

Introduction

Content:

The *Gaswirtschaftsgesetz* (Gas Act) 2011 fundamentally changed the method according to which the system charges are set. The *Gas-Systemnutzungstarife-Verordnung* (Gas System Charges Ordinance) 2013, *BGBI.* (Federal Law Gazette, FLG) II no 309/2012, and the transmission system charges it set from 1 January 2013 were the first step in implementing these changes. The 2017 amendment of the Gas System Charges Ordinance 2013, FLG no 425/2016, adjusted the transmission system charges. The present amendment aligns the transmission system charges with Commission Regulation (EU) 2017/460 establishing a network code on harmonised transmission tariff structures for gas, OJ L 72/29, 17.03.2017 (TAR NC).

Alternatives:

None

Effects on Austria as a place for doing business:

Economic system charges and efficient operation of gas networks enable a liberalised gas market, which in turn has positive effects on the economy as a whole.

Financial effects:

No impact on the budget of the state or the federal provinces

Union legislation framework:

The transmission system charges are set in accordance with the Gas Act 2011, which in turn transposes Directive 2009/73/EC concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC and the TAR NC.

Particulars of the legislative process:

The Ordinance is issued by E-Control's Regulation Commission in accordance with section 12 para 2 item 1 *Energie-Control-Gesetz* (E-Control Act). In accordance with section 69 para. 3 Gas Act 2011, the concerned system operators and system users and the stakeholder representations mentioned in section 69 para. 3 must be consulted before issuing the Ordinance. In addition, the Ordinance must be discussed by the Regulatory Advisory Council in line with section 19 para. 2 E-Control Act.

Explanatory notes

General comments

The Gas Act 2011, coming into effect on 1 January 2013, entailed fundamental changes to the gas market model. Transmission-level system utilisation charges are set separately per entry/exit point on the one hand and per internal interconnection point into the distribution network on the other; the former charge is payable by injecting/withdrawing parties, the latter by the distribution area manager (DAM). The system charges are set based on the allowed cost and the transported volume established by E-Control's Executive Board in accordance with section 82 Gas Act 2011. The allowed cost and the transported volume are fixed for each four-year regulatory period.

So far, transmission system charges have been set for the same duration, i.e. the charges remained unchanged for four years. The transmission system charges set in the Gas System Charges Ordinance 2013 thus applied for the entire tariff period from 1 January 2013 until 31 December 2016. The 2017 amendment to the Gas System Charges Ordinance 2013 adjusted the transmission system charges from 1 January 2017. These are again adjusted with the present amendment.

While the practice of stable transmission system charges is continued, the revised charges will already apply from 1 October 2020, i.e. from the beginning of the new gas year. This ensures that they correspond to the contract terms of standard capacity products pursuant to Commission Regulation (EU) 2017/459 establishing a Network Code on Capacity Allocation Mechanisms in Gas Transmission Systems, OJ 72/1, 17.03.2017 (CAM NC), and in particular to that of the yearly standard capacity product.

The TAR NC came into force on 6 April 2017. Article 27(5) TAR NC enables the charges set in the 2017 amendment to the Gas System Charges Ordinance for the period from 1 January 2017 to remain in force until the end of the four-year tariff period. The present amendment is thus the first to set the charges in line with the TAR NC. However, given that the contents of the TAR NC were already widely known (even though not yet binding) at the time when the 2017 amendment to the Gas System Charges Ordinance 2013 was drawn up, they were already taken into account.

The present amendment sets the system charges based on a reference price methodology that is described in annex 3. It was consulted in line with Article 26 TAR NC: the first consultation ran from 31 January 2019 until 31 March 2019, the second one from 8 November 2019 until 8 January 2020. Based on the responses received and on the assessment by the Agency for the Cooperation of Energy Regulators (ACER) pursuant to Article 27(2) and (3) TAR NC, the reference price methodology was adjusted; these adjustments are described in the explanatory notes relating to annex 3. The consultation of the reference price methodology also included a consultation of the discounts, multipliers and seasonal factors pursuant to Article 28 TAR NC.

The transmission system charges are laid down in an E-Control Regulation Commission ordinance. Prior to enacting the ordinance, it must be submitted to a consultation and to a discussion at the Regulatory Advisory Council.

Commentary on sections

Section 3

The system utilisation charges for feeding into and taking off from the transmission network in section 3 paras 2, 3, 5, 6 and 8 are determined applying the reference price methodology described in annex 3.

Section 3 para. 4 item 1

In line with the CAM NC, procedures for incremental capacity at the Überackern, Mosonmagyaróvár and Murfeld points were initiated in 2017. The procedure for the Überackern point did not yield a positive economic test result. Pursuant to Article 22(3) CAM NC, this concludes an incremental capacity process. Thus, the mandatory minimum premium does not apply.

Section 3 para. 7

The charge for interruptible capacity is not set separately. Instead, it normally corresponds to the charge for firm, freely allocable capacity, and compensations apply if interruptions actually occur. This is based on Article 16(4) TAR NC, and it corresponds to how system operators have handled interruptible capacity so far. One respondent to the final consultation of the reference price methodology suggested switching to ex-ante discounts for interruptible capacity, but the current system has proven its worth and is maintained.

The adjustment made refers to how the compensation is calculated (cf. annex 1), bringing it in line with the TAR NC. For the relating details and considerations that were taken into account in decision-making, please refer to the final consultation document, specifically on Article 28(c) TAR NC (cf. sub-chapter 5.3, <https://www.e-control.at/en/marktteilnehmer/gas/tarif-network-code?inheritRedirect=true>)

Also in line with the TAR NC, compensations only apply at points without capacity interruptions due to physical congestion during the previous gas year. As this condition was not fulfilled at the Oberkappel and Überackern entry points in the gas year 2018/19, section 3 para. 7a provides for an alternative approach at these points.

Section 3 para. 7a

Article 16(4) TAR NC provides for ex-ante discounts for interruptible capacity (as compared to the same type of firm capacity) at points with interruptions due to physical congestion during the previous gas year. This is the case at the Oberkappel and Überackern entry points, which is why section 3 para 7a sets ex-ante discounts for these points. They amount to 12% of the charges for the corresponding firm capacity with the same contract duration. There is an annual re-evaluation of all points to verify whether the prerequisites are fulfilled. Of course, capacity that has benefited from such an ex-ante discount does not qualify for ex-post compensation in the case of interruptions. For the relating details and considerations that were taken into account in decision-making, please refer to the final consultation document, specifically on Article 28(c) TAR NC.

Section 3 paras 9 and 9a

In line with Article 28 TAR NC, the level of multipliers was consulted with the national regulatory authorities of all member states directly connected with the Market Area East and with the relevant stakeholders. So far, the multipliers in the Market Area East have been far below those in adjacent market areas. The present amendment aligns them. This levelling up also takes into account that short-term capacity bookings have increased. The popularity of short-term contracts at interconnection points creates pockets of systemic under-use and costs at points where bookings cannot be adjusted to short-term demand swings, i.e. domestic supply, domestic production and gas storage. In line with Article 7(d) TAR NC, this asymmetric impact on domestic final customers must be offset by raising multipliers.

Section 3 para. 10 and section 4 para. 5

The transmission system operators publicly announce any maintenance work that will lead to a temporary restriction of capacities at least 42 days in advance. Any maintenance work that is not announced at least 42 days in advance counts as unscheduled maintenance; where this is the case, the rules in force dictate that the system charges payable by system users be reduced for the duration and extent of the capacity restriction.

The transmission system operators always endeavour to conclude scheduled maintenance work as quickly as possible. However, where scheduled maintenance indeed entails longer capacity restrictions, system users have so far had to pay the full charges for these periods. With the present amendment, charges are now also reduced for capacity reductions beyond 360 hours per gas year that are caused by scheduled maintenance.

The overall duration must be calculated per entry/exit point and be transparently and adequately communicated to system users. Historic data show that scheduled maintenance work does not usually exceed 360 hours per gas year at individual entry/exit points. In the few cases where maintenance lasted significantly longer, system users should not have to pay the full system charges.

Section 4

The system utilisation charges for transmission network entries and exits from/into storage in section 4 paras 2 and 3 are determined by applying the reference price methodology described in annex 3.

Section 4 para. 4

The interruptibility of interruptible capacity that connects storage facilities is taken into account by way of compensation (similar to the rule in section 3 para. 7). This has already been the case previously. One response submitted during the consultation suggested applying ex-ante discounts to interruptible capacity towards storage facilities that was indeed interrupted in the past. The present amendment does not follow this suggestion, because the existing system has proven its worth and there is no legal necessity to change it. In addition, a system that were to differentiate depending on interruptions during a previous period could create different charges for otherwise equally treated storage facilities/operators and thus distort competition.

Section 4 paras 6 and 7 and section 12 paras 4 and 5

Storage customers that make use of storage across borders have to be treated in the same way as system users that carry out transports at cross-border interconnection points and are obliged to pay the respective charges at these points. This principle has applied to cross-border storage use for some time; now, Article 9(1) of the TAR NC mandates it.

Section 4 para. 6 and section 12 para. 4 concern cross-border storage use from the Market Area East into a neighbouring market area. The charges for using the 7-fields storage facility, located near the cross-border interconnection point at Überackern, are set in section 4 para. 6 item 1 and section 12 para. 4; they are based on the system utilisation charge for exits at Überackern, while taking into consideration that the charge for exits from the Austrian grid into storage pursuant to section 4 para. 2 item 1 has already been applied. The charges for using the MAB (Láb 4) storage facility, located near the cross-border interconnection point at Baumgarten, are set in section 4 para. 6 item 2; they are based on the system utilisation charge for exits at Baumgarten, while taking into consideration that the charge for exits from the Austrian grid into storage pursuant to section 4 para. 2 item 2 has already been applied.

Section 4 para. 7 and section 12 para. 4 concern cross-border storage use from neighbouring market areas into the Market Area East. The charges in section 4 para. 7 item 1 and section 12 para. 5 (for 7-fields) are based on the system utilisation charge for entries at the Überackern cross-border interconnection point. The charges in section 4 para. 7 item 2 (for MAB) are based on the system utilisation charge for entries at the Baumgarten cross-border interconnection point.

Section 7 para. 2

As a consequence of applying the same reference price methodology to the two TSOs in the Market Area East, there is a systematic difference between the revenues based on tariffs in the ordinance multiplied by the capacities in the official cost decision (forecasted revenues) and the allowed cost of each TSO as stated in the individual official cost decision. The surplus of one TSO thereby amounts to the shortfall of the other TSO and thus determines the compensation amount to be paid. Section 70 para. 2 Gas Act 2011 provides that an ordinance with the compensation payments among the system operators be issued. This is done in section 7 para. 2.

Section 8 para. 3

The reference to the CAM NC provision on implicit allocation methods is corrected.

Section 21 para. 16

The revised charges apply from the start of the gas year on 1 October 2020 to ensure that they correspond to the contract terms of standard capacity products under the CAM NC. The previous rates apply for transports up until 30 September 2020.

Annex 1

Annex 1 describes how the compensation for actual interruptions of interruptible capacity is calculated (unless ex-ante discounts apply under section 3 para. 7a).

Basic considerations are explained in the final consultation document, specifically on Article 28(c) TAR NC (cf. sub-chapter 5.3, <https://www.e-control.at/en/marktteilnehmer/gas/tarif-network-code?inheritRedirect=true>). In addition, annex 1 distinguishes between the compensation factor (D_{rf}) for entries/exits at interconnection points and that applicable to capacities towards storage facilities.

Please note that the regulator had not so far issued ordinances fixing compensation for interruptions of capacity towards storage facilities; instead, the system operators had agreed (usually low) compensation factors with system users. The TAR NC now prescribes a factor of 3 and provides that ex-post compensation also apply to capacity towards storage; considering this, the present ordinance sets a uniform compensation factor of 1.5 for interruptible capacity towards storage. The regulatory authority thus takes into account the arguments brought forward during the consultation phase.

Annex 3

Annex 3 describes the reference price methodology for calculating the reference prices in sections 3 and 4. It was consulted in line with Article 26 TAR NC. Based on the responses received and on the assessment by ACER pursuant to Article 27(2) and (3) TAR NC, the reference price methodology was adjusted; these adjustments are described below. This is accompanied by a reasoned consideration of the arguments that were taken into account. The present explanatory notes thus constitute a motivated decision pursuant to Article 27(4) TAR NC.

The reference price methodology must be in line with the requirements of Article 7 TAR NC:

- “(a) enabling network users to reproduce the calculation of reference prices and their accurate forecast;*
- (b) taking into account the actual costs incurred for the provision of transmission services considering the level of complexity of the transmission network;*
- (c) ensuring non-discrimination and prevent undue cross-subsidisation including by taking into account the cost allocation assessments set out in Article 5;*
- (d) ensuring that significant volume risk related particularly to transports across an entry-exit system is not assigned to final customers within that entry-exit system;*
- (e) ensuring that the resulting reference prices do not distort cross-border trade.”*

Transparency (Article 7(a) TAR NC)

Respondents to the consultation requested that the description of the reference price methodology be more detailed and transparent. In concrete terms, they criticised that the consultation only stated indicative costs and that the separate procedure for fixing the transmission system operators' costs was not transparent. Also, they asked for more information about the parameters and stated that the differentiation between controllable and non-controllable costs was not straightforward. They considered the simplified tariff model to be insufficient and difficult to understand.

ACER found that the consulted explanation of the reference price methodology did not live up to the transparency requirements in Article 7 TAR NC because it failed to state the most significant assumptions and parameters for the simplified tariff model. It thus did not enable system users to reproduce and verify whether the rates calculated by the authority matched their own calculations. ACER recommended that the authority provide a detailed tariff model and an explanation of how the controllable and non-controllable costs contribute to the overall rates. E-Control follows this recommendation by publishing a detailed tariff model (s. separate spreadsheet). The differentiation between controllable and non-controllable costs is abandoned, i.e. the reference price methodology now applies to the TSOs' total costs. This improves transparency and enables system users to better calculate rates themselves.

On the issue of assumptions for the historical booking situation and actual forecasted booked capacity, please note that using total costs (instead of controllable vs. non-controllable costs) also means that a differentiation between these two is no longer necessary. The reference price methodology applies to the total costs, based on the transported volume. Neither of the two transmission system operators reached the mandatory minimum transport volume, i.e. both faced a realised volume risk in at least one year. For the upcoming tariff period, the transported volume thus corresponds to the mandatory minimum transport

volume pursuant to chapter III.1 of the methodology approved under section 82 Gas Act 2011. Due to the realised volume risk, the mandatory minimum transport volume is higher than the forecasts derived from the average historical booking situation during the last three years, i.e. the former is used for calculating the rates for the upcoming tariff period. The mandatory minimum transport volume is displayed in the tables in chapter 1.2 of annex 3 to the present amendment.

One point of criticism during the consultation was that indicative costs were used; on this issue, please note that Article 26(1)(b) TAR NC provides for using indicative information in the final consultation. Also, the final costs were not known at the time of consultation, i.e. using indicative costs was the only available option.

Regarding improved transparency on how the TSOs' costs were determined, please note that this is an issue outside the scope of the TAR NC. The TSOs' allowed cost is set in a separate procedure, under section 69 Gas Act 2011 in conjunction with section 82 Gas Act 2011; this procedure does not include a public consultation, but both the Austrian Federal Economic Chamber and the Federal Chamber of Labour, as representatives of customer interests, are parties to it.

Cost-reflectiveness (Article 7(b) TAR NC)

ACER found that the consulted reference price methodology fulfilled the TAR NC's requirements to be cost-reflective and non-discriminatory if the volume risk was sufficiently reasoned. With reference to the latter, they pointed to Article 7(d) TAR NC (s. below). A number of responses to the consultation also considered the reference price methodology using the virtual point to be a good fit for the transmission network structure in the Market Area East.

Some respondents criticised the that all entry points were joined into one entry cluster, arguing that a uniform entry charge would have undesirable effects on the Austrian gas market. Clustering entry/exit points, i.e. treating all entry or exit points as a single entry or exit point, is generally admissible. Article 3(19) TAR NC defines a cluster of entry or exit points as "a homogeneous group of points or group of entry points or of exit points located within the vicinity of each other and which are considered as, respectively, one entry point or one exit point for the application of the reference price methodology". According to Article 3(10) TAR NC, a homogeneous group of points is "a group of one of the following types of points: entry interconnection points, exit interconnection points, domestic entry points, domestic exit points, entry points from storage facilities, exit points to storage facilities, entry points from liquefied natural gas facilities (hereinafter, referred to as 'LNG facilities'), exit points to LNG facilities and entry points from production facilities". Clusters can thus consist either of a homogeneous group of points or of a group of entry points or of exit points located within the vicinity of each other.

The consultation document proposed forming a single cluster containing two different groups of homogeneous points: entry points from storage and entry interconnection points. To bring the system into line with the TAR NC, ACER reasonably recommended splitting the single entry cluster into one cluster for storage entry points and another cluster for entry interconnection points. The authority follows this recommendation but maintains the overall idea of clustering entry interconnection points as a way to create a level field on the Austrian gas market.

Different opinions were voiced concerning the benchmark exit tariff at the Murfeld point. Some respondents welcomed the step, while others criticised it. ACER pointed out that any deviation from the rates calculated by applying the reference price methodology must needs reduces cost reflectiveness; however, they conceded that benchmarking against the competing transport route was admissible under Article 6(4) TAR NC. The authority thus sticks to its proposal to introduce a benchmark exit tariff at the Murfeld point.

The differentiation between controllable and non-controllable costs is abandoned (cf. also the notes above on Article 7(a) TAR NC). E-Control shares ACER's legal interpretation, according to which differentiation between these two cost types would in practice lead to two reference price methodologies being applied, which is not in line with Article 6(2) and (3) TAR NC.

Preventing cross-subsidisation (Article 7(c) TAR NC)

ACER found that the consulted reference price methodology fulfilled the TAR NC's requirements to avoid undue cross-subsidisation if the volume risk was sufficiently reasoned. With reference to the latter, they pointed to Article 7(d) TAR NC (s. below).

One instrument to assess cross-subsidisation between intra-system and cross-system network use is the cost allocation assessment under Article 5 TAR NC. The result for the cost allocation comparison index is 12.29%, taking into consideration both freely and dynamically allocable capacity and all adjustments. As recommended by ACER, E-Control publishes information about the components of the cost allocation assessment and the details of these components pursuant to Article 26(1)(a)(iv) TAR NC.

Volume risk (Article 7(d) TAR NC)

Some respondents to the consultation criticised the 10% cap on tariff increases. They questioned whether this was a cost-reflective approach for all entry and exit points. A number of responses saw a connection between the cap and an assumption that TSOs' costs would rise. In this context, please note that the cap also applies if the TSOs' costs sink or go sideways, since application of the reference price methodology could lead to significant tariff increases at individual entry/exit points. Also, some reactions to the consultation pointed to the overall risk premium in the methodology pursuant to section 82 Gas Act 2011, asking whether the 10% cap on tariff increases was not a case of double compensation for the volume risk.

ACER found that the consulted reference price methodology fulfilled the TAR NC's requirements with respect to the volume risk if E-Control relied on a sufficiently reasoned argument.

The first time the system operators' volume risk was acknowledged was in the methodology pursuant to section 82 Gas Act 2011 for the years from 2012 onwards. At that time, the risk posed by falling volumes was estimated. That estimation did not take into account the risk that customers of system operators could prematurely terminate their contract due to tariff hikes, which were not foreseen in long-term contracts. (For instance, the tariffs at the Baumgarten and Mosonmagyaróvár exits would increase by around 50% if no cap was applied.) The cap is thus not designed to reduce the original risk, but to address the system operator risk caused by applying the TAR NC.

In addition, the 10% cap on tariff increases serves to fulfil the requirement in Article 17(1)(c) TAR NC, which states that, "significant differences between the levels of transmission tariffs applicable for two consecutive tariff periods shall be avoided to the extent possible." Excessive tariff hikes could undermine the competitiveness of the rates and frustrate system users' expectations towards continuous tariff development. Due to the cap, the rates for the upcoming tariff period will not deviate from the previous rates by more than inflation adjustments. The competitive situation is thus maintained. This is in line with Article 6(4)(a) TAR NC, which provides for the possibility that, "[...] reference prices at a given entry or exit point are adjusted so that the resulting values meet the competitive level of reference prices".

The assessment of the volume risk was based on the assumption that long-term capacity contracts would not be extended, neither in terms of amount nor in terms of duration. Experience has shown that booking and actual use are continuously converging. At the same time, rates should remain roughly stable over time and excessive swings should be avoided. Given that Austria is a transit country where four fifths of demand come from abroad, the Austrian network competes with alternative transport routes to the countries of destination. Stable rates are thus paramount to maintain the Austrian network's competitiveness.

To prevent the transport and domestic rates from rising starkly due to a drop in bookings, the mandatory minimum transport volume for tariff setting is maintained at 2012 levels. The risk premium foreseen as part of the cost methodology adequately compensates for the risks entailed.

The 10% cap on tariff increases enables a continuous, stepwise evolution of the entry/exit split towards the target split foreseen by the reference price methodology. Without the cap, entry rates would continuously rise, to the benefit of exit rates; this would constitute an unexpected change of the rates that would not be in line with Article 17(1)(c) TAR NC. If this were the case, long-term contracts could be expected to be terminated, reducing capacity bookings. This would drive up entry rates even further. Both effects would increase costs for domestic transports while decreasing those for transits.

Article 7(d) TAR NC stipulates that the volume risk may not be borne by final customers within the entry-exit system. As explained in the consultation document, the general terms and conditions of German

transmission system operators, which operate within a similar legal framework, consider an annual increase in line with the consumer price index (CPI) to be adequate. For the third regulatory period, the Austrian CPI for the years 2017-2020 is relevant. As of mid-October 2019, Statistics Austria had published the numbers for 2017 (2.1%) and 2018 (2.0%). Together with the pertinent forecasts for the CPI for 2019 and 2020 (by the Austrian central bank OeNB, IMF, Institute for Advanced Studies, Austrian Institute of Economic Research WIFO, Austrian Ministry of Finance), this results in 7.5 to 8% for the third period. Considering these numbers, and to enable actual tariffs to converge on the RPM level soon, tariff increases are capped at 10%. As an effect, only about 3.4% of costs are shifted from entry to exit points, compared to the previous tariffs. This is against a background of generally decreasing exit rates.

The authority concludes that the 10% cap on tariff increases is in line with the requirements in Article 7(d) TAR NC and that there are no equally suitable alternatives. The proposed 10% cap is maintained.

Cross-border trade (Article 7(e) TAR NC)

ACER could not verify whether the consulted reference price methodology was in line with the requirements on cross-border trade because the consultation document did not contain any relating information, even though this is an important factor for Austria as a transit country.

While the consultation document did not include an assessment, E-Control does monitor the general booking situation at the cross-border interconnection points, using the monthly reports drawn up by the transmission system operators. Route changes of Russian gas on its way to Europe did not have major impacts on the Austrian gas network; the Baumgarten point continues to function as central entry point. However, E-Control continues to monitor the emergence of new transport routes that could increase liquidity on the wholesale market and exert downward pressure on wholesale gas prices in Austria.