

**PER E-MAIL**

E-Control Austria

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Saint Petersburg, 14 March 2022

**RE: Consultation document – Supplement to the Gas System Charges Ordinance 2013, Annex 3**

Dear Ladies and Gentlemen,

we, Gazprom export LLC, appreciate the opportunity to provide our views and comments on the draft of the supplement to **Annex 3** to the Gas System Charges Ordinance 2013, as last amended (**Tariff Ordinance**). In this context we may provide the following

**CONSULTATION RESPONSE:**

**1. Introduction of a flow-based charge and tariff increase during the current regulatory period**

We note that the current reference prices and entry/exit tariffs were only recently determined based on the Reference Price Methodology (RPM) pursuant to Art 6 (3) NC TAR. The RPM was subject to public consultation in the year 2019. The current entry/exit tariffs are set for the regulatory period from 01.01.2021 to 30.09.2024.

The 4 years duration of each regulatory period is based on the idea of **stability of transport tariffs**. The 4 years period is therefore aimed to fix the transport tariffs not only in the short term (e.g., one year), but for a longer period. This provides a certain degree of planning certainty for network users. Such planning certainty is crucial for our business since the pricing of (forward) gas transactions largely depends on the expected gas transport tariffs. Moreover, tariff stability is generally ensured by the regulatory principle that there should be no unexpected changes in tariffs during a pending tariff period. It is common understanding in the Austrian regulatory practice that tariff changes which could have a material negative economic impact on network users must be avoided. If,

due to the dynamic cost base of network operators, there is a shortfall or surplus in the TSO's revenues, this should not be compensated for in the pending regulatory period, but by corresponding tariff adjustments in the next regulatory period. This is one of the core principles of the Austrian regulatory system.

Against this background, it does not appear permissible to compensate for any energy price driven shortfall in revenue during the current tariff period. The proposed introduction of a flow-based charge during the current regulatory period therefore contradicts the existing regulatory framework. The proposed tariff change conflicts with Sec 82 GWG 2011 which regulates the setting of the tariff methodology. Sec 82 GWG 2011 provides for the possibility to change the methodology upon request of E-Control, whereas it does not permit to adjust the cost base of network operators during pending regulatory period. A new cost assessment is allowed only, if the TSO does not comply with the methodology pursuant to Sec 82 GWG 2011 (see Sec 82 GWG para 3 GWG 2011). This conclusion is not altered by the fact that the method approval provides for the mechanism of a tariff increase "upon request" of the network operator in the event of a significant increase of energy prices and CO2 costs. Such mechanism to adjust the allowed cost of TSOs during pending regulatory period is not covered by law and is therefore unlawful.

The proposed tariff increase also violates the principles of the NC TAR and is contrary to EU law. According to the NC TAR, in order to promote stability of transmission tariffs for network users, to foster financial stability and to avoid detrimental effects on the revenue and cash flow positions of transmission system operators, principles for revenue reconciliation should be set out in the national tariff systems. The principle of stability of transmission tariffs is taken into account by the Austrian regulatory system to the extent that any shortfall in revenues arising during the current regulatory period is not compensated for until the end of the regulatory period. Moreover, compensation is only permitted if the shortfall in revenues has not been covered by risk premiums. At the same time, the principle of "financial stability and avoidance of adverse effects on the revenues and cash flow of transmission system operators" is taken into account to the extent that any shortfall in revenues is compensated for in the following regulatory period.

We are particularly critical of the fact that the planned amendment to the RPM will not only lead to an increase of tariffs during pending tariff period. It will also result in the introduction of a flow-based charge which is a new type of tariff component which is not foreseen in the current RPM which was only recently adopted in Austria. The introduction of a new tariff component should in any case have been reserved for the next regulatory period. Moreover, we believe that the introduction of a flow-based commodity charge must not be through amendment of the RPM since the RPM is aimed to establish a capacity cost allocation mechanism, whereas a commodity charge is entirely independent from the capacity costs. Against this background we believe that the proposed introduction of a commodity charge based on an amended RPM is inaccurate and in conflict with the NC TAR. It is also not correct to allocate the energy costs in the very same manner "as in the case for capacity-based charges" (page 5 of the consultation document). The NC TAR does not foresee to apply the cost allocation mechanism to commodity charges.

We therefore ask E-Control to refrain from passing through the price increases in connection with compressor energy as of 01.10.2022. We believe it would be reasonable to establish flow-based charge not before the end of the current regulatory period and pass through the costs to network users – if at all – only as of 01.10.2024.

## **2. Unreasonable increase in transport costs at certain entry points**

As part of the consultation on the RPMs and reference prices for 2019 and 2020, we already pointed out that the tariff increases at the entry/exit points Baumgarten and Arnoldstein are not reasonable (see our consultation responses of 29 March and 20 December 2019).

The tariff increases of 10% at the Baumgarten entry point, which has already been implemented, is incomprehensible, especially since, to our knowledge, no significant expansion or maintenance measures have been carried out in the recent past and the load flows have also remained essentially unchanged. The newly proposed introduction of a volume-based charge will result in a massive cost increase of 29,1 and 23,1% not only at the said entry and exit points, but in the entire transmission system of Austria. The current RPM promotes the principle to protect shippers from material price increases by applying a "cost cap". This principle is obviously detrimental to the envisaged introduction of flow-based charge which will result in material increase of transport costs. We consider such a short-term cost increase of this magnitude to be unreasonable and refer in this context to the statutory requirement to spread extraordinary expenses and cost increases over several regulatory periods so that there is no unreasonable cost burden on network users and end customers.

## **3. Lack of transparency and plausibility of the increase in energy costs**

In connection with the adjustments of the TSO allowed cost basis, we would like to point out that an increase of non-controllable costs in the amount 108% (TAG) and 61% (GCA), solely due to increased energy prices, is not plausible, especially since this cost increase was obviously already assumed in January 2022 which means that the most recent price developments have not even been taken into account. At the level of TAG, the consultation paper suggests that the total allowed cost will increase by 27%. The total costs in the market area East increase by 20.15%. Despite rising energy prices, it is hard to believe that such a high-cost increase for compressor energy has actually occurred. If this is the case, we believe it would be necessary to examine whether the network operators have complied with the requirement to procure compressor energy (gas and/or electricity) in a non-discriminatory, competitive, and transparent procedure. We are particularly concerned that E-Control does not provide any information in relation to the verification of claimed cost increases.

#### **4. Payment in kind instead of a monetary determination of the quantity-based remuneration**

Article 4(3)(a)(iii) NC TAR stipulates that a flow-based charge is to be expressed either in monetary terms or in kind. E-Control appears to have opted for the first option, whereas from our point of view, and presumably also from the point of view of many other network users, especially those who are primarily active at entry points of the system, the setting of the flow-based charge in the form of a contribution in kind would provide additional flexibility for network users. For the network operators, it makes no difference in which form the volume-based charge is paid. In any case, in view of the intended introduction of a volume-based charge during the current charging period, which would come as a surprise to network users, it would be a fair solution to provide the option of a payment in kind. Notably, Sec 72 para 2 GWG 2011 would not conflict with a payment in kind, since the NC TAR is directly applicable and is the prevailing regulation.

To conclude, we believe that the proposed supplement to the Tariff Ordinance does not comply with the NC TAR and GWG 2011. Furthermore, it conflicts with the well-established regulatory system in Austria, which is based on the principle of tariff stability and which, in principle, does not allow tariff adjustments during ongoing regulatory periods. We therefore would like to ask E-Control to re-consider the option to introduce flow-based charges only at the end of the current regulatory period.

Gazprom export LLC