Remarks to the draft of *Gas Release Program. Draft for social consultation* of 13 February 2012

Reported by …BP Gas Marketing Ltd………………………………
Date …………28 Feb 2012……………………………...............

No.	Remark refers to (page number, paragraph, item etc.)	Excerpt of the Gas Release Program to which the remark refers	Content of the remark/proposed wording	Justification/remarks to proposal
1	3.4. Regulatory Agreement between the President of the ERO and PGNiG Page 11 Paragragh 1	The Regulatory Agreement shall constitute a bilateral commitment of the parties (the President of the ERO and PGNiG) to comply with rules set out therein, within the period of GRP's implementation. Provisions of the Regulatory Agreement shall be fully consistent with stipulations of the detailed concept of GRP implementation, as prepared by PGNiG (having taken into account findings of the public consultation). Main elements of the Regulatory Agreement shall cover: a) Duration of the Agreement, b) Methodology for calculation of price of gas offered by PGNiG under GRP, c) Method of indexation of prices of gas offered by PGNiG under GRP.	Terms of the Regulatory Agreement should be open to consultation by interested parties. The nature of the Agreement should be binding (as stated in 3.4) rather than voluntary (as described in summary section 2) The duration of the Agreement may need to be extended beyond 31 Dec 2015 or if an alternative duration is reached under the Regulatory Agreement. (3.4 Ad a)) In the event that the calculated cost of gas is above market, parties are unlikely to bid. In order to promote successful supply competition, the Authority may choose to allow bids based on market prices rather than PGNiG contracts. In such an event, some stranded cost relief or costs of transition to competition should be considered.	In order to ensure the success of the programme, the views of potential buyers would be helpful for its design. We note that there is a contradiction between the way the programme is described as voluntary in section 2 and binding in section 3.4. If buyers are expected to enter into binding contracts for the purchase of release gas, then the obligation must also be binding on PGNiG. In other gas release programmes, unsold gas in the early stages can be re-offered later. The duration of the programme could be left open rather than set at a date that would prevent this option. We are concerned that a price based on contracts only may not be economic compared to other gas available on the market, and an opportunity to promote supply competition would be missed. In such a circumstance it should be possible to register a lower bid or to

				set a guide price based on market prices. In the event that PGNiG underrecovered, some agreement could be reached separately whereby such a loss mahy be recoverable through a form of relief.
2	4.1. GRP schedule Page 12 Paragraph 2	PGNiG is ready to commit to commence GRP no later than 3 months from the moment of conclusion of the Regulatory Agreement and introduction of necessary legal, regulatory and organizational changes (including changes described in this document), and to continue the programme for 3 years.	This period should be consulted to ensure industry readiness.	Having been involved in Release Gas Programmes across Europe, BP believe that the setting up of successful programmes can take longer, in particular in the following areas: • the time to ensure bidders are able to obtain licences – in particular where obligations must be translated into English or another language to obtain legal signoff • the time to ensure necessary systems are in place. We note that the release of 9.4 bcma to a competitive market will mean a substantial amount of customer switching activity in a very short space of time. Both PGNiG and supplier systems would need to be able to cope with thousands of customers being assigned to alternative suppliers, having final bills based on a termination meter reading, agreements on how to handle outstanding credit and other

				issues normally identified as problmeatic withing customer switching programmes. Suitable time should also be left to test communications between third parties and TSO customer services.
3	4.2. source of gas released under GRP Page 13 Paragraph 3	Participants of the survey conducted by the President of the ERO expressed the need for release of gas in the Virtual Trading Point, or – in case of lack of such a possibility – release of gas in other specified entry points, yet ensuring the possibility of transportation of gas to any entry/exit point.	Gas delivered at the virtual trading point will be regarded as firm in all circumstances except for a declared emergency. Even if one or more of the contracts used to determine the price of the gas is temporarily unavailable, then deliveries of release gas will be maintained. Where a customer switches supplier, any firm capacity used to supply this customer will be made available to a new supplier under the release programme.	If suppliers are to sign firm deals for sale of gas to consumers or other wholesalers, then they must be confident that the gas is provided on a firm basis.
4	4.3. Quantity of gas offered under GRP Page 14 Paragraph 1	Consistently with recommendations of the President of the ERO, the GRP concept provides for a release by PGNiG of total quantity of 9,4 bcm of natural gas (GZ-50) per year which corresponds to ca. 70% of the market, in auctions for 2013-2015.	All contracts should last three years, all release arrangements would terminate at the same time in 2016 potentially leading to a situation where the traded market would not be liquid enough to fulfil all demand for spot gas. A series of three year contracts for 3.1bcma running 2013-15, 2014-16 and 2015-17 would allow a three year build-up and a three-year phase out. A further option would be to allow successful bidders to reduce their commitment each year as they may be able to source alternative gas on the traded market.	Switching rates quoted for electricity have been around 19% for industrial customers and 0% for commercial and 0% for domestic. This programme assumes that a switching rate of 70% for all gas customers will be achievable in a period of around 3 months. This has not been achieved in any other market, and we believe could only be delivered here if customer contracts were terminated forcibly and reallocated. As an alternative we have suggested a slower build-up. This would be similar to the Ruhrgas gas release programme implemented following the merger between E.On and Ruhrgas.

				In the UK, contracts lasted up to 5 years, with the original volume scaled down from 100% to 80% in year 2, 60% in year 3 etc., with the option to exit the programme at the end of each year (but not to re-enter).
5	4.3. Quantity of gas offered under GRP Page 14 Paragraph 2	PGNiG will not participate in the GRP auctions in the capacity of a buyer (however, PGNiG's subsidiaries including DSOs, SSO, electricity producers and trading companies	Parent companies and their affiliates / subsidiaries should be considered as one entity and collectively can only obtain 25% of gas available at auction In the case of PGNiG affiliates/ subsidiaries the same should be considered	Our experience in other programmes has shown that if parent companies and their affiliates / subsidiaries are not considered as one entity then several subsidiaries can bid and could be successful in obtaining more than the 25% limit placed of gas available at auction. The same comment applies to PGNiG and its affiliates / subsidiaries.
6	4.3. Quantity of gas offered under GRP Page 14 Paragraph 3	In each auction the maximum quantity of gas available for purchase by a single entity shall be limited to 25% of the total quantity offered in a single auction.	Greater clarity is required as to whether the 25% limit is flat per year or could parties obtain a greater %age in one year and a lower %age in other years, as long as the average for the 3 years is below 25%? If parties bid in multiple years of the auction and are successful, we would recommend the party is given option to either: • take equal volumes guaranteed across all the years based on the lowest year's award or • unequal volumes over the 3 years	Our experience in other programmes has shown that parties prefer to have volume certainty in order to ensure their customer business is supplied
7	4.3. Quantity of gas offered under GRP Page 14 Paragraph 5	Implementation of mechanisms limiting export of gas purchased under GRP	There should be no restriction on exporting gas purchased under GRP.	To the extent that a buyer is unable to sign Polish customers or wholesalers, an alternative means to dispose of the gas must be available through export. This is even more important if

				PGNiG attempts to replace volumes through the import market, if local exploration is successful, or imports are made and the Polish market is left long We would also be concerned that an export restriction would be equivalent to a destination clause and would contravene European legislation on the freedom of movement of goods and services.
8	4.4. Products offered under GRP Page 16 Paragraph 2	Supply profile – flat.	Supply profile – flexible with daily nomination rights and annual take or pay If the supply profile is to be flat then the starting price of gas should be discounted to reflect this, and alternative forms of flexibility will be offered.	Parties are likely to provide gas to customers that require a flexible or season profile. the GRP should provide this We note that the calculation for the starting price is based on contracts that contain levels of optionality (swing and take or pay). However, the price is to be applied to a flat profile of gas with no swing or take-or-pay, which is inherently worth considerably less. We therefore suggest that if the price represents an average of contracts then the other terms should also represent the average swing or TorP.
9	4.4. Products offered under GRP Page 16 Paragraph 3	GRP contracts will provide for obligatory physical supply and physical receipt of gas at the level of 100% of contracted volume (i.e. per analogiam to power contracts traded on the commodity exchange).	GRP contracts will provide for obligatory physical supply and physical receipt of gas at the level of 100% of *nominated* volume ~~(i.e. per analogiam to power contracts traded on the commodity exchange).~~ Which will be based on the daily contract quantity up to the maximum daily quanitity determined by the swing of the contract.	Parties are likely to provide gas to customers that require a flexible or season profile; the GRP should provide this The discount should be applied to the starting price, as PGNiG's import contracts have less than 100%

			If the supply is to be 100% of contracted volume then the starting price of gas should be discounted to reflect this Buyers should be fully indemnified from any failure to deliver gas and suitable credit protection should be provided.	commitment, so the participants of GRP should not pay for the flexibility within the import price of these contracts To ensure all risks can be reviewed and mitigated parties will require time to review all contracts and credit requirements
10	4.4. Products offered under GRP Page 16 Paragraph 3	Auction participants will be able to resell gas on the exchange.	Full details on the exchange, on the costs of trading and of the contracts used by the exchange will be published prior to the auctions.	Previous experience of exchanges has shown that some of them do not allow penalties to be recovered through the trading chain in the event of a physical failure at the hub. Bidders should be in full knowledge of this risk prior to bidding.
11	4.5. Price of gas offered under GRP Page 17 Paragraph 3	The starting price of gas offered through the GRP auctions will be determined on the basis of a wholesale price, taking into account costs of gas from all sources, including: • cost of imported gas (for the entire import portfolio of PGNiG), • cost of gas from domestic production, including due return on capital employed, • cost of mandatory gas reserves maintenance, as required by law, • transmission system entry fees charged by OGP Gaz–System, i.e. to the Virtual Trading Point, • PGNiG’s wholesale margin.	A full breakdown and explanation of these costs will be given not less than one month in advance of the auctions	Our experience in other programmes has shown that parties need as much information on pricing as possible to determine the likely outturn prices and therefore evaluate the risk and costs of participation, and to price accurately advance on-sales, and to allow efficient hedging
12	4.5. Price of gas offered under GRP Page 17 Paragraph 4	In order to create space for competition PGNiG will introduce a discount to the wholesale price, which would constitute an incentive for potential participants of the GRP auctions. The level of the discount to the price of gas offered by PGNiG will be equal to the wholesale margin	The discount may need to be greater than PGNiG’s margin, if the resultant price remains above the international price of gas.	In an internationally competitive market, prices can no longer be based on costs of historical contracts.

		of PGNiG.		
13	4.5. Price of gas offered under GRP Page 17 Paragraph 6	The starting price will undergo further modifications under the exchange auctioning mechanisms, depending on orders placed by auction participants.	The starting price should be fixed	More clarity is required on how orders placed would cause the starting price to change?
14	4.5. Price of gas offered under GRP Page 17 Paragraph 7	in subsequent quarters (including supply in first quarters under contracts for 2014 and 2015) the price of gas will be indexed (up or down) in accordance with the indexation model described in detail in the Regulatory Agreement,	We believe a consultation process whereby parties taking part in the GRP can input into the Regulatory Agreement would be advantageous to ensure the overall programme is successful	Having been involved in Release Gas Programmes across Europe, BP more clarity is required on the indexation and whether the indexation is linked to the parties' transaction price or the floor price of the auction
15	4.5. Price of gas offered under GRP Page 17 Paragraph 8	Rules of quarterly price indexation of gas offered under GRP will be specified in the Regulatory Agreement and will be made available to all market participants. In order to ensure full transparency of the adopted solution, the President of the Office of Competition and Consumer Protection will receive the indexation calculations for the purpose of verification of their accordance with the methodology set out in the Regulatory Agreement.	We believe a consultation process whereby parties taking part in the GRP can input into the Regulatory Agreement would be advantageous to ensure the overall programme is successful	Having been involved in Release Gas Programmes across Europe, BP believe they can bring industry knowledge and experience of previous into the discussion
16	4.6. Model of gas under GRP Page 18 Paragraph 2	PGNiG will not participate in the GRP auctions in the capacity of a buyer (however, PGNiG's subsidiaries - including DSOs, SSO, electricity producers and trading companies - will be entitled to participate therein).	Same as point 3 above	Same as point 3 above
17	4.6. Model of gas under GRP Page 18 Paragraph 5	In each auction the maximum quantity of gas available for purchase by a single entity shall be limited to 25% of the total quantity offered in a single auction.	Same as point 4 above	Same as point 4 above
18	4.6. Model of gas under GRP Page 18 Paragraph 9	Gas offered by PGNiG under the GRP, as well as gas sold on the wholesale market, will be subject to the standard balancing rules set out in transmission and distribution network codes	Rules should be published in English	This will encourage a larger number of companies to take part

		(IRiESP and IRiESD).		
19	4.7. GRP price setting mechanism Page 19 Paragraph 4	The price at which transaction will be settled (transaction price) shall be set individually, in accordance with the following rules: • The transaction price for allocated quantities is equal to the price offered • Gas is allocated in order from the highest to the lowest purchase order, • Allocation of gas at the border price (exhausting the volume put on the auction) is conducted proportionally to the orders placed (pro-rata), • Purchase orders at prices lower than floor price will not be executed.	Can you clarify how the floor price is calculated? Is the floor price the same as the starting price of gas? There should be one clearing price for all parties and this should be the lowest price at which all the auction volumes are allocated	Our experience would suggest there would be fairest and simplest way of ensuring all parties pay the same price. This would be similar to the Ruhrgas gas release programme implemented following the merger between E.On and Ruhrgas.