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Dear Michael,

Consultation on proposed draft:
E-control Regulation Commission Ordinance Setting the Natural Gas Sytem Charges (Gas System Charges Ordinance GSNE-VO 2013)

Over the past year, we have worked with E-control and CEGH both as BP and through associations to raise concerns related to early implementation of the proposed Austrian virtual trading point for the gas market (ATP). One of the key items of information necessary to facilitate renegotiation of pre-existing deals is tariffs. Regretfully, the proposed Ordinance does not give comfort on this area as we believe that it does not meet the requirements of European Regulation No. 715/2009 (the "Gas Regulation") and European Directive 2009/73/EC (the "Gas Directive").

In particular, the proposal breaches:

- Gas Directive Articles 32, 41, 42
- Gas Regulation Articles 13, 14

It also falls outside the terms of CAM and CMP Network Codes

Given the ongoing uncertainty in this area and the inoperability of the proposed transitional arrangements, there has been an almost complete cessation of trading at CEGH beyond 1 January 2013. We request E-control to use its powers to extend the operation of the existing trading points *in their current form* at CEGH Baumgarten until such time as outstanding issues related to pre-existing contracts are resolved, and enduring solutions can be found for the issues that have been identified. Failure to do so will increase the likelihood that trades will migrate to other hubs, most notably to those in Germany, though hubs in Italy, Slovakia and Hungary may also benefit in the longer term.

Discrimination, pricing on contract paths and interruption

Example: Gas flowing from Baumgarten to Oberkappel attracts a fee of 0.45 (€/KWh/hr/a) Entry and 3.85 Exit (total 4.3) if it is traded at ATP and neither the importer nor the exporter can be connected due to intermediate trades. For a company transiting Austria without trading (and therefore retaining both entry and exit capacity rights), they will be able to move gas for 0.40 Entry + 3.46 Exit (total 3.86)

This represents discriminatory access against traders by allocating a higher fee for gas that is traded, when entry capacity and exit capacity are owned by different shippers, compared to gas that is not traded and entry capacity and exit capacity are owned by the same shipper, even though the molecules pass along the same path. This is counter to Gas Directive Article 13 (1) *Each transmission…system operator shall…refrain from discriminating between system users or classes of system users,* and Gas Regulation Article 14(1) *Transmission system operators shall…ensure that they offer services on a non-discriminatory bases to all network users.* The difficulties in trying to entitle traded paths to benefit from discounted "Dynamically Allocable" firm capacity are described below (see Box). Avoidance of undue discrimination is also imposed via Gas Directive Articles 32, 41 and 42.

Box: Could Dynamically Allocable capacity work in a traded market?

In theory, we could see a way for Dynamically Allocable capacity to be used for gas traded into and out of the ATP, but practical difficulties make it unworkable.

One way might be to trade different products at the ATP (i.e. gas imported through TAG and gas imported through BOG could be treated as separate products such that a buyer who wants to export the gas via BOG could price the products differently compared to one who wants to import the gas into the Austrian market. However, this would run counter to the principle of a single virtual trading point, it would create an unsustainably large number of products that would fragment the market, and it would require new contracts to be drawn up to deal with circumstances where gas was delivered via a different route thereby creating different transportation liabilities and different risk of firmness. Additionally, these products would not be tradable via the exchange. It has been our experience that Wiener Borse has refused to recognise risks created to the trading of a physical product and amend their contractual arrangements accordingly.

A second way might be to create certificates on the source of gas which could be traded as a separate product. A certificate could entitle the holder to a discount if it was married to gas entering or exiting in the relevant system. However, arrangements would need to be put in place to define these products and contractual arrangements around their trading. Again this would diminish the purpose of establishing a virtual trading point and the industry has not had any discussion around how such arrangement would work.

Additionally, the tariffs for Dynamically Allocable capacity are charged according to contract paths, which runs counter to Gas Regulation Article 13(1) *By 3 September 2011, the Member States shall ensure that, after a transitional period, network charges shall not be based on the basis of contract paths.* Nothing suggests that the proposed Ordinance is only to run for a transitional period, and in any case, if a transitional period was to be allowed, it should have ended by 3 September 2011. It is neither within the letter nor the intent of the Regulation to allow tariffs by contract paths after 1 January 2013.

A further potential breach arises to Gas Directive Article 14(1)(b) *The price of interruptible capacity should reflect the probability of interruption*. Title 2 Paragraph 7 of the draft Ordinance announces differences in the way that interruption rebates are calculated, depending on whether the original product is Freely Allocable or Dynamically Allocable. In the first instance a rebate is due where Freely Allocable capacity is interrupted, but not where Dynamically Allocable capacity is interrupted. Though it is unclear what products will receive compensation (if Dynamically Allocable Firm capacity is compensated for interruption, then in what sense is it firm?), the existence of a discount on one and the absence of a discount on the second suggests that the latter does not reflect the probability of interruption.

We also note that in the event of interruption, a capacity refund is paid. This does not reflect the risk to the shipper of being interrupted. For example, if a shipper is never interrupted, then he receives no discount. However, the ever-present risk of interruption means that he cannot warrant that he is selling firm gas, which may lead to a lower valuation by his customer or counterparty. It is not only the *act* of interrupting but the *risk* of interruption that carries a cost for the shipper.

CAM and CMP

BP has participated at length in industry discussions around Capacity Allocation Mechanisms and Congestion Management Procedures (CAM and CMP). These have not contemplated Dynamically Allocable capacity services which were understood to be disallowed by the Third Package. Accordingly, the Network Codes on CAM and CMP do not contain special provisions for these services, in particular how they should be defined, traded or priced. Their introduction would therefore be outside CAM and CMP, which would be unhelpful in terms of creating convergence under the Gas Target Model. In particular, the bundling of capacity across interconnection points would be unworkable in practice.

Tariff methodology

Finally, we note that information has not been published on the methodology for establishing these tariffs, nor on the amounts of capacity to be available under each of the services, although we understand that such (preliminary) data has been provided to E-control by the TSOs. It is therefore impossible to challenge whether the networks may be earning monopolistic rates of return, nor whether Equalisation Payments (Section 7) constitute cross-subsidies between networks. The increase in tariffs suggests that the amount of capacity for sale will be reduced, if the TSOs' allowed revenue is to remain constant. Shippers remain in a position where they are unclear whether they will receive sufficient capacity, which service will be offered, or what the cost will be, in order to consider how contracts will be impacted.

While the only obligation placed on National Regulatory Authorities is to be transparent, and they need only publish tariff methodologies where the tariffs have not themselves been approved, this lack of transparency is extremely unhelpful and would not in our view constitute good regulatory practice. In order to aid understanding, we request that E-control publish information on pricing methodology and on capacity availability – even if only in draft form – as early as possible.

Conclusion

Trading at the Austrian gas hub beyond 1 January 2013 has almost completely stopped. A situation that penalises traders in Austria compared to those transiting the Austrian system is more likely to encourage traders to move trades outside Austria - in particular to Germany, and possibly to Italy, Slovakia and Hungary if this situation persists. This is based not only on tariffication, but a range of other issues that have been raised to the authorities.

We recognise that the tight timescales of the Austrian Gas Act have placed the National Regulatory Authority in the very difficult position of having to foresee a range of problems that are not yet apparent to the market, in a unique and complex situation. We therefore believe that the least damaging course would be a postponement to allow for these matters to be identified and resolved ahead of time, rather than risk resorting to settlement through the courts, with consequent negative long term impact on Austrian market liquidity.

This response is not confidential and may be published.