

Draft

## **Energie-Control Austria Executive Board Ordinance Amending the Gas Market Model Ordinance (2012 Gas Market Model [Amendment] Ordinance 2014)**

In exercise of section 41 *Gaswirtschaftsgesetz* (Natural Gas Act) 2011, *BGBL.* (Federal Law Gazette [FLG]) I no 107/2011, as amended by FLG I no 174/2013, in conjunction with section 7 para. 1 *Energie-Control-Gesetz* (E-Control Act), FLG I no 110/2010, as amended by FLG I no 174/2013, the following Ordinance is issued:

The Energie-Control Austria Executive Board Ordinance on Provisions for the Gas Market Model (Gas Market Model Ordinance 2012), FLG II no 171/2012, as amended by the 3rd Gas Market Model (Amendment) Ordinance 2013, FLG II no 271/2013, is amended as follows:

1. *Section 12 reads:*

“**Section 12.** (1) System users are obliged to offer fully or partially unused firm capacity as secondary capacity on the online platform without delay, or to return it to the transmission system operator pursuant to point 2.2.4 in Regulation (EC) No 715/2009 Annex I and pursuant to the general terms and conditions for transmission system access.

(2) Following a written notification, transmission system operators shall partially or fully withdraw systematically unused firm booked capacity from a system user and offer it on the primary capacity market if and to the extent that other system users request firm capacity at the relevant interconnection point, there is contractual congestion and the system user has not offered the unused capacity on the online platform or returned it pursuant to para. 1. This applies to all contracts with an effective contractual duration of at least one year that have been concluded for that entry/exit point. Booked capacity is considered to be systematically unused if

1. the balance responsible party has been using less than on average 80% of the capacity allocated to its balance group or sub-account both from 1 April until 30 September and from 1 October until 31 March with an effective contract duration of more than one year; or
2. the balance responsible party systematically nominates close to 100% of the capacity allocated to its balance group or sub-account and renominates downwards with a view to circumventing the rules laid down in section 11 para. 3; or
3. the balance responsible party has not used the firm capacity allocated to its balance group or sub-account during a period of at least three consecutive months during the last calendar year, not even during individual hours. One of these three months must have been the month of October, November, December, January, February or March.

If a network user has distributed its booked capacity among several balance groups or sub-accounts, the criteria for systematically unused capacity pursuant to items 1 to 3 shall be calculated depending on the total capacity allocated to these balance groups or sub-accounts.

(3) Transmission system operators shall withdraw capacity to the extent specified below; where several network users have entered capacity to the same balance group or sub-account, withdrawal shall be proportionate to the capacity entered by each network user.

1. In the cases of para. 2 items 1 and 2, capacity shall be withdrawn to the average extent of non-use for the remaining contractual term;
2. in the case of para. 2 item 3, capacity shall be withdrawn to the extent that the balance responsible party has not used the firm capacity allocated to its balance group or sub-account during a period of at least three consecutive months during the last calendar year, not even during individual hours. One of these three months must have been the month of October, November, December, January, February or March. Where several such periods of three calendar months can be identified, capacity may be withdrawn from the system user up to the lowest instance of non-use during this entire time. Calculations of how much capacity is to be withdrawn shall be based on the amount of capacity available to the balance responsible party by way of contracts with durations of at least one year.

(4) Capacity shall not be withdrawn under para. 2 above if the system user, within 14 days following written notification of the capacity withdrawal, provides written proof confirming that

1. it has offered the capacity in accordance with para. 1 on the secondary market for a price that is not significantly higher than the original price payable to the transmission system operator for the corresponding primary capacity or surrendered the capacity to the transmission system operator for the period and extent of non-use; or
2. it still needs all the capacity to meet existing contractual obligations, from gas procurement or supply contracts in particular.

(5) The transmission system operator shall inform the regulatory authority without delay when a situation as described in para. 2 arises, including information about the envisaged extent of capacity withdrawal pursuant to para. 3; if applicable, it shall also submit the proof provided under para. 4.

(6) The system user shall retain its rights and obligations under the capacity contract until the capacity is reallocated by the transmission system operator as primary capacity and to the extent the capacity is not reallocated by the transmission system operator. As far as collateral is concerned, the relevant provisions in the general terms and conditions for transmission network access apply.

(7) Transmission system operators shall retain the information as referred to in paras 2 and 3 for each balance group or sub-account, particularly information about the allocated and actually used capacity, for a period of five years and make such information available to the regulatory authority if it so requests.”

*2. Section 13 para. 1 reads:*

“(1) Access to the distribution network is governed by the provisions of sections 27 et sqq. *Gaswirtschaftsgesetz* (Natural Gas Act) 2011. Applications for access to a system shall contain at least the information listed in annex 1. System access contracts may specify any point in time within three years of signing the contract as starting point for system use. Where the system access contract states that system use will begin later than three months after contract signature, the name of the supplier in line with annex 1 point I item 1(h) may be omitted and instead be stated during the enabling procedure according to the *Wechselverordnung* (Gas Switching Ordinance) 2014. System access contracts that state that system use will begin later than three months after contract signature may include non-discriminatory and factual conditions for guaranteeing capacity bookings; moreover, they shall fix adequate charges for (partial) non-use of the contractual capacity from the agreed time of use which reflect the degree of (partial) non-use. The provisions relating to the amount, reduction and payment security of such charges of annex 1 point III item 1(4) apply *mutatis mutandis*.”

*3. After section 13 para. 2 the following para. 2a is inserted:*

“(2a) The maximum capacity pursuant to annex I point 1 item 1(c) can be changed once in twelve months, while taking into consideration any conditions agreed pursuant to para. 1.”

*4. After section 13 para. 3 the following para. 4 is added:*

“(4) In cases where the undertaking that discharges the functions of a distribution system operator at the same time acts as consumer whose facility is connected to its own distribution system, the provisions on system access in chapters 2 and 3 apply *mutatis mutandis*.”

*5. In section 14 para. 3 the following sentence is added:*

“Conclusion of a system admission contract does not entitle the party entitled to system access to use of the network.”

*6. Section 16 para. 1 reads:*

“(1) Storage system operators shall set the maximum capacity to be reserved for injection into and withdrawal from storage together with the system operator to whose system the facility is or is to be connected

once a year for the following calendar year. System operators shall permanently reserve the capacity booked in a year for the next year. Booking more than 10% less annual capacity than has been agreed for a year between the storage system operator and the system operator shall only be permissible to the extent that the system operator can market the capacity elsewhere at the same economic conditions. If a capacity expansion project has been initiated by a single storage system operator, the annual booking may only be reduced insofar as this is foreseen in the capacity expansion contract. To increase the annual booking beyond the reserved capacity, a system access application pursuant to section 13 must be filed.”

7. *After section 16 para. 1 the following para. 1a is inserted:*

“(1) Notwithstanding para. 1, storage system operators may set the maximum capacity to be reserved for injection into and withdrawal from storage together with the system operator to whose system the facility is or is to be connected for a minimum duration of 15 years at a time. In this case, the system operator shall reserve the booked capacity for the duration of the contract. Booking less capacity than has been contractually agreed is only permissible to the extent that the system operator can market the capacity elsewhere at the same economic conditions. To increase the booking beyond the reserved capacity, a system access application pursuant to section 13 must be filed.”

8. *The last sentence of section 18 para. 7 reads:*

“A system user's balancing period can be changed once in twelve months; the distribution system operator shall inform the concerned supplier thereof without delay.”

9. *Section 24 para. 1 reads:*

“(1) System operators shall establish special balance groups for the purpose of determining system losses and own consumption. The system operators shall nominate balance responsible parties for these balance groups. In addition, several system operators may establish joint such special balance groups, in particular with a view to the procurement of energy to cover network losses. Special balance groups cannot contain metering points of consumers.”

10. *In section 24 para. 2 the following sentence is added:*

“Should several system operators form a joint special balance group, the group's appointed balance responsible party shall conclude corresponding contracts with the clearing and settlement agent or market area manager, as may be the case, and the operator of the virtual trading point.”

11. *In section 26 para. 6 item 2, the words “system operator” replaces the words “transmission system operator”.*

12. *Section 27 para. 1 reads:*

“(1) Balancing and clearing of discrepancies between consumer schedules and their actual consumption, the special balance group for distribution systems, the cross-border interconnection points at distribution level and discrepancies between biogas production schedules and metered biogas input shall be the task of the clearing and settlement agent.”

13. *Section 27 para. 4 reads:*

“(4) Clearing of the distribution-level cross-border interconnection points and of the special balance groups in the distribution network in accordance with section 24, as well as for biogas injections, shall follow a daily rhythm. Clearing of entries and exits at distribution-level cross-border interconnection points shall be based on metered hourly values. Where an operational balancing agreement with the adjacent system operator is in place, the balance responsible parties shall assume that confirmed nominated volumes correspond to allocated volumes.”

14. *Section 37 para. 4 reads:*

“(4) Clearing of the physical discrepancies between the gas transferred in accordance with para. 3, actual biogas input and deviations at cross-border interconnection points to downstream market areas on the one hand and actual consumption on the other hand shall be the duty of the clearing and settlement agent. It shall be done for each balance group separately in accordance with section 41 paras 2 and 3 and in energy units.”

15. In the first sentence in section 41 para. 8, the words “cross-border interconnection points” replace the words “cross-border points”.

16. After section 41 para. 10, the following paras 11 and 12 are added:

“(11) Clearing of entries and exits at cross-border interconnection points with downstream market areas shall be executed hourly and be based on metered hourly values. Where an operational balancing agreement with the adjacent downstream system operator is in place, the balance responsible parties shall assume that confirmed nominated volumes correspond to allocated volumes, unless the limits laid down in the operational balancing agreement have been violated.

(12) The provisions on the merit order list from section 31 apply mutatis mutandis. Notwithstanding this, the lead time for the distribution area manager to call offers for balancing energy in Tyrol or Vorarlberg is 180 minutes.”

17. In the first sentence of section 43 para. 1, the word “upstream” is deleted.

18. In the second sentence of section 43 para. 6, the reference to section 44 para. 5 is replaced with a reference to section 44 para. 6.

19. Section 44 para. 1 reads:

“(1) The clearing and settlement agent shall calculate market-based imbalance prices for the purpose of settling the discrepancies between consumer schedules and their actual consumption, the cross-border interconnection points with downstream market areas, the special balance group for distribution systems and discrepancies between biogas production schedules and metered biogas input.”

20. The first sentence in section 44 para. 2 reads:

“Settlement of system users under section 37 para. 6 and of cross-border interconnection points with downstream market areas shall make use of a volume-weighted average price for each hour, based on the balancing energy procured by the distribution area manager on the gas exchange at the virtual trading point in the upstream market area and the offers it has accepted from the merit order list.”

21. In the first sentence of section 44 para. 4, the words “distribution-level cross-border interconnection points” are deleted.

22. After section 47 para. 8 the following para. 9 is added:

“(9) The Gas Market Model Ordinance 2014, FLG II no XX/2014, shall enter into force on 1 October 2014.”

## **Energie-Control Austria für die Regulierung der Elektrizitäts- und Erdgaswirtschaft**

Executive Board

Walter Boltz

Martin Graf

Vienna, xx XXXX 2014