BOP | BELGIAN OFFSHORE PLATFORM

Feedback in response to the public consultation on amendments to the general conditions

In this reaction, Belgian Offshore Platform responds to the public consultation on amendments to the general conditions for balancing services (T&C FCR, T&C aFRR, T&C mFRR), restoration services (T&C RSP), voltage and reactive power services (T&C VSP), and services related to congestion management (T&C OPA, T&C SA) as launched by Elia on 12th of November 2021.

BOP remains at disposal for further questions and clarifications when deemed necessary.

Article I.6.4 Caps

In Article I.6.4, the last sentence is deleted:

Any compensation due, as the case may be, by any Party is in any case limited to a maximum of twice the value of the Contract per year irrespective of the number of claims, the amount of which cannot exceed €12.5 million (twelve and a half million Euro) per year and per Party. ~~This cap is without prejudice to the caps applicable for contractual third party claims.~~

- "Any compensation" : also cap for indirect claims in the event of deception or deliberate fault?
- Cap is for all liability in aggregate, irrespective of the number of breaches?
- Last sentence: does deletion implies that the cap now takes into account third party claims as well since the cap includes "any compensation due (…) by any party"?
- Proposal: "Any compensation due, as the case may be, by any Party *to the other Party* is in any case limited to a maximum of twice the value of the Contract per year, irrespective of the number of claim, the amount of which cannot exceed (…) per year and per Party, *except in a case of deception or deliberate fault*.

Article I.7.1 Emergency situation

In case of an emergency situation (as defined in the applicable legislation and regulations[1]), Elia is entitled and/or obliged to take all the measures provided for in the applicable legislation and regulations. In case of contradictions with the provisions of this Contract, such measures as foreseen in the applicable legislation and regulations shall prevail on the rights and obligations of this Contract. Except if Elia notifies expressly otherwise and/or except in case of a provision of the applicable legislation and regulations stating otherwise, the Service Provider will continue to fulfill its obligations as foreseen under this Contract during this situation.

- Seems like a quite broad obligation for the counterparties of ELIA. Shouldn't there be any 'default caps' on this obligation
    - E.g. timing (max amount of time during which the obligations of the ELIA counterparty remain in place)
    - Cost (max cost/damage)
    - At least possibility to request break from obligations (and obligation of ELIA to answer in due time and motivated?)

Article I.7.2 Alert, Emergency, Black-out and Restoration state

When the system is in alert, emergency, black-out or restoration state (as defined in the applicable legislation and regulations[23]), Elia is entitled and/or obliged to take all the measures provided for in the applicable legislation and regulations, including under certain circumstances the suspension of market activities as provided for in the applicable legislation and regulations. In case of contradictions with the provisions of this Contract, such measures as foreseen in the applicable legislation and regulations shall prevail on the rights and obligations of this Contract. Except if Elia notifies expressly otherwise and/or except in case of a provision of the applicable legislation and regulations stating otherwise, the Service Provider will continue to fulfill its obligations as foreseen under this Contract during this situation.

Similar comments as on art. I.7.1

Article I.14 Protection of personal data

Is this new article checked with GDPR experts?