



Ministry of Petroleum and Energy
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Our ref.: 884056

Sandnes, 30 September 2016

Consultation Note – Amended Tariff Regulation related to Vestprosess tariffs - Comments from ENGIE E&P Norge AS

ENGIE E&P Norge AS ("ENGIE") refers to the consultation note¹ from the Ministry of Petroleum and Energy (MPE) regarding suggestion to amend the Tariff Regulation² for regulation and determination of tariffs for Vestprosess mv.

ENGIE is of the view that MPE should remove the exceptions suggested³ in the Tariff Regulation regarding maintaining the tariffs (K-elements) for some Vestprosess shippers. All shippers shall have the same K-element.

ENGIE will elaborate on the rationale behind its view below.

The determination of tariffs is regulated by the Petroleum Act⁴ § 4-8, the Petroleum Regulation⁵ chapter 9 and the TPA Regulation § 9⁶.

ENGIE acknowledges that MPE may decide that "other facilities" linked to the upstream pipeline networks shall be regulated by the Petroleum Regulation, see the Petroleum Act §§ 10-18 (1), 4-8 and the Petroleum Regulation § 69 (2).

However, it is not obvious that Vestprosess is a facility that falls under § 69 (2) of the Petroleum Regulation. The consequence may be that MPE cannot bring Vestprosess under the scope of the Tariff Regulation.

¹ Consultation note dated 30 June 2016, MPE reference 16/2611-

² See Regulation of 20 December 2002 No 1724 relating to determination of Tariffs for certain facilities

³ See suggestion for revised § 4 in the suggestion for a revised Tariff Regulation

⁴ Act November 1996 No. 72 related to the petroleum activities

⁵ Regulations of 27 June 1997 to Act relating to petroleum activities

⁶ Regulations of 20 December 2005 relating to others use of facilities

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Hence, the shippers and Vestprosess may need to agree revised terms for use of Vestprosess facilities under the provisions set out in the TPA Regulation. This topic will not be subject for further scrutiny herein.

In any case, and notwithstanding the above, if the Tariff Regulation is relevant in this matter, ENGIE recognizes that MPE decides the tariffs in accordance with the Petroleum Act § 4-8 and the Petroleum Regulation chapter 9.

MPE's suggestion entails that ENGIE will have to pay significantly higher K-element than other selected shippers.

Therefore, the question is if MPE is entitled to decide that selected shippers receive tariff reductions while all shippers receive the same services.

A fundamental principle is that Licensees with a need to use the facility of another party shall "... on objective and non-discriminatory conditions..." have the right to such use, see Section 4-8 of the Petroleum Act and the Petroleum Regulation § 59 (version English translation), see also Petroleum Regulation § 70 (2).

The wording above states that all shippers, including ENGIE, are entitled to equal terms and conditions, including tariffs.

The main rationale set out by MPE for different treatment of shippers is that some shippers have life of field contracts whilst other shippers have time limited contracts.

ENGIE hereby asks MPE to assess further the rationale behind the distinction between these two contract categories. This assessment is important because the proposed differentiation leads to significant differences in tariffs among Vestprosess shippers.

In any case, ENGIE does not see that MPE's suggestion regarding different K-elements is in accordance with the principle of equal treatment.

Furthermore, principles for determination of tariffs are set out in the Petroleum Act § 4-8 and the Petroleum Regulation § 63. The main purpose of these provisions is to secure that the main part of companies' returns relates to their production activities and not their ownership interests in facilities for transport and treatment of gas. At the same time, the K-element intends to allow owners of infrastructure coverage for historical investments, compensation for risks and uncertainties and a reasonable profit.



MPE's rationale for the distinction between the life of field contracts and time limited contracts seems to be that MPE wishes to take due consideration to Vestprosess owners.

ENGIE understands that life of field contracts are existing contracts and that owners of Vestprosess therefore may have justifiable expectation interests.

However, also ENGIE has justifiable expectation interests. If the suggestions of MPE stands, ENGIE has to accept revised terms for transportation and processing of NGLs in Vestprosess ("GT&Cs") as of 1 January 2018. These GT&Cs are less favorable for ENGIE than the terms in ENGIE's existing agreement. Still ENGIE will have to pay the tariff set out in the existing agreement.

ENGIE has undertaken a thorough analysis of the differences in the GT&Cs and the existing agreement. ENGIE will submit its comments to Gassco who is finalizing such GT&Cs.

Also, differentiation in tariffs will allow shippers with lower K-elements to receive a higher profit for their NGLs products than shippers with high K-elements. It is not likely that the provisions related to tariffs on infrastructure is intended have such consequences.

MPE refers to good resource management as a reason for reducing the K-element. This rationale is equally relevant for shippers with life of field contracts and time limited contracts. Hence, also ENGIE may expect that legislation allow for good resource management.

In addition, the expectation interest Vestprosess owners may have is not likely to be relevant in this case. MPE states in the Consultation note:

- a. "Vestprosess har gjennom betaling for reservert kapasitet og transport og behandling av NGL oppnådd en rimelig avkastning på sine investeringer", see subsection "Avkastning i Vestprosess" third paragraph.
- b. "Departementet har lagt til grunn at K-elementet skal fastsettes slik at tariffene vil gi eierne i Vestprosess en rimelig fortjeneste også fra nye transportavtaler. Departementet har også hensyntatt den risiko som eierne i Vestprosess vil påta seg som følge av nye transportavtaler" see subsection "Forslag til kapitalelement for nye avtaler", first paragraph.

As ENGIE understands from the consultation note, Vestprosess has received a fair return on its past investments. Further, as ENGIE understands the new K-element suggested by MPE takes due consideration to risk and profit, ref. b above. Thus, in our case Vestprosess has no justifiable expectations interests with respect to life of field contracts.



Based on the above, ENGIE asks MPE to treat all shippers equally regarding the K-element of the tariff.

ENGIE acknowledges that the discussion about new access regime to Vestprosess is complex.

Therefore, ENGIE kindly asks MPE to assess general principles on how to determine when shippers with life of field contracts are entitled to receive tariff reductions. Such principles may have implications for future discussions on transportation and processing infrastructure.

Kind regards,

A handwritten signature in blue ink, appearing to read "Cedric Osterrieth", with a long horizontal stroke extending to the right.

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