



EXECUTIVE SUMMARY

# Tariff methodology for the Danish transmissions system – NC TAR approval

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## SUMMARY OF THE DECISION

In this case, The Danish Regulatory Authority (DUR) is to make a decision in relation to a tariff methodology proposal submitted to DUR by the Danish Gas TSO, Energinet, in December 2018. The background for the methodology submission is the fact that all EU Member States have to approve national tariff regimes in respect of NC TAR (EC REGULATION (EU) 2017/460 of 16 March 2017 establishing a network code on harmonized transmission tariff structures for gas) by 31 May 2019 at the latest.

Energinet's tariff methodology will apply from the next gas year starting on 1 October 2019 – coinciding with the beginning of an extraordinary and challenging period for the Danish gas system/market where there will be significant changes in both gas flow direction and gas flow volumes. In October 2019, the major Danish upstream gas hub, Tyra, will close down for a rebuild that is expected to last until October 2022. In addition, a new major infrastructure project, the Baltic Pipe Project, which can transport up to 10 bcm/year from the Norwegian upstream infrastructure through Denmark to Poland will come is expected to be ready to transport gas from October 2022. DUR therefore finds that the regulatory period of this decision could reasonably be set to cover three gas years – October 2019 until October 2022.

The main elements of the tariff methodology proposal submitted to DUR are:

- A uniform allocation of capacity tariffs across the Danish transmission system – i.e. uniform tariffs in all entry points and exit points of the system
- A split of the transmission tariff in a capacity share and volume share that reflects Energinet's capital costs (capex) and operational costs (opex) – with a cap on the volume share of 40%.
- A 100% discount on transmission tariffs to/from the virtual storage point.
- A discount (multiplier) of 5 to 10% on capacity contracts with a duration of 5 years or more – increasing with the length of the contract.

In addition, the submitted methodology maintains the present short-term multipliers for capacity products below 1 year, and it maintains the present non-transmission tariffs of which the most important one is the tariff for security of supply. This tariff is a PSO tariff paid by Danish consumers to Energinet.

Energinet has discussed the draft methodology proposal with market participants and has submitted the proposal to public consultations – most recently in the “Final Consultation Document” where the entire methodology proposal was published in

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line with the process envisaged by NC TAR. The market players have generally expressed full support for the Danish tariff methodology proposal.

A main requirement of NC TAR is that transmission tariffs shall be capacity based and that a RPM (Reference Price Methodology) should be set that allocates capacity tariffs across the individual entry points and exit points of the transmission system. Further, NC TAR describes a basic RPM: The Capacity Weighted Distance methodology (CWD). The CWD allocates costs across the individual entry points and exit points taking into account both distance and the share of expected capacity reservations. If the proposed national tariff methodology is different from the CWD then it should at least be compared to the CWD. The chosen RPM shall also be assessed in terms of cross-subsidization between domestic gas transport and cross-system transport (transit) in a so-called Cost Allocation Assessment (CAA). NC TAR also requires that a minimum discount of 50% on capacity tariffs to/from storage points shall apply, and that a possible volume tariff (based on actual gas flows) shall be the same in all entry points and exit points.

According to NC TAR, ACER has to analyze the national tariff methodology proposal and issue a non-binding report with the findings of its analysis. In its analysis of the Danish proposal, ACER recognizes that a uniform tariff methodology is in theory a robust methodology as stated in the tariff proposal, but ACER also finds that it should be better explained why a uniform RPM could be considered to be more robust than a CWD model. ACER also finds that DUR should analyze the degree of potential cross-subsidization of the various RPM methodologies.

ACER recommends that DUR examine if there is a strong correlation between operational costs (OPEX) and actual gas flows and – if this is not the case – then DUR should reduce the volume-based tariff. ACER points to the fact that the same volume-based tariff should be set for all exit points, including the exit point from storage, and ACER recommends that DUR examine if Energinet's non-transmission tariffs (e.g. tariffs for emergency supplies) are in accordance with NC TAR.

Finally, ACER recommends that the national regulator (DUR) set a fixed regulatory period for which the Danish tariff methodology shall apply.

**The uniform RPM:** Energinet argues that the uniform tariff methodology is robust towards changes in flow quantities and flow patterns and that uniform tariffs give more transparent price signals compared to the CWD. Energinet also points out that distance is not an important cost driver in the Danish transmission system, and that all users benefit from the Baltic Pipe Project as the significantly increased gas flows resulting from BP will reduce the general tariff level of the transmission system. Also, it is fair that both costs and benefits (lower tariffs) are shared equally between new and existing shippers through uniform capacity tariffs. Energinet also argues that uniform tariffs will help improve gas trade and competition in the gas market.

Energinet has made calculations as to how tariffs would develop in a CWD scenario. Tariffs would then result in a relatively high degree of tariff differentiation between the individual tariff points of the system. Energinet has also calculated CAA values for the uniform tariff methodology and the CWD methodology, and the results show that uniform capacity tariffs generally result in a lower degree of cross-subsidization between domestic shippers and cross-system shippers. According to Energinet, the uniform methodology is more robust towards changes in flow patterns and changes in the cost base of Energinet after the Tyra rebuild period and the start of gas transportation through the Baltic Pipe line.

**Capacity and volume split – and volume tariff:** Energinet has submitted a proposal for a transmission tariff that consist of a capacity share and a volume share where the split between the respective shares reflects Energinet's capital costs (capex) and operational costs (opex) – with a cap of 40% on the volume share. Energinet's volume tariff is based on expected future gas quantities in the system, and it is paid at exit points. Energinet finds that a relatively high share of volume-based tariffs supports a flexible use of the system and the development of bio-methane and the green transition in general. Energinet points out that there is no capacity bottlenecks in the Danish transmission system, which could be an argument for setting a higher capacity tariff. The direct variable OPEX of the system is today approx. 8%, but the present data quality makes it difficult to calculate the variable costs of Energinet in a precise manner. The variable OPEX is likely to be higher than 8%. In addition, calculations show that shippers with different load factors are affected differently by the capacity and volume split, and a different split will have redistributive effects between various shipper groups. In Energinet's view, the chosen tariff structure should support a broad and diversified use of the system and support various types of users and consumers. Overall, Energinet recommends that the present split be maintained at least during the Tyra rebuild period, which would also allow Energinet to have a dialogue with the market participants on what would be the effect of a higher capacity tariff on the functioning of the market.

**A 100% discount on transmission tariffs to/from storage:** Energinet argues that efficient access to storage is very important and that historically Energinet has never set transmission tariffs to/from the two Danish storages. The virtual storage point in the Danish market model is considered an internal system point. If Energinet were to set a volume tariff for gas transportation to/from the storage point then this would mean that the shippers pay tariffs twice for the same gas volume. Energinet draws attention to the fact that the two Danish storages are becoming increasingly important in terms of system balancing, but especially during the Tyra rebuild period the storages will be vital to ensure security of supply in Denmark. In addition, CAA sensitivity calculations show that the introduction of a volume-based tariff to/from storage would lead to cross-subsidization between domestic shippers and cross-system shippers – to the benefit of cross-system shippers.

**Short-term and long-term multipliers:** Energinet proposes to apply both short-term multipliers and long-term multipliers. Energinet has applied short-term multipliers for short-term capacity products (< 1 year) since 2016 with the purpose of promoting short-term gas trade and maintaining long-term price signals. The purpose of the proposed multiplier on long-term capacity contracts (a discount of 5-10% on capacity contracts with a duration of 5 years or more) is to reflect the fact that shippers with long-term capacity bookings incur a larger risk while at the same time providing certainty for Energinet's tariff income. The proposed multiplier applies to all capacity contract for a duration of 5 years or more, including capacity contracts awarded in the Open Season 2017 for the Baltic Pipe Project. Energinet also proposes to extend Open Season 2009 capacity bookings by one year to allow shippers who hold OS 2009 contracts to have a discount for a five-year contract.

**Non-transmission tariffs:** Energinet has checked whether it is still relevant to charge various minor tariffs/fees that appear from Energinet's price sheet - some of which seem to be zero. Energinet has done this at the recommendation of ACER and the request of DUR. Following this check, Energinet has removed several fees from the price sheet, and Energinet now only levies the so-called "emergency supply tariff" as a non-transmission tariff. Energinet levies the emergency supply tariff on all Danish consumers, and the tariff comprises Energinet's costs for fulfilling its security of supply obligation.

### **Additional data and sensitivity analysis from Energinet**

DUR has asked Energinet to provide more sensitivity analysis and explanations on a number of subjects of the Public Consultation Document. This was also a recommendation from ACER.

The additional analysis data and calculations from Energinet show that changes to the various tariff methodology assumptions tend to result in higher tariff variations over time with the CWD method than with the uniform tariff method. Changes to the entry/exit split show that when the induced split from the uniform tariff methodology is applied to the CWD methodology then the CAA of the CWD methodology will fall. However, no variations are so significant that they change the overall picture.

Energinet's additional sensitivity analysis on storage shows that the CAA result is sensitive to changes in tariff methodology assumptions. Calculations show that if 10 per cent of the total Danish storage capacity is used for domestic transport then neither the CWD nor the uniform tariff methodology will pass the CAA test in the period before the Baltic Pipe Project starts operations whereas both methodologies will pass the CAA test after the Baltic Pipe Project starts operations.

### **THE MOTIVATION FOR DUR'S DECISION**

DUR has reviewed Energinet's proposed tariff methodology and assessed whether it complies with NC TAR and the European Gas Regulation.

In relation to the **RPM (uniform tariffs)**, DUR finds that the submitted RPM methodology with uniform capacity tariffs complies with NC TAR. DUR finds that uniform tariffs are robust toward changes in flow patterns and flow direction and that the methodology is transparent and easy to understand/apply for the shippers. RPM reflects system costs, and DUR is of the opinion that a complex tariff methodology should not be introduced because the Danish transmission system is not a complex system. DUR finds that a simple methodology will make access to the Danish gas market easier and easier to use. Compared to the CWD methodology the proposed RPM with uniform tariffs is more robust, and it will especially provide more tariff stability during the coming regulatory period, which will see major changes in gas flows and system use.

DUR finds that a number of factors speak in favor of not taking distance into account when setting tariffs for the Danish transmission system. The Danish system was seen and built as one comprehensive system, and the depreciation period for the system was later extended as a whole; there is plenty of capacity in the Danish system and the use of compressors and metering stations does not depend on distance. DUR finds that the costs of the Baltic Pipe Project should be born evenly by all shippers (domestic and cross-system) as this will help ensure that both costs and benefits of the Baltic Pipe are shared. In relation to the volume risk of the Baltic Pipe Project on domestic shippers is it important to evaluate the relationship between risks and benefits in terms of reduced tariffs for all existing shippers due to substantial new gas flows through the Danish transmission system. DUR has made this evaluation in e.g. its formal decision on the economic test for the Baltic Pipe Project (i.e. approving the economic test parameters and setting the so-called F-factor for the project). DUR also points to the fact that there are ways of limiting the risks associated with the project if the Baltic Pipe route is used less than expected in the future which, however, DUR has no reason to believe will be the case. Overall, DUR finds that the domestic shippers (consumers) are safeguarded against the inherent risks of the Baltic Pipe Project.

Finally, DUR finds that a uniform tariff methodology will ensure that differences in tariff levels do not become an element that could impede competition in the Danish gas market.

Concerning **the volume/capacity split and volume tariffs**, DUR finds that the wording of NC TAR (Article 4(3)) on the possibility of having a flow-based charge (volume tariff) levied for the purpose of covering the costs mainly driven by the quantity of gas flows allows to include other costs than pure gas flow costs in a volume tariff. The costs strictly related to the quantity of gas flows in the Danish system are approx. 8% at present, but 8% is the lowest possible figure and a very conservative one. DUR is of the opinion that the split between the capacity share and the volume share of the transmission tariff could be in the interval 90/10-85/15 as a starting point – and still be in line with Article 4(3) of NC TAR.

It is not clear how the shippers and the wholesale market would react to a significantly higher capacity tariff, and it is therefore also not clear what effect it would have on the market functioning. However, it is clear that the effect will be different in the Tyra rebuild period from what it will be after the Tyra rebuild period. DUR finds that it would pose an unacceptable risk to the functioning of the Danish gas market if the split was changed dramatically (90/10 or 85/15) at the same time as a very exceptional and uncertain period for the Danish market is about to start. However, DUR finds that the capacity/volume split needs to be reduced to better align the Danish tariff structure to the requirements of NC TAR as the gap between the proposed 40% cap on the volume share and the documented costs for transporting the gas is too high. DUR finds that the necessary changes to the capacity/volume split need to take place gradually because of the exceptional circumstances of the Danish gas system for the next regulatory period (Tyra shutdown).

DUR also finds that a gradual implementation of Article 4(3) of NC TAR can be justified with reference to the Gas Regulation which is the legal basis for NC TAR. The Gas Regulation states that the objective of the Regulation is “setting non-discriminatory rules for access conditions to natural gas transmission systems taking into account the special characteristics of national and regional markets with a view to ensuring the proper functioning of the internal market in gas”, cf. Article 1(a) of the Regulation. It is also stated that it is an objective of the Regulation to “facilitating the emergence of a well-functioning and transparent wholesale market with a high level of security of supply in gas (...)”, cf. Article 1(c). According to the Regulation, the objectives shall also include the setting of harmonised principles for tariffs, or the methodologies underlying their calculation, for access to the network (...)”, cf. Article 1.

DUR finds that the capacity/volume split can discretionarily be set at 70/30 for the next regulatory period covering the period from 1 October 2019 to 1 October 2022. This split represents a significant reduction (about 18%) from the present split of 52/48. A split of 70/30 takes account of the vulnerable supply situation for both the Danish and the Swedish gas markets and the uncertainty about the market would react to a significant change of the framework conditions for the market. DUR also finds that the fact that the Tyra rebuild period is limited to three years is an argument in itself speaking in favor of setting a discretionary capacity/volume split for a regulatory period of the same length (three years) that does not fully meet all requirements of NC TAR.

The next regulatory period will cover a post-Tyra period where the market uncertainty and the vulnerable security of supply situation will no longer be relevant factors. DUR therefore looks forward to receiving a methodology submission for the

next regulatory period with a proposed volume share that more precisely reflects the costs driven by the quantity of gas flow through the system. Further, DUR awaits to receive more consolidated and comprehensive data from Energinet on the costs directly driven by the quantity of gas flows as part of the next methodology submission. DUR also expects Energinet to make an assessment as national TSO – as part of the methodology submission – of the expected impact on the market functioning of the proposed split, cf. the objective in the Gas Regulation that national tariff systems shall help secure well-functioning wholesale markets (Articles 1 and 13).

Finally, DUR is of the opinion that there could be valid reasons for having a level of flow-based tariffs that includes a certain “margin” to promote the green transition and the coupling of the electricity and gas sectors. Sustainable energy forms like bio-methane and wind power typically have an uneven production profile where a very high capacity tariff could slow down the necessary green transition and an effective sector coupling between electricity and gas.

Concerning the **100% discount on tariffs to/from storage**, DUR finds that it is within the scope of NC TAR to offer a discount on both the volume tariff and the capacity tariff. A discount on the overall tariff is fully in line with the purpose of the discount – namely to acknowledge the general contribution to system flexibility and security of supply of such infrastructure. Discounts on volume tariffs may serve the purpose of the rule as well as discounts on capacity tariffs, and the fact that flow-based charges (volume tariffs) are not explicitly mentioned in Article 9 of NC TAR does not necessarily mean that a discount on such tariffs (where they are applied) is prohibited. Article 9 must be understood as a minimum requirement. Concerning the requirement that shippers should pay the same flow-based charge at all entry points and exit points, DUR is of the opinion that it would be contradictory to approve a certain discount (the 100% discount) in acknowledgement of the contribution of the storages to system flexibility and security of supply and then introduce a new tariff element in the Danish tariff methodology (a volume tariff to/from storages) to fulfill a legal requirement of NC TAR (that does not relate to storage tariffs) that possible flow-based charges should be the same at all entry points and all exit points, including entry/exit points to/from storages. This cannot have been the intention of the lawmakers.

In addition, the introduction of a volume tariff at the exit point from the virtual storage point would mean that the CAA test exceeds the allowed level for cross-subsidization. DUR notices that the two Danish storages do not add costs to the transmission system but, on the contrary, they help reduce transmission costs via their contribution to system flexibility and security of supply. Finally, the two storages are an integral part of the system, and historically shippers have not paid transmission tariffs to/from storage since the market liberalization in 2004.

Therefore, DUR is of the opinion that it is in line with the purpose of the gas Regulation (Article 1) and in line with NC TAR (Article 4(3), Article 9(1) and consideration 4) that a discount of 100% be applied to capacity and volume tariffs to/from the virtual Danish storage point.

Concerning the proposed **multipliers on short-term capacity products**, DUR takes notice of the fact that the proposed multipliers are within the allowed range, cf. Article 13(1) of NC TAR. DUR is of the opinion that it is important that Energinet can offer both attractive short-term capacity products and attractive yearly products to the market, and that the level of multipliers should reflect the actual conditions of the system, whether there are capacity constraints in the system and the level of multipliers in adjacent systems.

DUR therefore approves the proposed level of multipliers for short-term capacity products.

Concerning the fact that there are **no seasonal factors** in the proposed tariff methodology, DUR finds that the argument to be valid that there is no need for seasonal factors (multipliers) in a transmission system with no capacity constraints.

Concerning the proposed **multipliers on long-term capacity contracts**, DUR remarks that DUR primarily evaluates the proposed multipliers in the light of legal requirements of equal treatment of system users, equal terms of competition and balancing the need for facilitating short-term trade while securing the revenue of the transmission system operator and giving the right investment signals. Further, DUR makes reflections and statements on what will be required for DUR to be able to approve a possible new incentive structure in the Danish transmission tariff system for the future. A possible multiplier (discount) on medium and/or long-term transportation contracts would constitute such a new incentive structure in the Danish transmission tariff system.

*Initially*, DUR finds that there can be valid arguments for introducing an incentive structure in the Danish transmission tariff system, i.e. for offering a discount on the tariffs for medium and long-term capacity contracts. Long-term capacity contracts provide an investment signal to the TSO by guaranteeing a stable and long-term revenue to the TSO. Also, such a discount incentivizes shippers to enter into long-term contracts with the TSO even if they thereby accept to have less flexibility and expose themselves to increased financial and regulatory risks compared to other shippers who are able to buy and use capacity in response to the short-term price signals of the market - and in response to the regulatory rules applicable at the time of booking capacity. DUR finds that it can be justified (legally and de facto) to compensate shippers for their willingness to assume additional risks in relation to the additional financial security that such risk-taking gives to the system operator – and thereby to other system users.

DUR also takes note of the fact that the future gas system in Denmark will be challenged and has to adapt to a new reality (the green transition) and to a continued fall in domestic gas consumption, which may also justify the introduction of a tariff element that rewards shippers who are prepared to support the system by committing to buy and use gas transmission capacity several years ahead.

*In relation to the process leading up to the proposed multiplier*, DUR points to the fact that Energitilsynet (DERA) issued a non-binding statement in 2017 (prior to the Open Season 2017 process for the Baltic Pipe Project) in which DERA expressed support for the envisaged tariff principles for the future Danish transmission system, i.e. uniform tariffs and the envisaged one-zone model for the Baltic Pipe route (i.e. only one tariff payment for gas transport through the Danish upstream and transmission networks). DERA provided its statement based on a public document from Energinet from 2016 where Energinet presented its envisaged tariff/market principles for the Baltic Pipe Project. Energinet forwarded the document to DERA for regulatory treatment in November 2016, and DERA then held its own public consultation to get input from the gas market to the regulatory scrutiny of the envisaged tariff principles. The purpose of DERA's statement was to provide the market with some regulatory certainty to the market prior to the Open Season process.

The document from Energinet included several assumptions and scenarios on future transit quantities, load-factors, expected tariffs based on various allocation methods etc., but the document did not mention that an incentive scheme for long-term contracts was under consideration. The regulatory support for the future tariff principles therefore did not include support for such a new and important tariff element or any analysis of the potential market effect of such a tariff element. DUR remarks that the Open Season rules applicable to the Danish part of the Open Season 2017 specifically refers to the statement from DERA and the dialogue with the regulatory authority on the future tariff principle and the effect of the Baltic Pipe investment on future tariffs and market design.

DUR therefore concludes that shippers have entered into Open Season capacity contracts based on formal Open Season rules and statements from the national regulatory authority (DUR) which do not discuss or assume the possibility for shippers to get a potential discount on the tariffs for long-term contracts. However, DUR admits that a potential multiplier was discussed in a number of fora and meetings between Energinet and the shippers leading up to the formal Open Season 2017 process and the subsequent conclusion of capacity contracts for the Baltic Pipe route.

Concerning Ellund, DUR points out that it was never a discussion point that shippers should be able to benefit from a multiplier/discount in relation to the Open Season 2009 where a number of shippers bought long-term capacity contracts for 10 years for Ellund entry. If DUR approves the proposed multiplier at this stage, the discount would constitute an arbitrary profit element for a limited number of shippers.

In the view of DUR, the market participants could not reasonably have expected that a discount for medium and/or long-term capacity contracts would be available for the coming regulatory period, cf. that DUR has not supported nor had the opportunity to address such an important new tariff element as part of the Open Season processes – unlike other tariff elements - and cf. that it should anyway be clear to the market that DUR would have to review the tariff element on the basis of general and legal criteria - independent of individual shipper positions.

*Concerning fundamental legal requirements of ensuring non-discriminatory access and equal treatment of shippers*, DUR remarks that the proposed multiplier (discount) – if approved – would in fact not be available to all shippers in the European auctioning process for capacity at IPs according to NC CAM. Today, Energinet does not offer capacity for above 5 years in the yearly capacity auctions at Ellund, and the capacity is for the vast majority sold on long-term Open Season contracts which will not expire until after coming regulatory period. The long-term multiplier for capacity above 5 years is therefore in reality only available for the shippers who have already concluded long-term contracts in Energinet's Open Season processes – and especially the shippers who have concluded long-term contracts in the Baltic Pipe Project via Open Season 2017. Open Season 2017 was conditional in the sense that shippers were required to place binding long-term offers (15 years) for the majority of the 10 bcm/year that the Baltic Pipe route can transport.

In the formal Open Season rules applicable to the Danish part of the Open Season 2017 (“Rules Applicable to Participation in the Danish Part of the OS 2017”) Energinet specifically states that tariffs for Open Season 2017 capacity “will be based on the same principles for tariff setting as other Capacity allocated by Energinet under the RfG”. Energinet's current tariff principles (approved by DUR and reflected in Energinet's Rules for Gas Transport, RfG) do not offer the possibility for shippers to book long-term capacity – and get access to the discount - because Energinet



does not offer “other capacity” in excess of 5 years. Moreover, Energinet has not proposed any change to this principle as part of the present approval process.

In this context, DUR points out that it will in fact possible be possible to offer capacity up to 15 years ahead in the yearly European auctioning process for IP-capacity, cf. Article 11(3) of NC CAM. Ellund is an interconnection point (IP) in NC CAM. The reasons that could justify a long-term multiplier would also be valid for Ellund where Energinet made a major investment in 2013 that will have to paid off for several decades to come. The present long-term contracts at Ellund IP will expire in 2023, i.e. at an early stage of the next regulatory period, and all capacity at Ellund would then be available to all shippers on equal terms – for short-term or long-term contracts.

Methodology approvals from the NRA always have effect for the future, cf. that the NRA has to approve methodologies for prices and access conditions to transmission networks prior to their entry into force. Methodology approvals are of a general nature and apply to the whole transmission system, i.e. all shippers in the system, cf. Article 36a of the Danish Natural Gas Act. However, if DUR approves the proposed multiplier then DUR in fact approves a tariff principle that is not of a general nature and not available to all shippers in the regulatory period due to the present tariff system and the present capacity situation.

DUR is therefore of the opinion that the proposed multiplier would have discriminatory effects although Energinet has submitted it to DUR for approval as a general tariff principle that applies to all capacity contract with a duration of 5 years or more. DUR refers to the fact that tariffs and tariff methodologies have to be set on a non-discriminatory basis, cf. Article 13(1) of the Gas Regulation.

*Concerning the competition*, DUR finds that the discount for long-term contracts could potentially harm the competition in the Danish gas market if it is not generally available to all shippers. For example, those shippers who have bought capacity in the Baltic Pipe route (North Sea Entry) are under no obligation to use the capacity only for transit to Poland. Such shippers can choose to use part of their long-term capacities to transport gas to the Danish market and the sell the gas here – or in other ways take advantage of a favorable situation in the Danish gas market. They can do this with a tariff discount of up to 10% on the entry tariff to the Danish market (which will normally be considered as a sunk cost) compared to their competitors who will have to pay the full capacity tariff (or even a higher tariff with the present short term multiplier, cf. above) if the wish to buy shorter-term capacity and import gas from e.g. Ellund to compete in the same favourable market situation. This could hamper competition and market development in the Danish gas market. DUR takes note of the fact that tariffs and tariff methodologies “shall facilitate efficient gas trade and competition”, cf. Article 13(1) of the Gas Regulation.

A Polish shipper in the Baltic Pipe Project, PGNiG, mentions in its response to the hearing of the draft decision from DUR that this is a hypothetical scenario, which is out of line with both the company’s strategy and its statements in the process so far. DUR finds that it is not possible for DUR to take into account individual companies’ strategies or the likelihood of a given scenario. For DUR it is important to make sure that DUR’s decisions do not contribute in any way to creating uneven competition conditions in the gas market – regardless of what is the likelihood of a certain behavior and regardless of the individual position of certain shippers.

Energinet mentions in its response to the draft decision that the size of the multiplier is set with the aim of setting equal terms for shippers with short-term capacity contracts and long-term contracts respectively. A shipper with an annual capacity contract will always “waste” a certain amount of capacity and will experience greater uncertainty compared to the shipper who buys capacity from day to day. The same principle would apply to a 5-year capacity contract compared to e.g. a 1-year contract. The proposal for a multiplier between 0.9-0.95 is supposed to level out this difference so that the different types of shippers are set even in the competition.

In relation to Energinet’s comments, DUR in principle agrees with Energinet’s considerations on the relationship between short-term and long-term contracts, and why it could be fair to have a tariff regime that supports long-term revenue generation in favor of the whole system while also securing a fair balance between the short-term and long-term market. DUR finds that the decision already reflects such considerations, and DUR further emphasizes that any tariff principle will have to apply as a general principle that makes it possible for shippers to compete on a level playing field from both a legal and practical viewpoint.

The shippers who have booked capacity in the Open Season for Ellund back in 2009 will have the possibility to extend their existing capacity contracts for Ellund (entry) with one year (until 2024) and thus be able to benefit from the proposed multiplier for 5-years contracts – according to the proposed model. DUR finds that such a discount would constitute an arbitrary and unexpected profit element for those shippers (whose investment must now be seen as sunk) as it has never been in play or argued for before now, and DUR also finds that such a multiplier (discount) may have adverse effect on competition particularly during the Tyra shut-down period (corresponding to the regulatory period) where all gas to the Danish market has to be imported from Ellund. During this extreme period, it is even more important not to take steps that could change the competitive situation at this critical entry point. There are no sound arguments for offering those shippers who hold Open Season capacity a competitive edge compared to other shippers who have to import gas and who have no (or very limited) possibility of booking similar capacity contracts in view of the present capacity situation at Ellund.

DUR remarks that the reconstruction of the Tyra field is scheduled to be finished by the start of the next regulatory period (October 2022), and the present long-term capacity contracts at Ellund will expire shortly into that regulatory period (in 2023) – meaning that shortly into the next regulatory period all transport capacity will be available to the market. An incentive scheme for medium and long-term capacity contracts could then be introduced without the same competitive concerns and uncertainty as to market effects at the border point.

DUR remarks that tariffs and tariff methodologies shall “facilitate efficient gas trade and competition, while at the same time avoiding cross-subsidies between network users”, cf. Article 13(1) of the Gas Regulation. In addition, NC TAR states that the national regulatory authority has to take into account “situations of physical and contractual congestion” and “the impact on cross-border flows” when taking a motivated decision on multipliers, cf. Article 28(3)(a)(iv-v) of NC TAR.

In relation to the competition and the market situation, DUR therefore finds that DUR cannot approve the proposed multiplier for the next regulatory period (2019-2022).

*Concerning the possibility of introducing an incentive scheme (multiplier) for long-term capacity contracts in the future*, DUR remarks that even if DUR cannot approve the proposed multiplier in the form that it has been presented for approval in the present “Public Consultation Document”, DUR finds that there could indeed be valid reasons for introducing an incentive scheme in the form of multipliers for medium and long-term capacity contracts for the future Danish transmission system. DUR encourages Energinet to prepare a possible scheme for such multipliers for the next and following regulatory periods in a way that provides all existing and future shippers with equal opportunities to be part to the scheme and thereby contribute to ensuring greater revenue security for the total Danish system.

DUR remarks that in that respect that it is possible for Energinet as TSO to offer capacity for up to 15 years ahead at the Ellund IP, cf. Article 11(3) of NC CAM, and it should be possible to prepare a national incentive scheme in a form that makes it available to all shippers at all system points regardless of whether the individual point is an interconnection point (IP) or not.

To this end, DUR remarks that the Danish Tyra field is scheduled to restart operations from October 2022, i.e. at the start of the next regulatory period, and the Tyra-Nybro upstream network will then presumably be owned and controlled by Energinet, cf. the political agreement to this effect. This should make it possible for Energinet to prepare a market model and tariff principles for this transport route that match the market model and tariff principles for the Baltic Pipe route. DUR takes note of the fact that Energinet speaks of the possibility of extending the envisaged one-zone model for the Baltic Pipe Project to the whole North Sea system in Energinet’s own public document (“strategy paper”) from November 2016 (see above). DUR finds that important legal requirements like fair competition, equal treatment of shippers, transparency and effective system operation speak in favor of having the same tariff principles (and market model) apply to all entry points to the Danish system – although there is of course less need for having investment signals and revenue recovery for the Tyra-Nybro upstream network which has already been in operation (and paid for) during several decades.

To sum up, DUR finds that a possible future tariff model with multipliers for medium and long-term capacity contracts should be de facto available to all shippers at all times, and it should apply to all entry points to the Danish market, i.e. the Baltic Pipe route, the Ellund route and the Tyra-Nybro route when this transport route re-opens and comes under Energinet’s ownership and control.

Finally, DUR points to the fact that Energinet need to justify a possible new submission of an incentive scheme (multipliers) with an analysis of probable market effects and (re)distributive effect between various groups of shippers. Such a justification is missing from the proposed multiplier scheme contained in the “Public Consultation Document” which is the document for approval. Energinet only states that the rationale for introducing a multiplier for longer-term capacity contracts is that shippers with long-term contracts assume a greater risk for having unused capacity while at the same time contributing significantly to greater predictability and financial stability in the tariff structure. A multiplier reflects such risks and the total increase in benefits compared to short-term capacity contracts.

DUR finds that it is necessary to have a more coherent and comprehensive analysis to be able to qualitatively assess the financial and market effects of a multiplier. DUR refers to the fact that the impact of multipliers on the transmission services

revenue and its recovery is a consideration that should be included in the regulatory authority's motivated decision on multipliers, cf. Article 28(3)a(ii) of NC TAR.

A tariff method has to be based on transparent and non-discriminatory criteria, cf. Article 13(1) and 13(2) of the Gas Regulation. And a multiplier has to secure a fair balance between the objectives of facilitating short-term gas trade and getting long-term investment signals for the transmission system, cf. Article 13 of the Gas Regulation and 28(3)a(i) of NC TAR. DUR therefore cannot approve the multiplier – in the form it has been submitted for approval and in the present market context. However, DUR finds that there could be valid reasons for introducing a multiplier for longer-term contracts in the Danish transmission system for future regulatory periods. DUR will always have to assess tariff methodologies in view of relevant legal criteria and market conditions.

Concerning Energinet's proposal for **non-transmission tariffs**, DUR is of the opinion that it provides more transparency if Energinet removes non-transmission fees from its price list if they are no longer applied. Concerning the **off-spec fee**, DUR finds that this fee is outside the scope of NC TAR as it is only a "redistribution fee". Concerning Energinet's **emergency tariff**, DUR finds that the emergency tariff is cost reflective, and it is only levied on Danish consumers who are secured gas in emergency situations, cf. Article 4(4)(b) of NC TAR that states that a non-transmission tariff shall be charged to the beneficiaries of a given non-transmission service. Finally, DUR points out that DUR monitors Energinet's procurement of emergency gas/capacities and requires Energinet to submit an annual report of its actions and costs for fulfilling its security of supply obligations. DUR finds that Energinet's emergency tariffs fulfill the requirements of Article 4(4) of NC TAR.

## THE DECISION

The Danish Utility Regulator **partly approves** Energinet's proposed tariff methodology (Public Consultation Document) for a regulatory period of three gas years (1 October 2019 – 30. September 2022).

The Danish Utility Regulator **approves the following elements** of Energinet's proposed tariff methodology (Public Consultation Document) for the regulatory period (1 October 2019 – 30. September 2022):

- The proposed reference price methodology (RPM) with uniform capacity tariffs in all entry-points and exit-points of the Danish transmission system.
- The proposed discount of 100 per cent on the transmission tariff to and from the Danish virtual storage point.
- The proposed multipliers and seasonal factor for short-term products with a duration shorter than one year.
- The proposed methodology for tariffs and fees for non-transmission services.

The Danish Utility Regulator **does not approve the following elements** of Energinet's proposed tariff methodology (Public Consultation Document) for the regulatory period (1 October 2019 – 30. September 2022):

- The proposed multiplier for the capacity tariff relating to long capacity contracts with a duration of 5 years or more – where the multiplier is progressively decreased from 0.95 for 5-year capacity contracts to 0.9 for capacity contracts with a duration of 10 years or more.
- The proposed split between the capacity share and the volume share of the overall transmission tariff (60/40) – with a cap on the volume share of 40 per cent.

The Danish Utility Regulator **changes** the split between the capacity share and the volume share of the overall transmission tariff to 70/30 for the regulatory period (1 October 2019 – 30. September 2022).

The legal basis for the decision is the European Gas Regulation (Regulation No. 715/2009) (Article 1 and Article 13), Commission Regulation (EU) 2017/460 of 16 March 2017 establishing a network code on harmonised transmission tariff structures for gas (NC TAR) (Articles 4, 5, 6, 7, 9, 13, 26 and 27), Commission Regulation (EU) 2017/459 of 16 March 2017 establishing a network code establishing a network code on capacity allocation mechanisms in gas transmission systems (NC CAM) (Article 11), the Danish Natural Gas Act (Consolidated Act No. 1127 of 05/09/2018) (sections 12, 12a, and 36a).

The decision relates to the Public Consultation Document, which the Danish TSO, Energinet Gas TSO, published for public consultation during the period from 1 August 2018 and until 16 November 2018. The Danish Utility Regulator (DUR) received the document for approval on 7 December 2018. According to Article 27(4) of NC TAR, the national regulatory authority shall take and publish a motivated decision on all items set out in Article 26(1).

**Disclaimer**

*This executive summary of the formal decision in Danish is a non-binding document, and it does not in any way substitute the original and binding Danish version of the decision. The purpose of the summary is only to give the reader an overview of the case and present the main conclusions and arguments of the decision.*