

Energie-Control Austria
Rudolfsplatz 13a
A-1010 Wien
Austria

Malacky, July 30, 2015

Subject:

Comments on the draft Energie-Control Austria Executive Board Ordinance Amending the Gas Market Model Ordinance ("GMMO Amendment Ordinance 2015")

Dear Ladies and Gentlemen,

We appreciate the possibility to take part in the consultation process for the 2015 reform of the GMMO.

From our perspective as a Slovak storage system operator ("SSO") connected to the Austrian transmission system via the MAB pipeline, we would like to make the following comments on the proposed amendment of Section 16 (1) GMMO.

Pursuant to the draft GMMO Amendment Ordinance 2015 the following sentence shall be inserted after the second sentence of Section 16 (1):

If a storage system operator fails to comply with the system operator's call to book capacity within a reasonable deadline to be set by the system operator, the amount of capacity last booked by the storage system operator shall be again booked for the next year.

a) Booking period in Section 16 (1) should correspond to storage year

At the moment, the rules in Section 16 (1) are based on the calendar year as the relevant booking period. This is suboptimal for SSOs. They market their storage capacity according to the storage year (April-March) and their knowledge of next year's business situation and capacity demand is best in the months preceding April. Any amendment of Section 16 should therefore either change the booking period in Section 16 (1) to the storage year or otherwise provide for sufficient flexibility of the booking process for SSO.

b) Clarification that contractual regime prevails over general rule

We assume that the proposed new sentence relating to a SSO's failure to notify applies only as a fallback solution, i.e. if a failure to notify is not dealt with in the capacity contract between the SSO and the TSO (in German: "dispositives Recht"). We appreciate that the Austrian regulator intends to create a legal framework that reduces legal and procedural uncertainties that may arise in the relations between market players. However, we would like to emphasize at this point that capacity contracts between system operators and SSOs are best suited to set forth the rules of communication between the parties and the consequences of a SSO's failure to notify next year's capacity demand to the system operator. A general rule such as the one proposed in the draft GMMO Amendment Ordinance 2015 cannot mirror the specific demands and requirements of the parties as good as a tailor-made contractual regime.

We suggest to clarify the primacy of a contractual arrangement by putting the following phrase in front of the proposed new sentence:

"Unless the storage system operator and the system operator agree otherwise, ..."

- c) **The "call" by the system operator should be replaced by a statutory deadline within which an SSO is required to announce the capacity booking for the next period**

If, in the absence of a contractual agreement, the process according to the proposed new sentence applies, the SSO would be in a very unfavorable position. The suggested process creates flexibility for the system operator and uncertainty for the SSO. This is because (i) the system operator is free to "call" on the SSO whenever it deems appropriate and has a wide margin of discretion as to the deadline for a reply (it must only be "reasonable") and (ii) Section 16 (1) is based on the calendar year instead of the storage year.

To give an example: If, *e.g.*, the system operator calls on the SSO to indicate the required capacity booking for Year 2 in February of Year 1, the SSO will have to make a decision on capacity booking for the storage year that begins in April of Year 2, *i.e.* 14 months in advance. It goes without saying that it is difficult for the SSO to plan so far ahead. In such a scenario the opportunity to unilaterally reduce the booked capacity for 10%, for example, provides little or no flexibility.

This problem is best solved if the process is not introduced by a "call" from the system operator. In our view, if this situation requires to be regulated at all, it would be sufficient if the amended Section 16 (1) provides for an obligation on the SSO to announce the capacity booking for the next period reasonably in advance. In order to ensure predictability for system operators Section 16 (1) should stipulate a deadline for the SSO's announcement which takes into account the way how storage capacities are marketed.

We suggest that if the booking period remains to be the calendar year the deadline for the SSO's announcement should not be earlier than the fourth quarter of the year, *e.g.* November 30. Similarly, if the booking period is changed to the storage year, the deadline for the SSO's announcement should be set in the first quarter of the calendar year, *e.g.* February 28/29.

We believe that this would be a balanced solution. It would at the same time ensure the system operators' interest in predictable capacity booking and provide the SSOs with necessary flexibility to make well-founded and timely decisions on their demand for capacity in the next period. In this context it is worth mentioning that the flexibility of SSOs is already limited by the 10% cap on yearly changes in their capacity bookings.

We thank you in advance for taking our comments into account. We are happy to discuss our comments with you in further detail.

Martin Beňa
Director for Sales and Marketing