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05.05.2020 № GE/02/04-2673
on № ______________ From ______________

E-Control
Rudolfsplatz 13a, 1010 Wien
Austria

Consultation response

Dear Ladies and Gentlemen,

we, Gazprom export LLC, appreciate the opportunity to provide our views and comments on the draft of the second amendment 2020 to the Gas System Charges Ordinance 2013 (***Tariff Ordinance***).

We understand that the Tariff Ordinance is based on the Reference Price Methodology (***RPM***) which was previously consulted by way of publishing the Consultation Documents of 31 January 2019 (***CP 1***) and 6 November 2019 (***CP 2***). Both Consultation Documents were intended to fulfil the consultation requirement of the Commission Regulation (EU) 2017/460 of 16 March 2017 establishing a network code on harmonised transmission tariff structures (***NC TAR***). We have submitted consultation responses within open deadlines on the CP 1 and CP 2 on 29 March 2019 and 20 December 2020 respectively.

We further understand that the final RPM, underlying the Tariff Ordinance, has been revised and updated with regard to individual points. Whereas we maintain the arguments put forward in our consultation responses on the CP 1 and CP 2, we would like to provide our views and comments on the amendments and updates of the RPM as follows:

1. General Remarks

In our previous consultation responses we have pointed out that the RPM provides for an insufficient level of detail. The materials accompanying the Tariff Ordinance now reveal that the European Union Agency for the Cooperation of Energy Regulators (***ACER***) has also criticised that the RPM does not provide sufficient explanations and generally lacks disclosure of important data. We appreciate that E-Control has partially addressed this criticism by publishing an excel-file on the Tariff-Model 2020-2024 and disclosing some additional explanations. However, we believe that there is still a lack of a generally comprehensible description of the tariff calculation methodology as required under the NC TAR. For instance, the benchmark tariff Murfeld still does not provide a proper evidence for the competitiveness of the exit points Murfeld and Mosonmagyarovar. Also, the identified inconsistencies within the system of clustering have not been clarified. And, the tariff increase for entry Baumgarten is still not explained at all. E-Control has always been a frontrunner with regard to transparency and stakeholder involvement. We therefore ask E-Control to extend the consultation timeline and ensure a sufficient level of detail by providing the requested clarifications and explanations.

2. Entry Baumgarten

We appreciate the fact that E-Control finally reacted to our request for disclosure of the "theoretical", i.e. "real" tariffs by publishing them in the excel-file on the Tariff-Model 2020-2024. However, our main concerns in this respect – the actual tariff applied behind the tariff cap of 10% – remains valid. It is generally not understandable why Baumgarten is subject to a tariff increase, whereas at the same time the cost basis of network operators is substantially lowered and most of the other entry/exit points benefit from lower tariffs. The tariff increase at entry Baumgarten runs directly and fundamentally counter to the chosen RPM of the virtual point-based methodology with the virtual reference point Baumgarten which, by its very definition, indicates a low price for entries and exits at Baumgarten. In addition, no major investments are planned for the entry/exit points Baumgarten. Furthermore, capacity bookings at these points will probably remain high and stable. E-Control's argument concerning the protection of domestic supply against volume risks is therefore unreasonable and does not explain why Baumgarten is subject to a material tariff increase. This appears to be highly inadequate in the light of the chosen RPM and the newly established lower cost basis and raises concerns in respect of the RPM underlying the proposed tariffs. Furthermore, this approach suggests that the proposed tariffs are non-cost reflective and that the RPM favours certain entry/exit points (such as Murfeld), whereas Baumgarten and other points (which appear to be particularly relevant for shippers transporting gas from the East) are used to compensate non-cost reflective tariffs applicable at the remaining "favoured" entry/exit points.

3. Benchmark Tariff Murfeld

Another central argument brought forward in our consultation response to the CP 2 also remains valid. E-Control still fails to provide evidence for the nexus between the decrease and increase of capacity bookings at the exit points Murfeld and Mosonmagyarovar. It still cannot be ruled out that the decrease of capacity use at exit Murfeld is rather driven by other means than competition with Mosonmagyarovar.

The calculation of the threshold of 0,67 EUR/kWh/h/year is now better explained. However, Annex 3 still does not explain how and at which entry/exit point the lack of cost coverage is going to be compensated. Furthermore, Annex 3 still fails to provide an analysis as to whether the creation of competitiveness between Murfeld and Mosonmagyarovar is in line with the objectives of European gas market regulation and whether the creation of competition justifies a deviation from the principle of setting tariffs which are cost-reflective.

4. Entry and Exit Tariffs – Distribution Area

In our previous consultation responses, we pointed out that the exit points to the distribution area appear to be favoured against other entry and exit points since, as opposed to Baumgarten and other cross-border points, their tariffs were not increased but benefit from a material tariff decrease. Notably, Annex 3 now provides for a tariff decrease which even goes beyond the one established by CP 1 and CP 2 (21% instead of 12%). Moreover, the initially proposed tariff increase for the exit points to the distribution area Carinthia was replaced by a tariff decrease of -8%. These changes support our argument that the RPM favours domestic supply to the detriment of gas imports and gas transit. Such discrimination is not acceptable for us.

5. Clustering

At first sight, establishing a cluster for all entry points seems reasonable, since the clustering model basically aims at harmonizing and applying the same tariff to specific entry and/or exit points with similar characteristics. However, this leads to a considerable tariff increase at the entry point Baumgarten, since the costs between all entry points in the west and east are socialized. This particular effect of clustering is highly questionable and undermines the basic functioning of the chosen RPM, because Baumgarten is considered to be the virtual reference point under the RPM and thus logically provides for the shortest distance to the reference point (especially compared to the distance between the Oberkappel/Überackern entry points and the virtual reference point in Baumgarten). The considerable tariff increase at entry Baumgarten is clearly inconsistent with the logic behind the chosen RPM. This suggests once more that gas imports at the western border are favoured over imports at the eastern border (Baumgarten), which is not only inappropriate and unfair but, above all, incomprehensible.

6. Discounts, Multipliers and Seasonal Factors

The multipliers used are not appropriate because insufficient consideration has to date been given to the fact that non-yearly bookings are not the cause of pipeline vacancies, but rather a means of avoiding these. This must result in multipliers that are lower than those that have been set to date. This is because short-term capacity products increase the utilisation of a transport infrastructure, including in times where gas flows are generally low, and create incentives for bookings in cases in which long-term capacity products would not be worthwhile and there would therefore not be any demand for them. Non-yearly capacity products thus increase the utilisation of the transmission network, which would otherwise remain unused to a greater extent. This does not involve creating vacancies for the non-yearly capacities. The multipliers must therefore be set at a much lower level than currently proposed in order to be considered appropriate.

7. Cost Allocation Assessment

For the first time, the RPM and proposed tariff structure provide for a cost allocation comparison index exceeding the 10%-threshold. This triggers general concerns with regard to E-Control's compliance with the obligation to properly consult the RPM. The new cost allocation comparison index requires E-Control to provide a justification for the deviation from the 10%-threshold in line with Article 5(6) NC TAR. Such justification was not provided.

To conclude, we believe that the proposed Tariff Ordinance does not comply with the principles of cost-reflectiveness and fair tariff setting. The RPM underlying the Tariff Ordinance needs to be revised and improved by providing a sufficient level of detail and including proper explanations and justifications with regard to the unequal treatment of individual entry/exit points, resulting in preferential treatment of certain shippers and discrimination against (East) gas importers and transit customers.

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