CC: Mr Florian Ermacora, DG Energy, B2
Mr Bartłomiej Gurba, DG Energy, B2
Mr Dennis Hesselning, ACER
Mr Maciej Bando, Urząd Regulacji Energetyki

8 April 2019

Subject: EFET¹ follow-up letter on the accessibility of storage capacity in Poland

Dear Mr. Tchórzewski, Dear Mr. Dąbrowski

First of all, we would like to thank you for your answer of 31st October 2018 where you have addressed EFET's concerns² about the accessibility of storage capacities in Poland. We were very pleased to hear, that the Ministry of Energy is preparing the amendments to the Energy Act as of April 10th, 1997 (Journal of Laws 2018, section 755 with amendments, further referred to as "**the Act**"), which envisages the obligation of the Polish Storage System Operator (SSO) to submit its Storage Services Rules (SSR) for the approval of President of Energy Regulatory Office. However, in our understanding the amendment is under public consultations since November 2018 and no particular changes have been made to the way the SSO is functioning.

EFET appreciates the fact that our concerns have been addressed in the draft amendments to the Act and that they have been duly consulted with the stakeholders, yet we would like to learn more about the timeline for implementing these changes. We also take this opportunity to reiterate the concerns we have raised **about the independence of the Energy Regulatory Office** under the consultation process³. We have noticed, that inter-ministerial consultations have already taken place and were finalized with the round of opinions at the beginning of March 2019⁴, but we have seen no follow-ups. Below, we explain why in our opinion **the envisaged reform of the Polish SSO's functioning is urgent and of utmost importance** to the gas market participants.

To begin with, since the amendments to the Act are still in the drafting phase, Gas Storage Poland (GSP, Poland's only SSO remaining part of the former incumbent's capital group) continued introducing changes to the Storage Service Rules, directly affecting the way storage services are offered. Once again, the amendments to the Service Rules were announced right at the start of the storage capacities allocation procedure for the gas year 2020/2021 (further

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² We have expressed our concerns in a [letter dated 2 July 2018](#)

³ Please refer to our [consultation response](#) dated 9th November 2018 for further reference.

⁴ <https://legislacja.rcl.gov.pl/projekt/12317354/katalog/12543035#12543035>

referred to as the “**the procedure**”) at the end of January 2019⁵. This has caused major uncertainty among the market participants, who were not sure which rules would be binding for the services offered under the procedure.

Furthermore, we wish to highlight that this year the procedure included new capacity products that have not been envisaged in the Storage Service Rules in force, but only in the version being consulted. This implies that the consultation procedure was organized as pure formality and stakeholder feedback was not going to be taken seriously. It therefore questionable whether the third-party access rules in terms of storage facilities have been met, particularly in terms of publishing relevant information on the availability of services and their compatibility with storage facility users' reasonable commercial needs⁶.

Finally, it is our understanding that once again the amendment to the storage service costs shall apply to the services the procedure for which has already ended⁷. The calculations shall be adjusted unilaterally by the SSO, based on the new tariff that has been ratified just recently by the President of the Energy Regulatory Office⁸. Practically, the new tariff will come into force in mid-April or mid-May at latest, two months' after closing the procedure and announcing its results.

To conclude, EFET believes that GSP enjoys an unreasonable level of operational freedom, despite holding the status of a monopoly on the market. This status is further reinforced through the changes introduced under the amended Act on Reserve of crude oil, refinery products and natural gas, due to which the use of foreign storage facilities for meeting the related storage obligations is no longer commercially viable. We consider the activities of the SSO to be non-transparent and detrimental to the development of the Polish gas market. Against this background we would once again like to request the Polish authorities to implement the necessary amendments to the Energy Act.

Kind Regards,
On behalf of EFET TF CSEE-G



Co-Chair

⁵ the same approach was taken by the SSO last year: <https://ipi.gasstoragepoland.pl/pl/menu/transparency-template/?page=regulacje-prawne/regulamin-magazynowania/>

⁶ as per art. 15 of Regulation (EC) No 715/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the natural gas transmission networks and repealing Regulation (EC) No 1775/2005.

⁷ Last year the tariff amendment introduced in May applied to the services contracted back in March: https://ipi.gasstoragepoland.pl/wp-content/uploads/2018/08/zmiana-Taryfy-1_2018.pdf

⁸ Please see [URE's decision](#) from 29th March