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Agency Report

Analysis of the Consultation Document on the Gas Transmission Tariff Structure

for Austria

NRA: Energie-Control Austria
TSO: Gas Connect Austria & Trans Austria Gasleitung

4 March 2020

Contents

1. ACER conclusion

(1) The Austrian NRA, Energie-Control Austria (“E-Control”), proposes a reference price methodology (“RPM”) based on a virtual point-based method (“VPB”, variant b) and the clustering of entries and of exits into homogeneous groups. The entry-exit split amounts to 19.1% / 80.9%. In addition, it proposes the following adjustments:

- Benchmarking of the exit Murfeld from Austria to Slovenia to the competing transport route to the Croatian entry-exit system via exit Mosonmagyaróvár from Austria to Hungary;
- Capping tariff increases to 10% compared to the preceding tariff period, labelled as “general benchmarking” in the consultation document and referred to in this Report as “10% cap”;
- Discounts of 100% for entry points from storage and 50% for exit points to storage;
- Rescaling to ensure cost recovery of the allowed revenue taking into account the aforementioned adjustments.

(2) Furthermore, the allowed revenue is split in controllable costs and non-controllable costs; the latter being operational costs, like compression costs. The RPMs for both are the same with the exception of the technical parameter for weighing capacity, which considers “reference bookings” and forecasted bookings for the former and only forecasted bookings for the latter.

(3) The RPM is jointly applied to Gas Connect Austria (“GCA”) and Trans Austria Gasleitung (“TAG”), and an inter-TSO compensation (“ITC”) ensures the redistribution of collected revenues in the Austrian gas system.

(4) The tariffs apply for the single tariff period, lasting the full four years of the regulatory period that is likely to start on 1 October 2020.

(5) The Agency appreciated the constructive bilateral interactions with E-Control, which offered clarifications beyond the consultation document, and recommends E-Control to include these clarifications also in its motivated decision.

Agency remarks on volume-risk instruments in Austria

(6) The RPM proposed by E-Control reflects in its design the importance of transit flows in the Austrian gas system and the volume risk that is associated with those flows. The Agency notes the following relevant volume-risk instruments of which elements are embedded in the RPM:

- 10% cap on tariff increases to mitigate the risk of long-term contracts being terminated;
- A capacity-risk premium of 3.5% on equity in combination with:
  - .i. The consideration of reference bookings for calculating the tariff part related to controllable costs;
  - .ii. An asymmetric reconciliation mechanism that exposes the TSO to absorb revenue deficits if actual bookings (and associated actual revenue collection) are below reference bookings (and associated allowed revenue).

(7) The Agency finds that the consultation document does not explain sufficiently the treatment of volume risk that is interwoven in the RPM design choices. Yet, the treatment of volume risk is important to invoke exceptional justifications for choices that are not compliant with the provisions

of the NC TAR, notably the 10% cap, which is not compliant with Article 6(4) of the NC TAR, and the use of different RPMs for controllable versus non-controllable costs, which is not compliant with Article 6(2) and 6(3) of the NC TAR. In case such justification cannot be provided, the Agency recommends E-Control to substitute these non-compliant elements of the RPM with NC TAR-compliant approaches.

(8) The Agency recommends E-Control with respect to its justification of the treatment of volume risk:

- To assess the volume risk in a quantitative study, explaining the driving factors, such as significant and sustained transit volumes, actual or potential underutilisation of pipelines and the exposure in terms of costs and revenues for the TSOs;
- To assess whether the capacity-risk premium and the 10% cap are commensurate to the risk which the TSOs are exposed to;
- To assess whether the instruments have been effective, for instance, in building up a buffer from the additional remuneration for covering actual or potential loss of revenue, and did not result in excessive profits, which should be returned to network users;
- To assess whether other instruments that are compliant to the NC TAR could not have achieved a similar result.

(9) Next, the Agency recommends E-Control to repeat regularly this assessment of volume risk in order to ensure that the risk instruments comply with the requirements embedded in Article 13 of Regulation (EC) 715/2009[1], such as tariffs reflecting the actual costs of an efficient TSO, including an appropriate rate of return. The Agency recommends any risk-mitigation instrument to be evaluated regularly in terms of their cost effectiveness, and notes that Article 17(1)(a) of the NC TAR requires the under- or over-recovery of transmission services revenue to be minimised. In case the additional revenues related to risk premia may not be commensurate with the effective exposure to the risk, these excessive revenues should be returned to network users.

Agency assessment of the consultation document

(10) The consultation document published by E-Control contains the information items required by Article 26(1) of the Network Code on Harmonised Transmission Tariff Structure for Gas (“NC TAR”)[2] with the following shortcomings:

- The consultation document lacks the information regarding the justification of the technical parameters that is required by Article 26(1)(a)(i) of the NC TAR; in particular, the assumptions supporting the values for the reference bookings and the forecasted contracted capacity are missing;
- The information regarding the components of the CAA calculation and the details of these components that are required by Article 26(1)(a)(iv) of the NC TAR are missing;
- An explanation of the changes in the reference prices from the prevailing tariff period compared to the tariff period that is the subject of the consultation, which is required by Article 30(2)(a), is partially present as the effect of changes in the allowed revenue and the reconciliation between the tariff periods is not clearly considered.

[1] OJ L 211, 14.8.2009, p. 36–54.

[2] https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017R0460&from=EN.

(11) The Agency, after having completed the analysis of the consultation documents pursuant to Article 27(2) of the NC TAR, concludes that:

- The consultation document does not contain all the required information as listed in Article 26(1) of the NC TAR and is therefore not compliant with this provision. It notably misses the information outlined in the preceding paragraph;
- The proposed RPM does not meet the transparency requirements set out in Article 7(a) of the NC TAR, as the ability of network users to reproduce tariffs is undermined by the absence in the simplified model of key assumptions and parameters. Consequently, network users cannot verify whether the calculated tariffs are based on the RPM;
- The proposed RPM meets the requirement of cost-reflectivity, as laid out in Article 7(b), and the requirements related to no undue cross-subsidies and no discrimination as laid out in Article 7(c) of the NC TAR, subject to E-Control providing adequate justifications on how the volume-risk instruments embedded in the RPM, notably the 10% cap and the use of two RPMs for controllable and non-controllables costs, consider the principle of cost-reflectivity. In case no sufficient justification can be provided, the Agency recommends E-Control to reconsider the use of the proposed adjustments;
- The RPM is compliant to the volume-risk requirement laid out in Article 7(d) of the NC TAR subject to the reservations expressed above;
- The Agency could not conclude on compliance of the proposed RPM with respect to the impact of the RPM on cross-border trade, as laid out in Article 7(e) of the NC TAR. The information required to assess this requirement is not included in the consultation document.

(12) In view of the Agency's assessment of the consultation document, and in light of the requirements of the NC TAR, the Agency recommends that:

- E-Control, in its motivated decision, publishes the missing information listed in paragraph (10), notably
  - .i. the information regarding the justification of the technical parameters;
  - .ii. the information regarding the components of the CAA calculation and the details of these components;
  - .iii. an explanation of the changes in the reference prices from the prevailing tariff period compared to the tariff period that is the subject of the consultation, taking into account the effect of changes in the allowed revenue and the reconciliation between the tariff periods;
- E-Control publishes a simplified tariff model that enables network users to reproduce the tariffs that are the outcome of the RPM as well as includes key (input) assumptions;
- E-Control corrects the inconsistency regarding the use of reference bookings as described in paragraph 1.2(ii)(b) of the consultation document and their use in the full calculation model;
- E-Control includes in its motivated decision an adequate justification for the 10% cap that explains the need for the instrument and considers the impact with and without the cap on expected gas bookings and on the evolution of tariffs in light of volume risk;
- E-Control includes an adequate justification on the volume-risk instruments supported by a quantitative analysis in line with the arguments laid out in paragraphs (6) to (9) of this Report.

(13) The Agency furthermore recommends that E-Control include the following missing elements in its motivated decision referred to in Article 27(4) of the NC TAR:

- An explanation on how the CAA takes into account the conditional transmission services and the adjustments;
- Information with respect to the system utilisation charges for storages that are connected to more than one transmission or distribution network, including which storage points and which IPs are potentially competing, how significant the exchanged volumes are, and how the revenue is reconciled.

(14) The Agency suggests E-Control to explain additionally in its motivated decision how the proposed RPM compares to the CWD method of Article 8 of the NC TAR with an entry-exit split of 19.1% / 80.9% and with the inclusion of all adjustments that it proposes according to Article 6(4) of the NC TAR.

Agency remarks on the allowed revenue

(15) Regarding the allowed revenue, the Agency remarks that at the time of publishing its Report, E-Control still had to publish final decisions on the methodology for setting the allowed revenue and the values of the allowed revenues for GCA and TAG that follow from that methodology. The Agency and the network users therefore had limited information on the impact of these decisions on the tariffs. The Agency furthermore takes note of the critical remarks formulated by network users on elements of the allowed revenue methodology that was applied in the last regulatory period, such as the capacity risk premium embedded in this methodology.

(16) The Agency recommends E-Control to publish as soon as possible the decisions related to the allowed revenues, and to adopt the highest standards of transparency and justification regarding these decisions. The Agency furthermore recommends E-Control to assess the effect of changes in the allowed revenue in the motivated decision on the RPM, in particular when E-Control compares the tariffs of the new tariff period with the preceding tariff period.

2. Introduction

(17) Commission Regulation (EU) 2017/460 of 16 March 2017 establishes a network code on harmonised transmission tariff structures for gas (NC TAR).

(18) Article 27 of the NC TAR requires the Agency to analyse the consultation documents on the reference price methodologies for all EU entry-exit systems[3]. This Report presents the analysis of the Agency for the transmission system of Austria.

(19) On 8 November 2019, E-Control forwarded the consultation documents to the Agency. The consultation was launched on 8 November 2019 and remained open until 8 January 2020. On 17 and 29 January 2020, the consultation responses were published. At the time of publishing this Report, E-Control had not published a summary of the responses, which is a requirement set by Article 26(3) of the NC TAR[4]. The Agency has taken the published responses into consideration for this analysis. Within five months following the end of the final consultation, and pursuant to Article

[3] With the exception of Article 10(2)(b), when different RPMs may be applied by the TSOs within an entry-exit zone.

[4] E-Control made clear to the Agency its intent to publish the evaluation of responses in the motivated decision.

27(4) of the NC TAR, E-Control shall take and publish a motivated decision on all the items set out in Article 26(1).

(20) To carry out its assessment, the Agency requires information that goes beyond the publication requirements in the NC TAR. A number of bilateral exchanges to collect additional information took place between E-Control and the Agency. Additonally, E-Control made available a more detailed calculation file to support the Agency in its assessment.

Reading guide

(21) Chapter 3 presents an analysis on completeness, namely whether all the information in Article 26(1) has been published. Chapter 4 focusses on compliance, namely whether the RPM complies with the requirements set out in Article 7 of the NC TAR, whether the criteria for setting commodity-based transmission tariffs as set out in Article 4(3) of the NC TAR are met, and whether the criteria for setting non-transmission tariffs as set out in Article 4(4) of the NC TAR are met. Chapter 5 includes other comments related to a storage utilisation fee and to the allowed revenue. This document contains two annexes, respectively on the Legal framework and a List of abbreviations.

3. ACER analysis: completeness

3.1 Has all the information referred to in Article 26(1) been published?

(22) Article 27(2)(a) of the NC TAR requires the Agency to analyse whether all the information referred to in Article 26(1) of the NC TAR has been published.

(23) Article 26(1) of the NC TAR requires the consultation document to be published in the English language, to the extent possible. The Agency confirms that the consultation document was published in English.

(24) The majority of the information referred to in Article 26(1) of the NC TAR has been properly published, with the following three notable exceptions.

(25) First, the information regarding the justification of the technical parameters that is required by Article 26(1)(a)(i) of the NC TAR is incomplete, as the assumptions supporting the values for the reference bookings and the forecasted contracted capacity are not included in the consultation document.

(26) Second, the information regarding the components of the CAA calculation and the details of these components that are required by Article 26(1)(a)(iv) of the NC TAR are not published.

(27) Third, an explanation of the changes in the reference prices from the prevailing tariff period compared to the tariff period that is the subject of the consultation is only partially present. The effect of changes in the allowed revenue and reconciliation between the tariff periods is not clearly considered.

(28) These three elements should have been subject to the consultation according to the NC TAR. Therefore, the fact that they are not included in the consultation document makes it non-compliant with the provisions of the NC TAR. In any case, E-Control should include them as part of its motivated decision.

(29) The Agency additionally notes the lack of stable information on the allowed revenues, even if indicative values have been included in the consultation document according to Article 26(1)(b). A

number of stakeholders[5] referred to the missing approved values as hindering their ability to fully understand the tariffs under consultation.

(30) Table 1 gives an overview on how the consultation document complies with the publication requirements.

Table 1 Checklist information Article 26(1)

Article	Information	Published: Y/N/NA
26(1)(a)	the description of the proposed reference price methodology	Yes
26(1)(a)(i) **26(1)(a)(i)(1)** **26(1)(a)(i)(2)**	the indicative information set out in Article 30(1)(a), including: • the justification of the parameters used that are related to the technical characteristics of the system • the corresponding information on the respective values of such parameters and the assumptions applied	Partially
26(1)(a)(ii)	the value of the proposed adjustments for capacity-based transmission tariffs pursuant to Article 9	Yes
26(1)(a)(iii)	the indicative reference prices subject to consultation	Yes
26(1)(a)(iv)	the results, the components and the details of these components for the cost allocation assessments set out in Article 5	No
26(1)(a)(v)	the assessment of the proposed reference price methodology in accordance with Article 7	Yes
26(1)(a)(vi)	where the proposed reference price methodology is other than the capacity weighted distance reference price methodology detailed in Article 8, its comparison against the latter accompanied by the information set out in point (iii)	Yes
26(1)(b)	the indicative information set out in Article 30(1)(b)(i), (iv), (v)	Yes
26(1)(c)(i) **26(1)(c)(i)(1)** **26(1)(c)(i)(2)** **26(1)(c)(i)(3)**	where commodity-based transmission tariffs referred to in Article 4(3) are proposed • the manner in which they are set • the share of the allowed or target revenue forecasted to be recovered from such tariffs • the indicative commodity-based transmission tariffs	Not applicable
26(1)(c)(ii) **26(1)(c)(ii(1)** **26(1)(c)(ii)(2)** **26(1)(c)(ii)(3)** **26(1)(c)(ii)(4)**	where non-transmission services provided to network users are proposed: • the non-transmission service tariff methodology therefor • the share of the allowed or target revenue forecasted to be recovered from such tariffs • the manner in which the associated non-transmission services revenue is reconciled as referred to in Article 17(3) • the indicative non-transmission tariffs for non-transmission services provided to network users	Not applicable
26(1)(d)	the indicative information set out in Article 30(2);	Partially
26(1)(e) **26(1)(e)(i)** **26(1)(e)(ii)**	where the fixed payable price approach referred to in Article 24(b) is considered to be offered under a price cap regime for existing capacity: • the proposed index;	Not applicable

[5] Cf. consultation responses of EFET, Shell Energy Europe Limited and WKO.

26(1)(e)(iii) **26(1)(e)(iv)**	• the proposed calculation and how the revenue derived from the risk premium is used • at which interconnection point(s) and for which tariff period(s) such approach is proposed • the process of offering capacity at an interconnection point where both fixed and floating payable price approaches referred to in Article 24 are proposed	

4. ACER analysis: compliance

(31) Prior to elaborating on the compliance of the proposed RPM with the requirements of the NC TAR, the Agency deems it necessary to spell out its understanding of the volume-risk instruments embedded in the RPM for Austria.

(32) The RPM proposed by E-Control reflects in its design the importance of transit flows in the Austrian gas system and the volume risk that is associated with those flows. In the understanding of the Agency, the Austrian tariff methodology makes a distinction between volume risk related to the termination of contracts before their full maturity and volume risk related to the eventual expiration of long-term contracts.

(33) To mitigate the volume risk of terminated contracts, the RPM foresees a 10% cap on the increase of any tariff between two tariff periods. E-Control argues that this cap offers tariff stability and reduces the likelihood of legal proceedings of network users wishing to get out of their long-term commitments.

(34) To mitigate the volume risk of the future expiration of the long-term contracts, E-Control introduced in 2012, when the Entry-Exit system was introduced in Austria, a risk instrument based on a capacity-risk premium on equity, “reference bookings”, and an asymmetric reconciliation mechanism. The Agency understands these elements and their interactions as follows:

- E-Control introduced a distinction between reference bookings and actual forecasted bookings. Reference bookings are based on the long-term contracts that were in place on 1 June 2012; E-Control argues that these reference bookings will remain stable until the fixed assets of 2012 will be depreciated completely.[6] They represent the minimum volume to be considered when calculating tariffs. This means that for the purpose of calculating tariffs, E-Control intends to use the higher value of the reference booking and the actual forecasted bookings for the part of the tariff related to controllable costs. For the part of the tariff related to non-controllable costs, E-Control always uses the actual forecasted bookings which correspond better to expected flows;
- The TSOs collect revenues based on actual bookings, which may differ both from reference bookings and forecasted bookings. Three situations can occur:
    - .i. Actual bookings exceed forecasted bookings, which exceed reference bookings, and the over-recovery is reconciled;

[6] Bilateral exchange of information between E-Control and the Agency.

.ii. Actual bookings are below forecasted bookings, which exceed reference booking, and the under-recovery is reconciled;

.iii. Actual bookings are below reference bookings and the TSO absorbs the deficit[7].

- E-Control grants a capacity-risk premium of 3.5 percentage points on top of the regular WACC for the equity part of the remuneration (see further in Section 5.2) and an individual risk compensation per TSO. This premium remuneration is meant to cover the risk of lower future revenues when future bookings drop after the expiration of long-term contracts. It means that the additional remuneration for the TSOs when situations (i) and (ii) occur (driven by the risk premium, not by the realised volume, since the latter is reconciled) should cover the exposure to situation (iii).

(35) With respect to the 10% cap, while the Agency understands the argument of tariff stability, it reminds E-Control that such a cap is not foreseen in the adjustments of Article 6(4) of the NC TAR.

(36) With respect to the capacity-risk premium, the Agency notes that:

- The different treatment of controllable versus non-controllable costs leads in practice to the application of two RPMs depending on the type of costs, which is not compliant with Article 6(2) and 6(3) of the NC TAR;
- The consultation document described the approach for the controllable costs as “the higher of the following two: historical booking situation and actual forecasted booked capacity”, whereas in the full calculation model it is always the historical reference booking that is used for the calculation of the tariff to recover controllable costs. The Agency recommends E-Control to correct this inconsistency in its motivated decision;
- The instrument is entangled with the allowed revenue methodology, which is not the focus of this Report.

(37) The Agency finds the setup of the instrument not compliant with Article 6(2) and 6(3) of the NC TAR, whereas exceptions could be justified in the context of volume risk in the Austrian gas system.

(38) The Agency concludes tentatively on volume risk in Austria that the proposed tariff methodology considers the volume risk that is present in the Austrian gas system subject to E-Control providing an adequate justification.

(39) Therefore, the Agency recommends E-Control with respect to its justification of volume risk:

- To assess the volume risk in a quantitative study, explaining the driving factors such as significant and sustained transit volumes, actual or potential underutilisation of pipelines and the exposure in terms of costs and revenues for the TSOs;
- To assess whether the capacity-risk premium and the 10% cap are commensurate to the risk which the TSOs are exposed to;
- To assess whether the instruments have been effective, for instance, in building up a buffer from the additional remuneration for covering actual or potential loss of revenue, and did not result in excessive profits, which should be returned to network users;

[7] E-Control further clarified that any under recovery is only reconciled up to the level of reference bookings.

- To assess whether other instruments that are compliant to the NC TAR could not have achieved a similar result.

(40) Additionally, the Agency recommends E-Control to regularly repeat this assessment of volume risk in order to ensure that the risk instrument is aligned to the requirements embedded in Article 13 of Regulation (EC) 715/2009 and reflect the actual costs of an efficient TSO, including an appropriate rate of return. The Agency is of the view that the sustained application of the risk instruments should not exceed the depreciation period of the assets that are exposed to the risk.The Agency therefore recommends E-Control to verify if the assumptions regarding reference bookings in 2012 are still pertinent in 2020.

4.1 Does the RPM comply with the requirements set out in Article 7?

(41) Article 27(2)(b)(1) of the NC TAR requires the Agency to analyse whether the proposed RPM complies with the requirements set out in Article 7 of the NC TAR. This article refers to Article 13 of Regulation (EC) No 715/2009 and lists a number of requirements to be taken into account when setting the RPM. As these overlap, in the remainder of this chapter, the Agency will take a closer look at the five elements listed in Article 7 of the NC TAR.

(42) Since the concepts of transparency, cost-reflectivity, non-discrimination, cross-subsidisation and cross-border trade are closely related[8], the Agency concludes with an overall assessment.

4.1.1 Transparency

(43) **Article 7(a)** of the NC TAR requires that the RPM aims at ensuring that network users can reproduce the calculation of reference prices and their accurate forecast.

(44) E-Control makes publicly available on its website a simplified tariff model (in spreadsheet format), as required by Article 30(2)(b) of the NC TAR. The spreadsheet allows the users to change values of the allowed revenue - as the sum of controllable and non-controllable costs – for each of the two TSOs, and of the forecasted contracted capacity at all entry and exit points. The output includes the estimated tariffs for annual entry and exit capacities for the single tariff period of the four-year regulatory period from 1 October 2020 to 1 October 2024 and the comparison with the tariffs that have been in use for the preceding tariff period (2017-2020).

(45) The Agency notes that the adjustments according to Article 9 of the NC TAR and the use of reference bookings instead of actual forecasts of contracted capacity for some calculations are hidden from the network users. Furthermore, the tariff part coming from the non-controllable costs is absent.

(46) In the view of the Agency, the simplified model does not allow to reproduce or forecast accurately the present and future tariffs that are based on the chosen RPM for two reasons. First, the absence in full of the tariff part related to non-controllable costs prevents network users to reproduce or forecast the contribution to the total tariff in this respect. Second, the aforementioned non-inclusion of critical assumptions and parameters undermines the ability of network users to reproduce the

[8] The principle of cost-reflectivity is related to the principles of cross-subsidisation and non-distortion of cross-border trade. Tariffs that are fully cost-reflective do not result in any form of cross-subsidisation (and hence they do not distort cross-border trade), as they charge users for the exact costs they cause to the system. Following this reasoning, tariffs that are less cost-reflective may result in cross-subsidisation between users.

tariffs with respect to the costs as key information to understand the calculations is not present. Finally, the simplified model does not allow users to verify whether the calculated tariffs are based on the RPM as described in the consultation document.

(47) The Agency notes that the consultation document misses an explanation on how the final reference prices relate to the reference prices to recover controllable costs and the reference price to recover non-controllable costs. The Agency furthermore notes that it was able to assess the calculation of the reference prices for non-controllable costs as it was included as a separate item in the full calculation file made available by E-Control to the Agency. Network users, however, do not have access to this full calculation file.

(48) Pursuant to Article 7(a) of the NC TAR, the Agency recommends E-Control to extend the simplified model with a module to reproduce and forecast the final tariffs and the tariff parts coming from controllable costs and non-controllable costs, respectively. The Agency additionally recommends E-Control to include the information on the key assumptions of the RPM, on the adjustments and on the reference capacity bookings.

(49) Additionally, the Agency recommends E-Control to include in its motivated decision an explanation on how the references prices to recover controllable costs and to recover non-controllable costs relate. The Agency also recommends E-Control to explain why their separate calculation based on different assumptions (which is not compliant to the Article 6(2) and 6(3) of NC TAR) is preferred over their integrated calculation in a single RPM, or, alternatively, the use of a commodity[9] charge covering the non-controllable costs.

(50) On the basis of the above considerations, the Agency considers that the consultation document does not meet the requirements of the NC TAR with respect to transparency.

4.1.2 Cost-reflectivity

(51) **Article 7(b)** of the NC TAR requires the RPM to take into account the actual costs incurred for the provision of transmission services, considering the level of complexity of the transmission network.

4.1.2.1 The proposal for an RPM based on a VPB methodology with entry-exit split of 19.1% / 80.9%

(52) E-Control proposes to use a VPB methodology with an entry-exit split of 26% / 74% (before adjustments, as indicated in the full calculation model), which becomes an effective *ex post* entry-exit split of 19.1% / 80.9% after taking into account all adjustments and rescaling. E-Control notes that the entry-exit split is an outcome of the proposed RPM.

(53) The following paragraphs provide a description of the proposed RPM with respect to how distance is calculated and which other input is considered.

(54) The CWD methodology proposed by E-Control is "virtual point-based method (VPB, variant b)"[10]. This choice is motivated by the Austrian grid being non-meshed with a dominant node, Baumgarten. This dominant node serves as a virtual point to calculate all distances.

[9] E-Control indicates that there are substantial differences in allocation of the energy costs to the IPs caused by the prevailing flows in Austria. For that reason, E-Control considers it impossible to set a commodity tariff that is equal for all the entry and exit points.

[10] ACER, 2013. Revised chapter on Cost Allocation and determination of the reference price of the draft Framework Guidelines on rules regarding harmonised transmission tariff structures. PC_2013_G_03. Public consultation

(55) In addition to distance, the RPM uses as input controllable and non-controllable costs, technical capacity, reference bookings for firm products (Frei Zuordenbare Kapazität, "FZK", literally Freely Allocable Capacity) and conditional products (Dynamisch Zuordenbare Kapazitäten, "DZK", literally Dynamically Allocable Capacity), and forecasted contracted capacities for firm and conditional products. Conditional products receive a discount of 10% compared to the RPM that applies to firm products.

(56) E-Control proposes to have as clusters "all entries", "domestic exits", "exit Carinthia"[11], "exit East", "exit West" and "exit storage"[12].

(57) The RPM takes into account the following discounts according to Article 9(1) and adjustments according to Article 6(4), both of the NC TAR:

- 100% discount at entry points from storage and 50% discount at exit points to storage;
- Benchmarking of the tariff at exit Murfeld from Austria to Slovenia with the competing route to the Croatian entry-exit system via exit Mosonmagyaróvár from Austria to Hungary;
- "10% cap" of tariffs at all entries and all exits in order to cap the maximum increase of any tariff between the preceding and the new tariff period to 10% as a measure to ensure competiveness and to manage volume risk[13];
- Rescaling with a factor of 1.104 to account for the adjustments with the exception of points where the tariff has been capped to a maximum increase of 10%.

(58) E-Control applies a system utilisation charge to storage points that are connected to more than one network. This charge is meant to put storages that are used cross-border at a level-playing field with the competing interconnection point. The charge is discussed further in Chapter 5.

(59) The consultation document indicates that the RPM is applied in the same way to controllable and non-controllable costs with one exception: for controllable costs, reference bookings are used as forecasted capacity, whereas for non-controllable costs, actually forecasted contracted capacities are used.

(60) E-Control points out that the chosen RPM being a distance-based method integrates capacity and distance as cost drivers.

(61) E-Control furthermore carried out a comparison of its proposed RPM with the CWD method defined in Article 8 of the NC TAR. It found that all entry tariffs roughly double and exit tariffs are significantly lower, explaining that the CWD methodology of Article 8 of the NC TAR allocates more costs to entries.

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document.
https://www.acer.europa.eu/Official_documents/Public_consultations/Documents/Revised%20chapter.pdf

[11] The distribution network in Carinthia is not connected to the rest of the distribution-level grid and is for that reason a distinct cluster.

[12] The storage exit points 7-fields and MAB.

[13] The six capped points are: Baumgarten entry and exit, Mosonmagyaróvár entry and exit, and Petrzalka entry and exit.

4.1.2.2 Agency conclusion on cost-reflectivity

(62) The Agency is of the view that the choice for a distance-based method is appropriate for unmeshed gas systems, like the Austrian system, where distance is a cost driver.

(63) The Agency notes that E-Control applies clustering of entry points as foreseen in Article 3(19) of the NC TAR. The Agency remarks that Article 3(10) of the NC TAR refers to “entry interconnection points” and “entry points from storage facilities” as distinct homogeneous groups of points and recommends E-Control to clarify the definition of the clusters accordingly in its motivated decision.

(64) The Agency notes that any adjustments included in the RPM distort the cost-reflectivity to some extent as the resulting tariffs are based less on distance and capacity than they would have before the adjustment. In this respect, the Agency finds:

- The discounts of 100% for entry from and 50% for exit to storage in line with Article 9(1) of the NC TAR;
- The benchmarking of exit Murfeld to the cost of a competing route in line with Article 6(4)(a) of the NC TAR;
- The rescaling by a constant factor of 1.104 to consider other adjustments in line with Article 6(4)(c) of the NC TAR.

(65) With respect to the 10% cap, the Agency understands E-Control’s purposes are managing the volume risk and providing tariff stability as stated already in paragraph (35) of this Report. However, the Agency reiterates that this cap, which is labelled as “general benchmarking” in the consultation documents, goes beyond the benchmarking foreseen in Article 6(4)(a) of the NC TAR, which focuses on reaching competitive prices at specific entry or exit points.

(66) The Agency furthermore notes that the consultation document does not explain the distortive impact of tariff increases above 10% on long-term capacity contracts beyond a general statement that if large transit contracts were decreasing, domestic tariffs would have to increase significantly. The Agency recommends E-Control to provide an adequate motivation for the 10% cap by including for instance a quantitative analysis of what forecasted contracted capacity would look like, how large the exposure of domestic customers would be and why this approach is necessary.

(67) The Agency notes that the comparison of the proposed RPM with the CWD methodology as described in Article 8 of the NC TAR covers:

- The final reference price as the sum of the part covering the controllable costs and the part covering the non-controllable costs;
- The FZK and DZK products;
- The discounts for storage points according to Article 9(1) of the NC TAR;
- The rescaling to account for the discounts for conditional products and for storage points;
- The clusters as defined for the proposed RPM.

(68) The Agency notes that the comparison does not cover:

- The Entry-Exit split of 50% / 50% (as required by the Article 8 of NC TAR) is different from the proposed split of 19.1% / 80.9%;
- The benchmarking of exit Murfeld;

- The 10% cap.

(69) The Agency concludes that the proposed RPM being based on capacity and distance meets the requirement of Article 7(b) of the NC TAR subject to E-Control providing an adequate motivation for the adjustments based on the exceptional justification for volume risk.

(70) The Agency recommends E-Control to include in its motivated decision an adequate justification for the adjustment of the 10% cap, which explains why the instrument is needed, how this adjustment aligns with the principle of cost-reflectivity and how the contributions of the individual entry points and exit points to cost recovery change with and without the cap. In case no adequate justification can be provided, the Agency recommends E-Control to abolish this adjustment.

(71) Additionally, the Agency suggests E-Control to explain in its motivated decision how the proposed RPM compares to the CWD method described in Article 8 of the NC TAR with an entry-exit split of 19.1% / 80.9%, instead of the default 50% / 50%, and with the inclusion of all adjustments according to Article 6(4) of the NC TAR, notably the benchmarking of Murfeld, the 10% cap and the corresponding rescaling.

4.1.3 Cross-subsidisation

(72) **Article 7(c)** of the NC TAR requires the RPM to ensure non-discrimination and prevent undue cross-subsidisation.

4.1.3.1 Non-discrimination

(73) The Agency finds that the proposed RPM meets the requirement of non-discrimination because all network users in the same circumstances pay the same tariffs stemming from the RPM for the network services.

4.1.3.2 Cross-subsidisation between intra-system and cross-system users

(74) One instrument to evaluate cross-subsidisation between intra-system users and cross-system users is the cost allocation assessment (CAA, Article 5 of the NC TAR). The results for the capacity cost allocation comparison index amount to a level of 1.62% and take into account both the FZK and DZK products and all adjustments.

(75) E-Control additionally provides the CAA for the CWD tariffs; it amounts to 60.43% and reflects the significant allocation of costs to entry tariffs with this methodology.

(76) The Agency notes that changing in the full calculation model the Entry-Exit split to 19.1% / 80.9% for the CWD tariffs results in a CAA score of approximately 51%. The difference in Entry-Exit split of the CWD method compared to the RPM proposed by E-Control alone does not explain the large difference in CAA scores.

4.1.3.3 Agency conclusion on non-discrimination and cross-subsidisation

(77) The consultation document meets the requirements with respect to non-discrimination and no undue cross-subsidisation with the aforementioned caveat that E-Control includes in its motivated decision adequate justification for some of the RPM design choices as noted in paragraphs (69) and (70) of this Report.

4.1.4 Volume risk

(78) **Article 7(d)** of the NC TAR requires that the RPM ensures that significant volume risk related particularly to transports across an entry-exit system is not assigned to final customers within that entry-exit system.

(79) E-Control indicates in its consultation document that there is volume risk in Austria due to the significant share of (long-term) transit contracts.

(80) The Agency refers to its elaborate discussion of the issue in paragraphs (31) to (40) at the start of this Chapter.

(81) The Agency restates its recommendation that E-Control carries out an adequate analysis of the volume risk, namely of pipeline underutilisation, and how the benchmarking adjustments mitigate that risk and whether the mitigation of the risk is in line with the reasoning expressed in paragraphs (31) to (40) and also paragraphs (65), (66) and (70) of this Report.

(82) The Agency tentatively concludes that the RPM meets the requirements of Article 7(d) subject to the inclusion of adequate justification on the volume-risk instruments as recommended above.

4.1.5 Cross-border trade

(83) **Article 7(e)** of the NC TAR requires that the RPM ensures that the resulting reference prices do not distort cross-border trade.

(84) The consultation document does not discuss this criterion.

(85) Although the assessment is not present in the consultation, E-Control clarified bilaterally that it monitors the overall booking situation at the IPs by means of monthly reports received by TSOs. For instance, the changes of routes for the delivery of Russian gas to Europe had no major consequences for the Austrian gas system, which maintains Baumgarten as pivotal entry and virtual trading point. E-Control furthermore monitors the development of new routes that could increase the liquidity and decrease the wholesale gas prices; in particular, it monitors all the reverse flows from Hungary and the direct interconnection with Czech Republic.

(86) The Agency notes that the consultation document lacks the information to assess the requirements with respect to cross-border trade and recommends that E-Control include this information in its motivated decision.

4.1.6 Conclusion on the compliance of the proposed RPM with the requirements of Article 7

(87) The Agency finds that the proposed RPM does not meet the requirements related to transparency according to Article 7(a).

(88) The Agency finds that the RPM meets the requirements of cost-reflectivity, non-discrimination, and of no undue cross-subsidisation subject to the inclusion of adequate justifications with respect to the volume-risk instruments.

(89) The Agency finds that the RPM meets the requirement related to volume risk provided that E-Control includes the requested adequate justification in its motivated decision.

(90) The Agency could not assess the compliance of the proposed RPM with the requirements with respect to cross-border trade due to the absence of any information to that regard in the consultation document, whereas this information is important for a transit country like Austria.

4.2 Are the criteria for setting commodity-based transmission tariffs as set out in Article 4(3) met?

(91) Article 27(2)(b)(2) of the NC TAR requires the Agency to analyse whether the criteria for setting commodity-based transmission tariffs as set out in Article 4(3) are met.

(92) The Agency notes that E-Control does not apply commodity-based transmission tariffs.

4.3 Are the criteria for setting non-transmission tariffs as set out in Article 4(4) met?

(93) Article 27(2)(b)(3) of the NC TAR requires the Agency to analyse whether the criteria for setting non-transmission tariffs as set out in Article 4(4) of the NC TAR are met.

(94) The Agency notes that non-transmission services are not offered in Austria and therefore the criteria for setting non-transmission tariffs are not relevant.

5. Other remarks

5.1 System utilisation charge for storage competing with IPs

(95) E-Control applies system utilisation charges for storages that are connected to more than one transmission or distribution network. This charge is meant to allow fair competition between those storages and the interconnection point with which they compete. The charges are set in a way that the use of the exit to storage and entry from storage corresponds to the tariff at the competing interconnection point.

(96) To the extent that there is indeed competition between the IP and the cross-border use of a storage, the system utilisation charge seems to meet the purpose of negating the discounts that are applicable to entry from and exit to storages. Furthermore, it is targeted to the users of the service.

(97) The Agency recommends E-Control to include in its motivated decision which storage points and which IPs are potentially competing, how significant the exchanged volumes are, and how the revenue of this charge is reconciled.

5.2 The allowed revenue

(98) The Agency notes that, at the time of the public consultation, E-Control had neither set the methodology for calculating the allowed revenue nor issued the decisions to set the respective allowed revenue for GCA and for TAG.

(99) The Agency notes that this information must be published before the start of the relevant tariff period according to Article 30(1)(b). The Agency recommends this information to be included in the periodic consultations.

(100) The Agency takes note of the stakeholder responses to the consultation that highlight the lack of transparency on the methodology for setting of the allowed revenue and hint at potentially excessive revenues for the TSOs[14].

(101) The Agency notes that the indicative information on the allowed revenues indicate that non-controllable costs amount to about 30% of total allowed revenue (80 million euro out of 293 million euro) for TAG and to about 8% (11 million euro out of 138 million euro) for GCA. E-Control clarified that these differences stem from the different balance in CAPEX and OPEX, with the TAG gas system being much more reliant on compression than on pipelines, and the present transport situation that sees the TAG pipeline working just in one direction while the West Austria Gasleitung (WAG) pipeline works in both directions with nomination patterns netting each other and resulting in a reduction of the effective physical flow.

(102) The Agency notes that the methodology[15] for calculating the allowed revenue for the past tariff period included a premium for “capacity risk” on equity of 3.5 percentage points for all TSOs and the possibility for an additional TSO-specific capacity-risk premium.

(103) The Agency notes that the premium is granted on top of the regular WACC parameters, which include already a fair payment for equity. By definition, a corporate WACC reflects the appropriate return for a company by reflecting its risk profile and financing structure. The Agency reiterates that Article 13 of Regulation (EC) 715/2009 requires tariffs, including an appropriate remuneration, shall be in line with actual costs incurred by an efficient network operator. Additional premia to cover risk not already covered by the regular WACC still could be justifiable. The additional premium should then be proportial to the potential value at risk, e.g. to build up a buffer for potential future loss of revenue.

(104) However, as there is no justification for these capacity-risk premia in the methodology or in the consultation document, the Agency is not able to further assess the risk premia, the costs it relates to and their effect on the tariffs in view of cost-reflectivity and cross-border trade.

(105) Notwithstanding the lack of detailed information on the particular risk instrument in Austria, the Agency recommends any risk mitigation instrument to be evaluated regularly in terms of its cost effectiveness.

(106) The Agency furthermore stresses that Article 17(1)(a) of the NC TAR requires the under- or over-recovery of transmission services revenue to be minimised. In case the additional revenues related to risk prove not to be commensurate with the effective risk exposure, these excessive revenues should be returned to network users for the previous tariff period and should not be collected or be reduced for the new period.

(107) The Agency recommends E-Control to publish as soon as possible the decisions related to the allowed revenues, to adopt the highest standards of transparency and justification regarding these decisions, and to include in its motivated decision on the RPM an analysis of the impact of those decisions on the tariff changes between the new and the preceding tariff period.

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[14] Cf. the Consultation response by Shell Energy Europe Limited of 20.11.2019 and the submission of Frontier Economics study on the “”Quantitative analysis on the financial situation of an Austrian gas TSO” of 17 October 2019, commissioned by Shell Energy Europe Limited .

[15] METHODE GEM § 82 GWG 2011 FÜR DIE FERNLEITUNGEN ÖSTERREICHISCHER FERNLEITUNGSNETZBETREIBER, available at: https://www.e-control.at/marktteilnehmer/gas/netzentgelte/methodenbeschreibung.

Annex 1: Legal framework

(108) Article 27 of the NC TAR reads:

1. Upon launching the final consultation pursuant to Article 26 prior to the decision referred to in Article 27(4), the national regulatory authority or the transmission system operator(s), as decided by the national regulatory authority, shall forward the consultation documents to the Agency.

2. The Agency shall analyse the following aspects of the consultation document:

(a) whether all the information referred to in Article 26(1) has been published;

(b) whether the elements consulted on in accordance with Article 26 comply with the following requirements:

(1) whether the proposed reference price methodology complies with the requirements set out in Article 7;

(2) whether the criteria for setting commodity-based transmission tariffs as set out in Article 4(3) are met;

(3) whether the criteria for setting non-transmission tariffs as set out in Article 4(4) are met.

3. Within two months following the end of the consultation referred to in paragraph 1, the Agency shall publish and send to the national regulatory authority or transmission system operator, depending on which entity published the consultation document, and the Commission the conclusion of its analysis in accordance with paragraph 2 in English.

The Agency shall preserve the confidentiality of any commercially sensitive information.

4. Within five months following the end of the final consultation, the national regulatory authority, acting in accordance with Article 41(6)(a) of Directive 2009/73/EC, shall take and publish a motivated decision on all items set out in Article 26(1). Upon publication, the national regulatory authority shall send to the Agency and the Commission its decision.

5. The procedure consisting of the final consultation on the reference price methodology in accordance with Article 26, the decision by the national regulatory authority in accordance with paragraph 4, the calculation of tariffs on the basis of this decision, and the publication of the tariffs in accordance with Chapter VIII may be initiated as from the entry into force of this Regulation and shall be concluded no later than 31 May 2019. The requirements set out in Chapters II, III and IV shall be taken into account in this procedure. The tariffs applicable for the prevailing tariff period at 31 May 2019 will be applicable until the end thereof. This procedure shall be repeated at least every five years starting from 31 May 2019.

(109) Article 26(1) of the NC TAR reads:

1. One or more consultations shall be carried out by the national regulatory authority or the transmission system operator(s), as decided by the national regulatory authority. To the extent possible and in order to render more effective the consultation process, the consultation document should be published in the English language. The final consultation prior to the decision referred to in Article 27(4) shall comply with the requirements set out in this Article and Article 27, and shall include the following information:

(a) the description of the proposed reference price methodology as well as the following items:

(i) the indicative information set out in Article 30(1)(a), including:

(1) the justification of the parameters used that are related to the technical characteristics of the system;

(2) the corresponding information on the respective values of such parameters and the assumptions applied.

(ii) the value of the proposed adjustments for capacity-based transmission tariffs pursuant to Article 9;

(iii) the indicative reference prices subject to consultation;

(iv) the results, the components and the details of these components for the cost allocation assessments set out in Article 5;

(v) the assessment of the proposed reference price methodology in accordance with Article 7;

(vi) where the proposed reference price methodology is other than the capacity weighted distance reference price methodology detailed in Article 8, its comparison against the latter accompanied by the information set out in point (iii);

(b) the indicative information set out in Article 30(1)(b)(i), (iv), (v);

(c) the following information on transmission and non-transmission tariffs:

(i) where commodity-based transmission tariffs referred to in Article 4(3) are proposed:

(1) the manner in which they are set;

(2) the share of the allowed or target revenue forecasted to be recovered from such tariffs;

(3) the indicative commodity-based transmission tariffs;

(ii) where non-transmission services provided to network users are proposed:

(1) the non-transmission service tariff methodology therefor;

(2) the share of the allowed or target revenue forecasted to be recovered from such tariffs;

(3) the manner in which the associated non-transmission services revenue is reconciled as referred to in Article 17(3);

(4) the indicative non-transmission tariffs for non-transmission services provided to network users;

(d) the indicative information set out in Article 30(2);

(e) where the fixed payable price approach referred to in Article 24(b) is considered to be offered under a price cap regime for existing capacity:

(i) the proposed index;

(ii) the proposed calculation and how the revenue derived from the risk premium is used;

(iii) at which interconnection point(s) and for which tariff period(s) such approach is proposed;

(iv) the process of offering capacity at an interconnection point where both fixed and floating payable price approaches referred to in Article 24 are proposed.

(110) Article 7 of the NC TAR reads:

The reference price methodology shall comply with Article 13 of Regulation (EC) No 715/2009 and with the following requirements. It shall aim at:

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.

(111) Article 13 of Regulation (EC) No 715/2009 reads:
1. Tariffs, or the methodologies used to calculate them, applied by the transmission system operators and approved by the regulatory authorities pursuant to Article 41(6) of Directive 2009/73/EC, as well as tariffs published pursuant to Article 32(1) of that Directive, shall be transparent, take into account the need for system integrity and its improvement and reflect the actual costs incurred, insofar as such costs correspond to those of an efficient and structurally comparable network operator and are transparent, whilst including an appropriate return on investments, and, where appropriate, taking account of the benchmarking of tariffs by the regulatory authorities. Tariffs, or the methodologies used to calculate them, shall be applied in a nondiscriminatory manner.
Member States may decide that tariffs may also be determined through market-based arrangements, such as auctions, provided that such arrangements and the revenues arising therefrom are approved by the regulatory authority.
Tariffs, or the methodologies used to calculate them, shall facilitate efficient gas trade and competition, while at the same time avoiding cross-subsidies between network users and providing incentives for investment and maintaining or creating interoperability for transmission networks.
Tariffs for network users shall be non-discriminatory and set separately for every entry point into or exit point out of the transmission system. Cost-allocation mechanisms and rate setting methodology regarding entry points and exit points shall be approved by the national regulatory authorities. By 3 September 2011, the Member States shall ensure that, after a transitional period, network charges shall not be calculated on the basis of contract paths.

2. Tariffs for network access shall neither restrict market liquidity nor distort trade across borders of different transmission systems. Where differences in tariff structures or balancing mechanisms would hamper trade across transmission systems, and notwithstanding Article 41(6) of Directive 2009/73/EC, transmission system operators shall, in close cooperation with the relevant national authorities, actively pursue convergence of tariff structures and charging principles, including in relation to balancing.

(112) Article 4(3) of the NC TAR reads:
3. The transmission services revenue shall be recovered by capacity-based transmission tariffs.
As an exception, subject to the approval of the national regulatory authority, a part of the transmission services revenue may be recovered only by the following commodity-based transmission tariffs which are set separately from each other:
(a) a flow-based charge, which shall comply with all of the following criteria:
(i) levied for the purpose of covering the costs mainly driven by the quantity of the gas flow;
(ii) calculated on the basis of forecasted or historical flows, or both, and set in such a way that it is the same at all entry points and the same at all exit points;
(iii) expressed in monetary terms or in kind.
(b) a complementary revenue recovery charge, which shall comply with all of the following criteria:
(i) levied for the purpose of managing revenue under- and over-recovery;
(ii) calculated on the basis of forecasted or historical capacity allocations and flows, or both;

(iii) applied at points other than interconnection points;

(iv) applied after the national regulatory authority has made an assessment of its cost-reflectivity and its impact on cross-subsidisation between interconnection points and points other than interconnection points.

(113) Article 4(4) of the NC TAR reads:

4. The non-transmission services revenue shall be recovered by non-transmission tariffs applicable for a given nontransmission service. Such tariffs shall be as follows:

(a) cost-reflective, non-discriminatory, objective and transparent;

(b) charged to the beneficiaries of a given non-transmission service with the aim of minimising cross-subsidisation between network users within or outside a Member State, or both.

Where according to the national regulatory authority a given non-transmission service benefits all network users, the costs for such service shall be recovered from all network users.

Annex 2: List of abbreviations

Acronym	Definition
ACER	Agency for the Cooperation of Energy Regulators
NRA	National Regulatory Authority
TSO	Transmission System Operator
EC	European Commission
EU	European Union
NC TAR	Network code on harmonised transmission tariff structures for gas
IP	Interconnection Point
RPM	Reference Price Methodology
CWD	Capacity Weighted Distance
CAA	Cost Allocation Assessment
RAB	Regulated Asset Base
E-Control	E-Control Austria
GCA	Gas Connect Austria
TAG	Trans Austria Gasleitung
VPB	Virtual Point Based

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