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**Subject: Implementation of the network code on harmonised transmission tariff structures**

Dear Sir/Madam,

As you know Shell has been engaged in discussions regarding the Austrian gas transmission system charges over the last few years. Our participation to the discussion has always been aimed at ensuring:

- Cost reflectivity;
- Efficient use of infrastructure; and
- Reasonable cost levels for all.

In pursuing these objectives, our intention has been to contribute to a well-functioning market with high liquidity and high competition for all.

At the beginning of the current regulatory period we have applauded some improvements that have been made, mainly relating to those directed at eliminating elements of cross-subsidies between the transit routes and the Austrian domestic system, however, today we are concerned about several material aspects, namely:

1. No transparency on several items listed in Article 26 of the TAR Code and other TAR transparency requirements;
2. Limited transparency on the definition of TSOs' allowed revenues and high transmission costs when compared to other EU TSOs;
3. Limited explanations backing the forecasted booking levels used as input for the tariff methodology;

4. The overall consultation process;
5. Setting of multipliers, clustering of system points, seasonal factors; and
6. No-introduction of commodity charge.

Based on the concerns above, we would like to invite E-Control to put on hold the consultation process until all information mandated by the TAR NC is disclosed to market participants.

### **1. No transparency on several items listed in Article 26 of the TAR Code and other transparency requirements**

Below is a list of Article 26 items of TAR Code that are not covered in the consultation document issued by E-Control dated 31 January 2019 (Consultation):

- A detailed description of the proposed reference price methodology;
- A thorough justification of the parameters used that are related to the technical characteristics of the system;
- The corresponding information on the values of such parameters and the assumptions applied;
- The results, the components, and the details of these components for the cost allocation assessments set out in Article 5;
- The assessment of the proposed reference price methodology in accordance with Article 7;
- As the proposed reference price methodology is other than the CWD reference price methodology detailed in Article 8, the comparison against the latter accompanied by the information set out in point (iii);
- The indicative information set out in Article 30(1)(b)(i), (iv), (iv);
- The indicative information set out in Article 30(2), i.e. the tariff model published has very limited functionalities and does not allow parties to identify separately operational costs (e.g. fuel gas) or to identify tariff change without the 10% cap for tariff increase.

Moreover, according to Article 7(a) of the NC TAR, the reference price methodology aims at enabling network users to reproduce the calculation of reference prices and their accurate forecast. However, we do not believe that there is a way this can be done based on the information provided or based on the model published which has limited functionalities.

Our expectation has always been that the TAR Code implementation would serve as opportunity to close the gaps identified above (and in the past) and we are concerned that the lack of detail in the Consultation means that this opportunity will be missed and that the consultation process will not succeed in generating the improvements hoped for.

### **2. Limited transparency on the definition of TSOs' allowed and high transmission costs when compared to any other EU TSOs**

While we understand that the definition of TSOs' Regulated Asset Base (RAB) and the related allowed revenues are not part of the ongoing Consultation, these aspects are at the core of the concerns that Shell and other network users have brought to the attention of E-Control in the past.

We are aware that under the Austrian Gas Act the underlying process for setting the above values is not subject to the opinion of network users and leaves very little room for the opinion of end users.



However, we would like to take this opportunity to repeat our concerns, hoping that they may be addressed by you.

The problem we identify is that Austrian TSOs are among the most expensive gas transport service providers in Europe.

We note that without access to the details of the underlying regulated assets or their depreciation levels and without the publication of the rationale supporting the remuneration levels, it is difficult to carry out an accurate assessment or benchmark exercise. However, we have observed in the past that Austrian TSOs have a ratio EBITDA/Total Asset which is much higher than the ratio held by other European TSOs and this gives their shareholders an unmatched comfortable financial position.

Such position does not seem justifiable for a regulated company whose revenues are guaranteed by law both at the national and the European level and whose assets should be almost entirely depreciated, considering the year that they were put in the ground and in presence of long-term transportation contracts that extend in a large part beyond the duration of the next regulatory period.

As side note to this matter, we believe that the proposed 10% cap on tariff increase from one regulatory period to the next at each system point represents a mild regulatory risk mitigation feature. In our view, a full capacity reset right would be a more robust way to protect network users from price spikes comparable to the indicative tariffs published within this Consultation.

Also, while the proposed measure might, in theory, protect from excessive tariff increase, its application does not allow market participants to understand how tariffs would have changed had the cap not been applied, adding to the limited transparency of the overall proposal.

We believe that it is necessary that E-Control engages in a full transparency exercise to bring Austria to a level commensurate with its European peers in this regard. Without such action, consumers – both in Austria and in neighbouring countries will continue to grant excessive profit to Austrian TSOs with no special advantage in return, cross-border trade may be hampered, and the role of Austria as important transit country in the heart of Europe may be put at risk with consequences on security of supply of Austrian consumers too.

### **3. Limited explanations backing the forecasted booking levels used as input for the tariff methodology**

When considering E-Control's proposal we note that: i) the current reference price methodology is not changed, ii) no or limited new investment is in sight, iii) low interest rates and low cost of capital have been and are likely to stay in place, iv) gas prices are lower than in the past and have on average progressively decreased during the past four years. Therefore, the only driver behind the significant cost increase represented by the indicative tariff must be the forecasted contracted capacity.

However, we do not see strong signs that booking levels may dramatically decrease during the next regulatory period, even considering the possible conclusion of existing long-term transportation agreements and when looking at the demand/supply outlook of neighbouring countries.

To support this view, we would like to emphasise the ongoing restriction of the TENP pipeline causing the reduction of flows to Italy via Germany/Switzerland to the advantage of the Austrian route to the south. We acknowledge that this opportunity may not continue if the Austrian route becomes structurally less attractive than LNG deliveries and/or deliveries from TAP but this ultimately rests on the level of Austrian cross-border tariffs.

Further reasons to support our view may be found in the fact that import of Russian gas to Austria have increased by 32% between January to March 2019 compared to the same period in 2018 and one cannot exclude this trend to continue in the future.

Any different understanding of future flows and market dynamics should be shared with market participants if used as input to the selected price reference methodology.

#### **4. Overall consultation processes**

We note that the Consultation is published beyond the implicit deadline foreseen in the TAR Code.

Considering that the deadline to respond is March 31<sup>st</sup> and that according to Article 27 the procedure consisting of the final consultation on the reference price methodology, the decision by the national regulatory authority, the calculation of tariffs based on this decision, and the publication of the tariffs shall be concluded no later than 31 May 2019, E-Control is putting ACER under extreme pressure to produce its non-binding opinion in a very limited period which is shorter than the one formally granted.

We are concerned that, given the situation, ACER may conclude that it is not able to publish a fully formed and informed position.

We also note that E-Control, in contrast to other National Regulators in Europe, has neither engaged in any discussion on the broader principles informing the selected tariff methodology; nor has it presented alternative scenarios, de facto limiting the opportunity for market participants to objectively gauge the selected option against others that could have been equally defensible.

We are concerned that once this process is concluded there will be no further formal opportunity to challenge the approved tariff methodology for four years and, given the lack of transparency highlighted above and the multitude and complexity of the issues, there may be increased risk of legal challenges initiated by market participants leading to regulatory instability.

***In order to avoid implementing a tariff methodology which would benefit from more analysis, and taking into account that the current regulatory period only elapses at the end of 2020, we would invite E-Control to confirm all current tariffs for the entire gas year starting in October 2019 – consistent with the Austrian Gas Act stating that tariffs do not change during an ongoing regulatory period other than for inflation adjustment or in case of changes to Annex 2 of the Gas Act – and continue the discussion on the new tariff methodology beyond the May 2019 deadline, using the time available to provide market participants with all the information and analysis due.***

#### **5. Setting of multipliers, seasonal factors, clustering of system points, interruptible capacity**

The choice made with respect to multipliers does not rely on a thorough justification. This leaves market participants with the only possibility to comment based on their vested interest, rather than with an eye to contributing to a well-functioning market.

Against this background, we suspend our judgement in hope of receiving additional explanatory information and we limit ourselves to noting that short term multipliers, for within day capacity in particular, are generally higher than multipliers used in other Member States and this seems at odds with the objective to ensure a continued utilisation of transit pipelines.

Similar considerations and lack of explanation apply to the choice of seasonal factors and of the clustering of different system points. With respect to seasonal factor, the situation is further



aggravated by the fact that they would only be applied at one point in the system generating a discrimination between domestic and international flows and among different export routes, creating an unnecessary barrier to cross-border trade and putting flows via TAG artificially at risk.

With respect to the discount for interruptible capacity, we note that no justification has been provided to support the choice to differentiate among different system points and we recommend using the ex-ante discount methodology across the system to avoid forms of discrimination.

#### **6. No-introduction of commodity charge**

In some bilateral discussions with E-Control we appreciate the expressed intention to introduce a commodity charge in the tariff structure aimed at covering fuel costs. The proposal – perfectly in line with the provisions of the Austrian Gas Act and with the TAR Network Code – would allow a higher level of cost reflectivity and a higher level of transparency on relevant cost.

Having a commodity charge reflecting operational costs linked to actual gas flows would put shippers, particularly those that have invested in long-term, in a position to better control the costs related to the service they receive.

As such, the proposal would have been welcomed by Shell. Unfortunately, E-Control chose to disregard the idea without sharing the rationale behind their decision, preventing the possibility to have an informed discussion towards selecting the best solution for all market participants.

In conclusion, the sum and the complexity of the issues addressed in the above are such that we believe that engaging in further discussions would be beneficial to ensure our position is fully understood. We are therefore available for a bilateral meeting to further clarify and substantiate our position and would welcome discussion with you.

Sincerely,



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The first part of the paper is devoted to the study of the properties of the function  $f(x)$  defined by the equation  $f(x) = \int_0^x f(t) dt$ . It is shown that  $f(x)$  is a constant function, and its value is determined by the initial condition  $f(0) = 1$ .

In the second part, we consider the problem of finding the maximum value of the function  $f(x)$  on the interval  $[0, 1]$ . It is shown that the maximum value is attained at  $x = 0$  and is equal to 1.

Finally, we discuss the question of the uniqueness of the solution of the differential equation  $f'(x) = f(x)$  with the initial condition  $f(0) = 1$ .

The results of the paper show that the function  $f(x)$  is uniquely determined by the initial condition  $f(0) = 1$  and is a constant function.

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