

Statement:

Public Consultation – Gas System Charge Ordinance 2013 – 2nd Amendment 2020



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1. Preamble

Trans Austria Gasleitung GmbH (“TAG GmbH”) hereby makes a statement to the public consultation of the Gas System Charge Ordinance 2013 – 2nd Amendment 2020 (“*Gas-Systemnutzungsentgelte-Verordnung 2013 – 2. Novelle 2020*”). TAG GmbH welcomes the possibility to comment on that proposal.

2. Missing Reconciliation (And Recognition) of Non-Influenceable Cost Component

TAG GmbH appreciates the application of the Virtual Point B Reference Price Methodology (“RPM”) and the secondary adjustments applied by E-Control. However, TAG GmbH believes that the decision to exclude the tariff component for the non-influenceable cost constitutes a violation of several key principles and objectives of Regulation 715/2009, the Tariff Network Code (“NC TAR”), the Austrian Gas Act 2011 (“*GWG 2011*”) and the methodology pursuant to section 82 GWG 2011.

According to Art. 13 of Regulation 715/2009, the TSO shall be allowed to recover its efficient costs. This requirement is confirmed by Art. 17 of the NC TAR. Therefore, allowed costs shall be:

- (i) fully reconciled according to Art. 17 (1)(b) of the NC TAR under a non-price cap mechanism, or
- (ii) not reconciled according to Art. 17 (2) of the NC TAR where and to the extent all risks related to under- or over-recovery are covered by a risk premium under a price cap mechanism.

The already approved methodology pursuant to section 82 GWG 2011 for the next regulatory period does not foresee the non-influenceable cost to be subject to the volume risk (“*Mengengerüst*”); thus, these costs shall be treated under a non-price cap mechanism. Instead, the methodology pursuant to section 82 GWG 2011 foresees an actual capacity booking forecast to be applied to the non-influenceable cost and, coherently, the capacity risk premium of TAG GmbH does not cover these costs.

Moreover, chapter VI. of the methodology pursuant to section 82 GWG 2011 foresees that investments into projects to increase the efficiency shall not to be subject to the volume risk and to be treated as non-influenceable costs for the purpose of the reconciliation. Consequently, any related over- and under-recovery shall be fully reconciled and both, investments into projects to increase the efficiency as well as non-influenceable costs, are expressly excluded from any capacity risk. But without any non-influenceable cost component provision this chapter of the methodology pursuant to section 82 GWG 2011 will paradoxically and unintentionally not be applicable. This would hamper any possibility for TAG GmbH to contribute to the energy transition and investing in efficiency projects. This is in sharp contrast with the current European and Austrian climate targets, aimed to encourage and promote such transition and investments.

Furthermore, it is clearly established in the GWG 2011 and also logical, that the methodology pursuant to section 82 GWG 2011 sets the framework for the tariffing including the volume situation (see section 70 (1), second sentence, and section 72 (2) GWG 2011), and the Gas System Charge Ordinance 2013 – 2nd Amendment 2020 shall be subsequently based on the provisions of the methodology pursuant to section 82 GWG 2011; and absolutely not *vice versa*, as argued by E-Control in the explanatory notes to the Gas System Charge Ordinance 2013 – 2nd Amendment 2020.

According to Art. 20 (3) of the NC TAR, under- and over-recovery shall be reconciled with the aim of reimbursing the under-recovery to the TSO, but also of returning the over-recovery to the network users. Art. 17 of the NC TAR states that the under- and over-recovery shall be minimized and significant differences between the levels of transmission tariffs applicable for two consecutive tariff periods shall be avoided to the extent possible.

Considering the deviation between the capacity booking forecast published by E-Control in both the initial and the final public consultation pursuant to Art. 26 of the NC TAR on the one hand and the volume situation applied in the proposed Gas System Charge Ordinance 2013 – 2nd Amendment 2020 on the other hand, the requirement of minimizing under- and over-recovery is only achievable with the introduction of the non-influenceable cost component in the RPM, as previously consulted by E-Control. The following simplified example illustrates the effect of not applying the non-influenceable cost component on the basis of the capacity booking forecast.

		RP 4	RP 5	RP 6	RP 7
A	Current capacity level applied by E-Control	500	500	500	500
B	Capacity booking forecast	400	400	400	400
C	Non influenceable costs	100	120	144	173
D = C/A	Tariff with current ECA approach	0.20	0.24	0.29	0.35
E = D*B	Actual Revenues according to forecast	80	96	115	138
F = E-C	Under-recovery	-20	-24	-29	-35

RP = regulatory period

As demonstrated, the reconciliation of the under-recovery is not possible because the actual forecasted booking is never fully reflected in the reference price.

This either leads to:

- a net loss for the TSO, in contrast with Art. 13 of Regulation 715/2009 and Art. 17 and 20 of the NC TAR, or
- an increase of the regulatory account and the tariffs period after period, in contrast with Art. 17 of the NC TAR.

This effect might get even worse if the actual booked capacity decreases over time (for e.g. due to decarbonization or economic downturns). It should be noted that this mechanism, while not allowing a full reconciliation, does also not allow returning the full amount of eventual over-recovery to the network users. The following table shows an example where the non-influenceable cost component is applied resulting in reduced tariffs and minimized under- and over-recovery.

		RP 4	RP 5	RP 6	RP 7
A	Capacity booking forecast applied by E-Control	400	400	400	400
B	Capacity booking forecast	400	400	400	400
C	Non influenceable costs	100	100	100	100
D = C/A	Tariff with non-influenceable cost component	0.25	0.25	0.25	0.25
E = D*B	Actual Revenues according to forecast	100	100	100	100
F = E-C	Under-recovery	0	0	0	0

RP = regulatory period

To motivate the choice of eliminating the non-influenceable cost component, E-Control refers to the ACER opinion on the RPM. The ACER opinion states that the separate application of the RPM to the influenceable and non-influenceable costs contradicts Art. 6 (2) and 6 (3) of the NC TAR. TAG GmbH does not share this opinion.

According to the objective reading of the text of the NC TAR as well as the preparatory works and accompanying documents from ENTSG, nothing prevents the application of two components, based on different cost and volume assumptions, for the definition of a unique reference price. This does not constitute the application of two RPM as long as a unique reference price is determined. The RPM is applied equally to all entry and exit points of the system avoiding any discrimination in the application of the RPM to these points.

Art. 6 (2) of the NC TAR states that *“The application of the reference price methodology shall provide a reference price”*. Art. 3 (1) of the NC TAR defines the reference price as *“the price for a capacity product for firm capacity with a duration of one year, which is applicable at entry and exit points and which is used to set capacity-based transmission tariffs”*. As the application of the previously RPM consulted with the non-influenceable costs will determine:

- (i) a unique price for a capacity product for firm capacity with a duration of one year, which
- (ii) will be applied to all entry and exit points, and which
- (iii) will be used to set capacity-based transmission tariffs,

the consulted RPM is in line with Art. 6 (2) of the NC TAR. Indeed, the reference price will be used for setting the reserve prices and the tariffs for the yearly products and for short term products (with the application of the multipliers).

Moreover, according to Art. 3 (2) of the NC TAR the RPM is defined as *“the methodology applied to the part of the transmission services revenue to be recovered from capacity-based transmission tariffs with the aim of deriving reference prices”*. The application of the RPM with influenceable and non-influenceable cost components will derive unique applicable reference prices for capacity-based transmission tariffs. Art. 6 (3) of the NC TAR states that *“the same reference price methodology shall be applied to all entry and exit points in a given entry-exit system subject to the exceptions set out in Articles 10 and 11”*. As explained by E-Control, the selected RPM is the Virtual Point B. This RPM was applied equally to all the entry and exit points and integrated two different forecasts for the capacity booking to determine two components of a single reference price: one component for the influenceable cost and another for the non-influenceable costs. The

reference prices for all points were the sum of the resulting two components. This RPM was applied to all entry and exit points. All the resulting reference prices were then subjected to the secondary adjustments as foreseen by the NC TAR.

TAG GmbH concludes that the different treatment of controllable and non-controllable costs is an integral part of the RPM, which determines a unique reference price according to the definitions of the NC TAR and, in particular but not limited to, in compliance with Art. 6 (2) and 6 (3) of the NC TAR.

However, even following ACER interpretation, in fact the Agency does not ask for the deletion of the non-influenceable cost component. In its opinion, ACER simply requires justifying the application of two separate components and the 10% cap subject to the requirements of Art. 7 (d) of the NC TAR. For avoidance of doubts, this justification is related to the application of the volume risk as such and therefore eventually to the application of the fixed volume situation rather than the application of the standard non-price cap mechanism implemented for the non-influenceable costs. E-Control provided this justification in the explanatory notes attached to the current consultation; thus, this requirement is deemed to be fulfilled.

Furthermore, following other critics received in the RPM consultation answers, E-Control motivates its decision by an increase of transparency and comprehensibility of the RPM. TAG GmbH notes that increasing transparency does not imply the elimination of the non-influenceable cost component with all the negative consequences illustrated above. The missing publication of this model and explanations could eventually constitute an infringement of the transparency requirement of the NC TAR. The application of two components can be made transparent easily. To achieve the transparency and comprehensibility level necessary to pass the requirement of the NC TAR, a simplified model explaining the determination of the two components shall be implemented and published to allow network users to replicate and forecast the reference price.

Finally, the elimination of the non-influenceable cost component and the capacity booking forecast results in the RPM violating the Cost Allocation Assessment ("CAA") as foreseen by Art. 5 of the NC TAR. The CAA is above 10% because the share of network costs to be borne by intra-system (domestic consumption) is higher when only the reference volume is considered. The CAA resulting from the model published by E-Control in the context of the consultation according to Art. 26 of the NC TAR by applying the latest cost published by E-Control for the Market Area East is 0.8%.

Considering the arguments stated above, TAG GmbH deems the application of the non-influenceable cost component, as consulted by E-Control according to Art. 26 of the NC TAR, to be necessary to fulfill the requirements of Regulation 715/2009, the NC TAR, the GWG 2011 and the methodology pursuant to section 82 GWG 2011. Consequently, TAG GmbH considers the Gas System Charges Ordinance 2013 – 2nd Amendment 2020 consulted by E-Control and the relevant RPM as not compliant and in breach with the current regulatory framework.

3. Maintenance Works

The draft of the Gas System Charges Ordinance 2013 – 2nd Amendment 2020 foresees that

“In section 3 para. 10, after the words “in line with point 3.3(1)(g) of Annex 1 to Regulation (EC) No 715/2009,”, the following phrase is added: “and in the event of transport restrictions at and entry/exit point that exceed a total duration of 360 hours during a gas year.”

TAG GmbH objects to a reimbursement in case of maintenance works exceeding 360 hours a year at a certain entry or exit point as this concept has not been discussed with the TSOs and the measure has not been sufficiently evaluated with regards to all impacts. Such a limitation cannot be fixed at an arbitrary number, without taking into account the necessity of the pipeline system, the actual capacity impact and ignoring the limited possibility of a transit system compared to a meshed system (no possibility to revert flows to other routes).

E-Control claims that in the majority of the entry/exit points the maintenance works can be performed in less than 360 hours. However, some maintenance works require pre-works which make it impossible to stay below 360 hours. So, e.g. before changing a valve, the relevant sections of the pipeline have to be made free of gas. In order to limit the impact on the environment, this gas is recompressed and transferred to another section of the pipeline. For a typical valve replacement of the TAG pipeline system and normal recompression set-up this pre-work takes around 170 hours. Adding the compulsory safety checks at the compression stations, about another 190 hours have to be taken into account, summing already up to about 360 hours, where the TAG GmbH is not in the position to offer the full technical capacity.

For the year 2020, where no extraordinary maintenance works are foreseen, TAG GmbH would already exceed the 360 hours on planning basis.

Maintenance activities are performed by the TSOs to maintain the viability of the transportation system

- in case of damage,
- to respect maintenance cycles defined by the life cycle of the equipment,
- to respect safety standards (test of emergency shut down systems), and
- to ensure security of supply.

These maintenance works are planned with the aim to keep the impact of the maintenance works on the network users and the environment as small as possible. This is done by

- planning maintenance works at times when it has the least impact on the market (transportation periods with less demand),
- combining different maintenance works (also in cooperation with adjacent TSOs),
- limiting the impact on the market by spreading the maintenance works over a longer period, thus minimizing the hourly restriction, and
- transportation limiting methane emissions (see recompression example above).

Especially with regards to the two last bullet points, imposing a financial burden on TAG GmbH by applying a reimbursement rule taking into account 360 hours a year would give the wrong incentive and at the end have a negative impact on the market and the environment respectively.

A timely limitation would put a strain on all efforts made by the TSOs to reduce the impact of a given maintenance activity on the service. In fact, instead of reducing the flow to 100% for all maintenance activities, TAG GmbH is searching for the best possible technical setup in order to maximize the remaining transportation capacity as far as possible in a transit system by e.g. re-routing the flow on remaining available lines or compression facilities.

It is obvious that e.g. one hour of maintenance at 90% reduction and one hour of maintenance at 5% reduction have a different impact on the market. The introduction of a timely limitation will cause more harm to the network users and final consumers as it will imply the concentration of maintenance works resulting in higher capacity interruptions instead of spreading small interruptions over longer periods.

Furthermore, currently, TAG GmbH offers the balance groups the opportunity to nominate 100% of the allocated capacity also during maintenance work. Only in the event that the sum of all nominations exceeds the available technical capacity, a reduction in accordance with the terms of the capacity contracts is applied. Due to the fact that the transported capacity must not be higher than the invoiced capacity, a general reimbursement requirement as envisioned in the draft Gas System Charges Ordinance 2013 – 2nd Amendment 2020 would mean that in case of maintenance works exceeding 360 hours in total, the nominations of the balance groups would have to be automatically reduced by the respective percentage reduction, hence limiting the flexibility available today.

To conclude, the proposed change in the reimbursement scheme does not bring a viable benefit to the market but entails operational disadvantages for the TSO. TAG GmbH, therefore, proposes that the suggested wording is deleted without replacement.

4. Entry-Into-Force

According to the draft of the Gas System Charges Ordinance 2013 – 2nd Amendment 2020 currently under consultation, the provisions of this 2nd Amendment 2020 should come into force at the beginning of the gas year on 01.10.2020.

According to section 70 (1) Austrian Gas Act 2011, when calculating and enacting the system charges for the transmission network the regulatory authority shall apply the methodology pursuant to section 82 Austrian Gas Act 2011. For the period between 01.01.2017 and 31.12.2020 the approved methodology pursuant to 82 Austrian Gas Act 2011 for the 3rd period applies and the tariffs in this period have to be calculated according to this methodology. In the methodology pursuant to section 82 Austrian Gas Act 2011 for the 4th period it is clearly stated in its chapter I that it applies only for the tariff setting for the period 01.01.2021 until 31.12.2024 and in the decision

approving this methodology, the regulatory authority itself approved this methodology in decision point 1 (*"Spruchpunkt"*) of the decree V MET G 02/17, dated 30. April 2020 only *"as of 01.01.2021 limited until 31.12.2024"*. The Gas System Charge Ordinance 2013 – 2nd Amendment 2020 and the underlying methodology pursuant to section 82 Austrian Gas Act 2011 are deeply linked, thus a temporal misalignment between the Gas System Charge Ordinance 2013 – 2nd Amendment 2020 and the underlying methodology pursuant to section 82 Austrian Gas Act 2011 is not compliant with the Austrian regulatory framework. As the current methodology pursuant to section 82 Austrian Gas Act 2011 is approved until 31.12.2020 and the future methodology pursuant to section 82 Austrian Gas Act 2011 will only apply from 01.01.2021, such misalignment would occur, if the Gas System Charges Ordinance 2013 – 2nd Amendment 2020 would enter into force on 01.10.2020. Moreover, this misalignment would generate unnecessarily roll-up positions for the 4th period in contrast to Art. 17 (1) (a) and (b) of the NC TAR.

E-Control outlines in the explanatory notes that this approach was chosen to be in compliance with the NC TAR. However, the NC TAR in its Art. 12 (2) explicitly foresees the possibility that the tariff period and the gas year do not coincide. In such a case, separate reserve prices may be applied respectively: (a) for the time period from 1. October to the end of the prevailing tariff period; and (b) for the time period from the beginning of the tariff period following the prevailing tariff period to 30. September. This possibility is clearly envisaged also in the ENTSOG Implementation Document for the NC TAR where an example for a January–December tariff period is indicated, and *"the separate reserve prices cover the time period from 1 October 2018 to 31 December 2018 and the time period from 1 January 2019 to 30 September 2019"*.¹ Further, as indicated also by ENTSOG, this is fully in line with Art. 29 of the NC TAR since this provision provides the possibility of different "reserve prices" for publication for standard products before the yearly auction. Therefore, the application of different reserve prices within a gas year is in compliance with the NC TAR.

Consequently, TAG GmbH requests that the Gas System Charges Ordinance 2013 – 2nd Amendment 2020 shall enter in force on 01.01.2021 in line with the underlying and applicable methodology pursuant to section 82 Austrian Gas Act 2011.

¹ https://www.entsog.eu/sites/default/files/2019-10/entsog_TAR_NC_2017_2nd_ed_update_1910_web.pdf#page=74