

Open Season Procedure Regulation

Art. 1

Definitions

1.1 The following terms shall have the following meaning:

Advanced Reservation Capacity Agreements or **ARCAs** shall mean the contracts to be executed in respect of Allocated OS Capacity by and between Poseidon Co. and the Allocated Participants, committing the parties thereto to execute Transportation Contracts in accordance with the provisions of the OS Agreements Regulation;

AEEG shall mean the *Autorità per l'Energia Elettrica e il Gas* – Authority for Electricity and Gas, established pursuant to Italian Law No. 481/95, with regulatory and control powers in the electricity and gas sectors in Italy;

Allocated OS Capacity shall mean the OS Capacity as allocated to Participants by applying the allocation mechanisms set forth in Article 10 below;

Allocated Participants shall mean Participants that are awarded with Allocated OS Capacity, as notified by Poseidon Co. pursuant to Articles 5.4.2 or 5.4.4 below;

ARCA Bond shall mean a first demand bank guarantee issued by a primary banking institution for an amount equal to 25% of the Estimated Annual Fee applicable to each allocated Lot (taking into consideration the applicable duration), in the form as will be set out as an exhibit to the ARCA standard contract provided with the OS Agreements Regulation, to be provided by an Allocated Participant in accordance with Article 5.4.3. below;

Binding Offer shall mean the binding offer which may be submitted by a Participant during the Bidding phase described in Article 5.3 below in respect of OS Capacity, a standard form of which shall be provided with the ITT Documents;

Binding Offers Deadline shall mean a date falling not earlier than 4 weeks from the release of the ITT Documents, as it will be defined in the ITT Documents;

Bid Bond shall mean a first demand bank guarantee issued by a primary banking institution for an amount equal to 100,000 € for each Lot, in the form as will be set out as an exhibit to the ITT Documents, to be provided by a Participant in accordance with Article 6.5 below, which shall be valid for at least 6 months from the date it is provided by such Participant;

Commercial Operation Date shall mean the date on which the Poseidon Pipeline shall be commissioned and ready for performance of transportation services in accordance with the transportation commitments of Poseidon Co., as such date shall be notified by Poseidon Co.;

DEPA shall mean the Public Gas Corporation of Greece S.A.;

Edison shall mean Edison S.p.A.;

Estimated Annual Fee shall mean the sum of: (i) the applicable Indicative Tariff for the relevant duration requested, as will be set forth in the ITT Documents; and (ii) any offered annual Premium;

Exemption Decree shall mean the Decree of 21 June 2007 of the Italian Ministry of Economic Development, following the EU Commission Decision of 22 May 2007 (SG-Greffe(2007) D/203046);

Expression of Interest or **EOI** shall mean the non-binding expression of interest through which interested parties request to participate to the OS Procedure, a standard form of which will be attached to the OS Notice;

General Rules shall mean the detailed terms and conditions of the OS Procedure, to be adopted by Poseidon Co. on the basis of the principles set forth in this OS Procedure Regulations and to be published with the OS Notice;

Indicative Tariff shall mean the non binding transportation tariff, for each contract duration, provided by Poseidon Co. with the ITT Documents, assessed for the first year of operations, using the relevant indicative figures and calculated following the principles stated in the OS Agreements Regulation;

ITT Documents shall mean the invitation to tender documents to be provided by Poseidon Co. to Participants, after the adoption by the National Regulatory Authorities of the OS Agreements Regulation;

Lot shall mean a portion of OS Capacity equal to 0.012688 MNcm/h;

Minimum Credit Rating shall mean a credit rating, provided by a primary international rating agency, at least equivalent to Baa3 (if provided by Moody's Investor Services) or BBB- (if provided by Standard & Poor's Corporation);

MNcm shall mean one million Ncm;

National Regulatory Authorities or **NRAs** shall mean AEEG and RAE;

Ncm shall mean normal cubic meter at 0° C and 1.01325 bar absolute;

OS Agreements Regulation shall mean the Regulation to be adopted by the competent Italian and Greek authorities containing the provisions regarding: (i) the Tariff structure; (ii) the standard form ARCA; and (iii) the main terms and conditions of the Transportation Contracts;

OS Capacity shall mean the quota of firm physical forward flow capacity of the Poseidon Pipeline (*i.e.* capacity from Greece to Italy), in excess of the capacity exempted from third party access provisions, to be allocated to third parties in accordance with the OS Procedure;

OS Evaluation Committee shall mean the committee appointed by Poseidon Co., responsible for carrying out the OS Procedure.

OS Objection Committee shall mean the committee appointed by Poseidon Co., which decides on the objections raised in any phase of the OS Procedure.

OS Notice shall mean the notice to be provided by Poseidon Co., or by the Sponsors on behalf of Poseidon Co., in order to solicit interested parties to participate to the OS Procedure, to be published in accordance with Article 4 below and enclosing a standard form EOI and the General Rules;

OS Procedure shall mean the open season procedure set forth herein, established in accordance with the Exemption Decree in order to allocate to third parties a quota of additional firm physical forward flow capacity of the Poseidon Pipeline;

OS Procedure Regulation shall mean this document, regulating the OS Procedure;

Parent Company Guarantee shall mean a parent company guarantee as it will be set out as an exhibit to the ITT Documents;

Participants shall mean entities having provided a valid and complete EOI;

Participation Fee shall mean a fee equal to 5,000 € to be provided in accordance with Article 6.2 below by interested parties in order to participate to the OS Procedure;

Persons shall mean the persons that have the right to participate to the OS Procedure, which may be a legal entity, a consortium, a joint venture or a group of companies, notwithstanding the access requirements set forth in Article 8.

Poseidon Access Code shall mean, in relation of the Poseidon Pipeline, the access code to be approved by the competent Italian and Greek authorities on the basis of proposals by Poseidon Co., regulating the access conditions and the provisions of transportation services in respect of the Regulated Capacities;

Poseidon Co. shall mean the special purpose vehicle IGI Poseidon S.A., which is currently in the process of being incorporated in Greece, equally owned, directly or indirectly, by DEPA and Edison, through which Edison and DEPA intend to develop, build, own and operate the Poseidon Pipeline ;

Poseidon Pipeline shall mean the pipeline and the related facilities connecting the Greek and Italian natural gas transportation systems to be developed, built, owned and operated by Poseidon Co. as part of the Interconnector Greece-Italy;

Premium shall mean the amount expressed in €/year offered by a Participant with the Binding Offer for each Lot requested, which, in case of execution of a Transportation Contract with such Participant, shall be due and payable for the entire duration of such Transportation Contract;

RAE shall mean the *Ρυθμιστική Αρχή Ενέργειας* – Regulatory Authority for Energy established pursuant to Greek Law No. 2773/1999 (as amended), with regulatory and control powers over the whole energy sector in Greece;

Regulated Capacities shall mean the physical forward flow capacity (including the OS Capacity) exceeding the initial capacity of the Poseidon Pipeline, which is exempted, in accordance with the provisions of the Exemption Decree, from third party access obligations (*i.e.*, 1.015 MNcm/h for a period of 25 years), and the virtual reverse flow capacity of the Poseidon Pipeline;

Sponsors shall mean Edison and DEPA;

Tariff shall mean the transportation tariff, for each contract duration, approved by the competent Italian and Greek Authorities on the basis of the actual investment and operation costs concerning the Poseidon Pipeline, on the basis of the tariff structure as will be set forth in the OS Agreements Regulation, which shall be due and payable in respect of the transportation services rendered by Poseidon Co. in accordance with a Transportation Contract;

Transportation Contract Bonds shall mean, in respect of a Transportation Contract, successive first demand bank guarantees issued by primary banking institutions, each for an amount equal to the applicable Estimated Annual Fee, in the form as will be set out as an exhibit to the standard Transportation Contract provided with the OS Agreements Regulation, as may be required to be provided by an Allocated Participant in accordance with Article 9.4 below and covering the entire duration of the Transportation Contract;

Transportation Contracts shall mean the ship-or-pay natural gas transportation contracts to be executed between Allocated Participants having executed ARCAs with Poseidon Co., as shippers, and Poseidon Co., as carrier, in accordance with the provisions of the OS Agreements Regulation;

Unallocated OS Capacity shall mean any OS Capacity remaining unallocated at the end of the OS Procedure.

Art. 2

Object and application field

2.1 The present document constitutes the OS Procedure Regulation, setting forth the terms and conditions pursuant to which Poseidon Co. – or the Sponsors on behalf of Poseidon Co., in the event Poseidon Co. shall not be incorporated by the time of the launch of the OS Procedure (and in such event, reference to Poseidon Co. shall be construed as reference to the Sponsors on behalf of Poseidon Co. until the incorporation of Poseidon Co.) – shall conduct the OS Procedure for the allocation of the OS Capacity on the Poseidon Pipeline, as required by the Exemption Decree.

Art. 3

OS Capacity to be allocated through the OS Procedure

- 3.1 The OS Capacity to be offered through the OS Procedure is equal to 0.12688 MNcm/h,
- 3.2 The OS Capacity shall be offered on a firm basis through Lots of equal size as follows:
- Lot size: 0.012688 MNcm/h,
 - number of Lots: 10;
 - start of transportation services: Commercial Operation Date (currently foreseen for 2012), as will be notified by Poseidon Co.;
 - duration of the transportation services available for each Lot:
 - (a) 10 years;
 - (b) 15 years;
 - (c) 20 years; and
 - (d) 25 years.

Art. 4

Language, notice and governing law

- 4.1 The OS Procedure shall be conducted in English.
- 4.2 The OS Notice shall be published on the websites of Poseidon Co., if available, or of the Sponsors.
- 4.3 An abstract of the OS Notice shall be published in two European major financial newspapers.
- 4.4 An abstract of the OS Notice shall also be sent to the European Federation of Energy Traders and to Eurogas, requiring such organisations to inform their members accordingly.
- 4.5 The OS Procedure shall be governed by Italian law.

Art. 5

OS Phases

- 5.1 The OS Procedure shall consist of the following phases:
- 5.2 Expression of Interest phase, which shall consist of:
- 5.2.1 Publication by Poseidon Co. of the OS Notice, in accordance with Article 4. The OS Notice shall be sent for information to NRAs at least 5 days before its publication in accordance with Article 4.2 above. Following the publication of the OS Notice, any person that has any objection against the terms and the procedure of the OS Notice, within 5 banking days from the publication of the OS Notice according to Article 4.2, may raise an objection before the OS Objection Committee. The non exercise of the above mentioned objection equals to the acceptance of the terms and the procedure of the OS Notice, which may not be doubted in a next phase of the OS Procedure. The OS Objection

Committee decides on any objections raised, within 10 banking days from the submission of the objection.

- 5.2.2 Receipt by Poseidon Co. within a period not shorter than 3 weeks from the issuing of the OS Notice of non-binding Expressions of Interest submitted by interested parties. EOIs not complying with the requirements set forth in Article 6.2 below shall not be considered for the purposes of the OS Procedure.
- 5.2.3 Issuing by Poseidon Co. of notices confirming the status of Participant to entities having provided a valid and complete EOI and informing entities having provided an invalid or incomplete EOI that they shall be excluded from the following phases of the OS Procedure. Participants that doubt the notice issued by the Poseidon Co. may raise an objection before the OS Objection Committee, within 5 banking days from the delivery of the notice. The OS Objection Committee decides on any objections raised, within 10 banking days from the submission of the objection.
- 5.2.4 Delivery by Poseidon Co. to the National Regulatory Authorities, after issuing the notices set forth in Article 5.2.3 above, of a report summarising the results of the EOI phase.
- 5.2.5 For the avoidance of doubt, Participants shall not be obliged to submit Binding Offers.

5.3 Bidding phase, which shall consist of:

- 5.3.1 Issuing by Poseidon Co. to Participants of the ITT Documents, within a period not longer than [3 weeks] from the latest of: (i) the issuance by the competent Italian and Greek authorities of the deliberations approving the OS Agreements Regulation; and (ii) the conclusion of the EOI phase pursuant to Article 5.2.4. above.
- 5.3.2 Receipt by Poseidon Co. of possible Binding Offers by Participants, within the Binding Offer Deadline. Binding Offers not compliant with the requirements detailed in Article 6.5. below shall not be considered for the following phases of the OS Procedure.
- 5.3.3 Issuing by Poseidon Co., after the Binding Offer Deadline, of notices informing Participants having provided a valid and complete Binding Offer that they shall participate to the allocation of OS Capacity pursuant to Article 10 below and informing Participants having provided an invalid or incomplete Binding Offer that they shall be excluded from the following phases of the OS Procedure. Participants that doubt the notice issued by the Poseidon Co. may raise an objection before the OS Objection Committee, within 5 banking days from the delivery of the notice. The OS Objection Committee decides on any objections raised, within 10 banking days from the submission of the objection.
- 5.3.4 Delivery by Poseidon Co. to the National Regulatory Authorities, after issuing the notices set forth in Article 5.3.3. above, of a report summarising the results of the Bidding phase.

5.4 Allocation phase, which shall consist of:

- 5.4.1 Allocation by Poseidon Co., in accordance with Article 10 below, of the OS Capacity among Participants, which have provided valid and complete Binding Offers.
- 5.4.2 Issuing by Poseidon Co. of a notice informing (i) the Participants awarded with OS Capacity about the Lots awarded and confirming the status of Allocated Participant and (ii) the Participants not awarded with OS Capacity, within a period not longer than 2 weeks from the Binding Offer Deadline. Participants that doubt the notice issued by the Poseidon Co. may raise an objection before the OS Objection Committee, within 5 banking days from the delivery of the notice. The OS Objection Committee decides on any objections raised, within 10 banking days from the submission of the objection. Binding Offers for all Participants remain in force until all ARCAs have been executed pursuant to Article 5.4.5.

- 5.4.3 Execution of ARCAs by Allocated Participants within 2 weeks from the latest of: (a) receipt of the notice set forth in Article 5.4.2. above or (b) from the issuance of the decision of the OS Objection Committee in case of objections submitted, according to Article 5.4.2. In order to execute the relevant ARCA, the Allocated Participant must deliver to Poseidon Co. a valid and enforceable ARCA Bond.
- 5.4.4 In the event an Allocated Participant does not deliver within the term provided an executed ARCA enclosing a valid and enforceable ARCA Bond, the relevant Allocated OS Capacity shall be automatically allocated to the first ranking non-awarded Binding Offer and Poseidon Co. shall inform the new Allocated Participants without delay. Article 5.4.3. above and Article 5.4.4 shall apply, *mutatis mutandis*, to new Allocated Participants.
- 5.4.5 Issuing by Poseidon Co., after execution of all ARCAs, of notices informing remaining Participants that they have not been allocated with any Allocated OS Capacity.
- 5.4.6 Delivery by Poseidon Co. to the National Regulatory Authorities, after issuing the notices set forth in Article 5.4.5. above, of a final report summarising the results of the OS Procedure. Such delivery must occur within 3 weeks from the execution of the last ARCA.

Art. 6

OS Documents

- 6.1 The OS Notice shall, *inter alia*, set forth: (i) a general description of the Poseidon Pipeline; (ii) a general description of the systems interconnected with the Poseidon Pipeline; (iii) the expected timing for rendering available the OS Capacity (iv) the General Rules, consistent with the principles contained herein and including an EOI standard form. The General Rules shall, *inter alia*, set forth: (i) detailed timing and conditions for participation in the OS Procedure; (ii) timing and procedures for raising objections and elaboration of the respective decisions; (iii) a standard form Confidentiality Agreement; (iv) any relevant clause such as liability, assignment, severability, amendments, governing law and arbitration.
- 6.2 The EOI form, duly signed by the legal representative of the interested parties, shall, *inter alia*, (i) contain a statement by the interested parties, confirming their acceptance of the OS Procedure Regulation and the provisions contained in the OS Notice and its interest in having OS Capacity allocated to it; and (ii) enclose evidence of payment of the Participation Fee.
- 6.3 The OS Agreements Regulation, to be approved by the competent Italian and Greek authorities, shall contain, *inter alia*, (i) the structure for the Tariff calculation; (ii) a standard form of RCA, including a standard ARCA Bond form; and (iii) the main terms and conditions for the Transportation Contracts.
- 6.4 The ITT Documents shall contain: (i) the Binding Offer standard form; (ii) the foreseen level of the investment by Poseidon Co. in the Poseidon Pipeline; (iii) the foreseen level of operating costs to be incurred by Poseidon Co. in relation to the Poseidon Pipeline; (iv) a non-binding assessment of the Indicative Tariff; and (v) a standard form Bid Bond, Transportation Contract Bond and Parent Company Guarantee.
- 6.5 The Binding Offers shall be valid for a period of six months and shall indicate: (i) the number of Lots which are requested; (ii) for each Lot, indicate the length of the transportation services requested, within the durations offered in accordance with Article 3.2. above; (iii) for each Lot, the Premium that the Participant undertakes to pay in addition to the Tariff in the event a Transportation Contract is executed; (iv) enclose a valid and enforceable Bid Bond; and (v)

contain a statement by the Participant, confirming its acceptance of the OS Agreements Regulation and the provisions contained in the ITT Documents.

Article 7

Arbitration

- 7.1 The OS Objection Committee is construed by 3 members appointed by the Poseidon Co., other than the ones participating in the OS Evaluation Committee.
- 7.2 Persons and Participants may raise an appeal against the decisions issued by the OS Objection Committee according to the provisions of Article 5, within 7 days of the delivery of the decision of the OS Objection Committee, before an Arbitral Tribunal subject to the Italian Civil Procedure Code (CPC) with seat in Milan composed of three arbitrators nominated pursuant to:
- a) Article 810 CPC or
 - b) Annex B of AEEG decision n. 42/05; in this case, the parties shall make an effort to jointly select the Chairman in a list that could be published by AEEG pursuant to point 1 Annex B of AEEG decision n. 42/05.

Art. 8

Access requirements

- 8.1 Persons convicted for one or more of the reasons listed below are excluded from participation to the OS:
- participation in a criminal organisation, as defined in article 2(1) of Council Joint Action 98/733/JHA;
 - corruption, as defined in article 3 of the Council Act of 26 May 1997 and article 3(1) of Council Joint Action 98/742/JHA respectively;
 - fraud within the meaning of article 1 of the Convention relating to the protection of the financial interests of the European Communities;
 - money laundering, as defined in article 1 of Council Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering.
- 8.2 A Participant shall be also excluded from the OS Procedure if at any time it:
- is bankrupt or is being wound up, where his affairs are being administered by the court, where he has entered into an arrangement with creditors, where he has suspended business activities or is in any analogous situation arising from a similar procedure under national laws and regulations;
 - is the subject of proceedings for a declaration of bankruptcy, for an order for compulsory winding up or administration by the court or of an arrangement with creditors or of any other similar proceedings under national laws and regulations;
 - has been convicted by a judgment which has the force of res judicata in accordance with the legal provisions of the country of any offence concerning his professional conduct;
 - has been guilty of serious professional misconduct;

- has not fulfilled obligations relating to the payment of social security contributions in accordance with the legal provisions of the country in which he/it is established or exercises business activities;
- has not fulfilled obligations relating to the payment of taxes in accordance with the legal provisions of the country in which he is established or exercises business activities.

8.3 For the purposes of this Article 8, Participants may be required to provide evidence of the absence of any of the above situations and Poseidon Co. shall be allowed to apply to the competent authorities to obtain any information it considers necessary for the purposes of the above.

Art. 9

Financial standing or required guarantees

- 9.1 EOI shall be considered valid only if the Participation Fee has been duly paid by the Participant.
- 9.2 Binding Offers shall be considered valid only if accompanied by a valid and enforceable Bid Bond. The Bid Bond shall be returned to Participants within 5 days from delivery of the final report summarising the results of the OS Procedure pursuant to Article 5.4.6. above in the event (i) Poseidon Co. executes an ARCA with the relevant Participant; or (ii) the relevant Participant is not granted with any Allocated OS Capacity.
- 9.3 Poseidon Co. shall execute ARCAs only if the relevant Allocated Participant delivers to Poseidon Co. an ARCA Bond. The ARCA Bond shall be returned to Allocated Participants, within 5 days, in the event (i) Poseidon Co. executes a Transportation Contract with the relevant Allocated Participant; or (ii) the Sponsors decide not to proceed with the construction of the Poseidon Pipeline.
- 9.4 Poseidon Co. shall execute Transportation Contracts only if the relevant Allocated Participant has delivered to Poseidon Co. a Transportation Contract Bond. The Allocated Participant shall not be required to deliver a Transportation Contract Bond in the event such Participant complies with the Minimum Credit Rating. In the event a Participant is not rated but a parent company of the Participant is rated with at least the Minimum Credit Rating, the requirement set forth in this Article 9.4. may be complied with by way of a Parent Company Guarantee to be provided by such rated parent company, for the amounts to be guaranteed under the Transportation Contract Bond.

Art. 10

Allocation Mechanisms

- 10.1 The Lots shall be allocated among Participants producing valid Binding Offers.
- 10.2 In the event the number of Lots requested by Participants through valid Binding Offers is higher than the number of Lots available, then the Binding Offers for each Lot shall be ranked on the basis of the net present value of any Premium offered in accordance with Article 6.5. above, from the highest to the lowest. The net present value of the Premium shall be calculated using a discount factor that will be provided with the OS Agreements Regulation. Lots shall be allocated to the highest ranking Binding Offers.
- 10.3 In the event: (i) Binding Offers for two or more Lots rank equal in accordance with the criteria set forth in Article 10.2. above and (ii) the number of Lots to be allocated is lower than the number of Lots requested with the Binding Offers ranking equal in accordance with Article

10.2., than the available Lots shall be allocated, Lot by Lot, through a lottery mechanism among all Binding Offers ranking equal.

Art. 11

Use of Additional Revenues

- 11.1 Upon definition of the actual Tariff payable on Commercial Operation Date, in the event such Tariff is higher than the Indicative Tariff, the Premium due by the Allocated Participant to Poseidon Co. shall be reduced (up to zero) by an amount equal to the difference between the actual Tariff payable and the Indicative Tariff.
- 11.2 The annual revenues of Poseidon Co. deriving from the payment by Allocated Participants of the Premium adjusted in accordance with Article 11.1. above, shall be utilised by Poseidon Co. in accordance with the instructions of the National Regulatory Authorities.

Art. 12

Unallocated OS Capacity

- 12.1 Subject to a positive investment decision by the Sponsors concerning the Poseidon Pipeline, the NRAs may require Poseidon Co. to render available unallocated OS Capacity or any allocated OS Capacity which may remain available in the event the relevant transportation contracts will not be executed, by notice to be delivered to Poseidon Co. within three months from delivery of the final report summarising the results of the OS Procedure pursuant to Article 5.4.6. above. In such event, the NRAs shall have to adopt measures to safeguard the proper remuneration of Poseidon Co. in respect of the OS Capacity to be rendered available. In the event no notification by the NRAs is received in accordance with this Article, Poseidon Co. shall have the right to decide not to build such OS Capacity.