

26 June 2013

Regarding amendments to the Tariff Regulations

1 Introduction

The purpose of the amendments to Regulations no. 1724 of 20 December 2002 relating to the stipulation of tariffs etc. for certain facilities (Tariff Regulations) is to facilitate good resource management for petroleum activities on the Norwegian continental shelf. A fundamental objective of resource management is that as much as possible of the socio-economically profitable resources are utilised.

An important means of achieving this objective is to provide for the development of overall, joint transport systems for gas and to ensure the efficient use of the transport systems through, among other things, low costs. In order to ensure such efficient use, access to and returns from the systems are regulated by the authorities.

The authorities' tariff policy has, inter alia, been expressed in connection with licences to install and operate gas transport systems and in descriptions and references in a number of reports and propositions to the Storting (Norwegian Parliament). An important principle in resource management has been that as much of the profit as possible must be derived from the fields and not from the infrastructure. Since the mid-1980s it has been established that the tariffs shall give a real return on investments in gas infrastructure of approximately 7 per cent before tax on the total capital.

The right to use infrastructure and the conditions for such use are regulated in Act no. 72 of 29 November 1996 relating to petroleum activities (Petroleum Act) and the underlying set of regulations. The use of facilities for the transport and handling of natural gas is regulated in more detail in Chapter 9 of Regulations no. 653 of 27 June 1997 to the Act relating to petroleum activities (Petroleum Regulations) and in the Tariff Regulations.

2 The Ministry's decision

On 15 January 2013 the Ministry of Petroleum and Energy submitted for

hearing a proposal for amendments to the Tariff Regulations. The proposal concerned the stipulation of a new fixed part of the capital element (K-element) in the tariffs for future agreements for the transport and handling of natural gas in Gassled. The proposal included most of the tariff areas in the system. No changes to the tariff were proposed for transport agreements entered into prior to 2013. The deadline for submissions was set for 15 March 2013 with the intention of implementation on 1 May the same year.

During the hearing round the Ministry received submissions from oil companies, Gassled partners and shareholders and lenders to some of these companies, interest groups and various authorities. In a letter of 11 April 2013, the Ministry reported that it had received wide-ranging submissions and would require more time to prepare a decision in the matter. The Ministry also reported that it intended for the amendments to the Tariff Regulations to enter into force on 1 July 2013. The Ministry has now completed its handling of the matter.

The Ministry has stipulated new K-elements in the tariffs for future agreements regarding the transport and handling of natural gas for the majority of Gassled's facilities. The Regulations enter into force on 1 July 2013.

Two points in the Ministry's decision were changed compared with the proposal that was submitted for hearing. The new tariffs will apply for volumes that are transported or handled from and including gas year 2016 (i.e. from 1 October 2016) under transport agreements that are entered into after the Regulations enter into force on 1 July 2013. Therefore, for gas that is transported or handled prior to the gas year 2016, the tariffs in place prior to the new Regulations enter into force shall apply, including for agreements entered into after the entry into force of the new Regulation. The Ministry has also decided not to stipulate new K-elements for tariff areas G (Kvitebjørn gas pipeline) and H (Norne gas pipeline).

The decision involves the implementation and continuation of established regulatory principles and long-term administrative practices. Low tariffs will facilitate good resource management by stimulating the utilisation of socio-economically profitable resources. At the same time, the owners will be provided a reasonable profit.

Section 3 below reviews the decision and the Ministry's assessments in more detail. Section 4 contains a more detailed review of the hearing submissions and the Ministry's remarks to these.

3 Review of the decision and the Ministry's assessments

3.1 The legal basis for stipulating tariffs in the Tariff Regulations.

Section 4-1 of the Petroleum Act stipulates that the extraction of petroleum shall take place in such a manner that as much as possible of the petroleum in place in each individual petroleum deposit, or in several deposits in combination, will be produced. Extraction shall take place in accordance with prudent technical and sound economic principles and in such a manner that waste of petroleum or reservoir energy is avoided.

Section 4-8 of the Petroleum Act grants the Ministry the authority to regulate tariffs for third party use of facilities that come under Section 4-2 and 4-3 of the Petroleum Act, including Gassled. Section 4-8 of the Petroleum Act, Chapter 9 of the Petroleum Regulations and the Tariff Regulations presently constitute the regulatory regime for the upstream gas pipeline network and provide the basis for resource management in accordance with Section 4-1 of the Petroleum Act.

Section 4-8, paragraph one of the Petroleum Act grants the authority to order owners and users of facilities to permit others to use the facilities (third party use) if so warranted by considerations for efficient operation or for the benefit of society, cf. paragraph one, first sentence. With regard to access to the upstream gas pipeline network, the right to access follows directly from paragraph one, second sentence, while it stipulates in paragraph one, third sentence that the Ministry sets more specific rules through regulations and may impose conditions and issue orders relating to such access in each instance. This is regulated in more detail in Chapter 9 of the Petroleum Regulations.

Pursuant to Section 4-8, paragraph two, first sentence of the Petroleum Act, the Ministry shall approve all agreements concerning third party use unless the Ministry itself decides otherwise. With regard to the upstream gas pipeline network, it stipulates in Section 65 of the Petroleum Regulations that agreements must not be sent to the Ministry for approval since the applicable tariffs are stipulated in the Tariff Regulations and the conditions in general follow from a standard transport agreement that has been approved by the Ministry. With regard to the upstream gas pipeline network, principles for the tariffs are established in Section 63 of the Petroleum Regulations, while the actual tariffs are stipulated in the Tariff Regulations.

Section 4-8 of the Petroleum Act grants the Ministry the authority to both stipulate new tariffs and to change previously set tariffs. By amending the Tariff Regulations, the Ministry has stipulated new, lower tariffs for new agreements. This is not a "change" to the tariffs pursuant to the Act, cf. Section 4-8, paragraph two of the Petroleum Act, since the tariff for existing transport agreements is not affected.

Section 4-8 of the Petroleum Act grants the Ministry the general authority to set tariffs. Pursuant to Section 4-8, paragraph two of the Petroleum Act the stipulation of tariffs shall ensure that projects are carried out with due regard to considerations relating to resource management and providing the owner of the facility with a reasonable profit taking into account, among other things, investments and risks.

The tariffs must be stipulated in such a way that they ensure good resource management in accordance with the principal objectives in the Petroleum Act. The stipulation of new, lower tariffs is an important means of facilitating the extraction of socio-economically profitable resources.

Section 63 of the Petroleum Regulations supplements the condition in Section 4-8 of the Petroleum Act relating to reasonable profit by the capital element in the tariff being stipulated such that the owner can expect a reasonable return on invested capital. The Ministry has, in long-term and fixed administrative practices which have been expressed in, among other things, a number of reports to the Storting and propositions, licences and remarks to Section 63 of the Petroleum Regulations, established that the tariffs must provide a real return of approximately 7 per cent before tax on the total capital. The return basis (total capital) is the historical investments in the physical gas infrastructure. Subsequent transfers of participating interests between companies are not relevant to the return basis. The compensation that is agreed between sellers and buyers of participating interests in Gassled, or the amounts that are used as a basis by the private parties for the exchange ratio when incorporating new systems into Gassled, are therefore not relevant to the return basis.

3.2 Resource management considerations

The tariff regime for the gas infrastructure on the Norwegian continental shelf has been formulated based on resource management considerations. An important principle in resource management is that as much of the profit as possible is derived from the field and not the infrastructure. The decision to stipulate new tariffs for Gassled is a concrete follow-up of this.

Good resource management through low tariffs has been an important framework condition for the development and use of Norwegian gas infrastructure. This was already established in Report to the Storting no. 46 (1986-1987). In this Report to the Storting it was also emphasised that transport must be viewed as a means and not an objective of resource management and that the infrastructure must, to the least possible extent, create distortions between commercial and socio-economic profitability. These considerations have been important for the development and use of the gas transport system. This is emphasised in the preparatory works to the Petroleum Act and has been repeated in a number of reports and propositions to the Storting.

Low tariffs reflect the low socio-economic cost of transport and handling in Gassled and stipulating new, lower tariffs will therefore provide greater concurrence between commercial and socio-economic considerations. This facilitates good resource management.

The tariff level for Gassled is relevant for all decisions that can influence the gas production from fields that are, or discoveries that can become, tied in to Gassled. This applies to both gas fields and oil fields that contain gas and is relevant to decisions in all phases of petroleum activities, i.e. exploration, development, operation and tail-end production. New and lower tariffs will give lower costs and contribute to the utilisation of a greater part of the petroleum resources.

The development on the Norwegian continental shelf indicates that the Gassled tariffs will be of increased importance to resource management. A large part of the resources that are the least costly to extract have already been extracted. In new areas further north on the continental shelf the distance to the market will be greater and the transport costs will therefore be higher. Therefore, lower Gassled tariffs will be even more important for good resource management.

It is important for resource management that the regulation also provides incentives to develop infrastructure. Therefore, it is a principal objective of the authorities to balance out the need for lower tariffs with the need for a tariff level that provides incentives for new investments in infrastructure. When, based on transport agreements that have been entered into, the owners achieve the presupposed return on historical investments, the general resource management considerations require that new, lower tariffs are stipulated for new transport agreements.

3.3 Achieved returns in more detail

Gassled presently consists of the gas transport systems that were part of Gassled when this was established on 1 January 2003 and the transport systems that have been incorporated into Gassled since this date.

The gas transport systems that were part of Gassled upon establishment (the original transport systems) are Norpipe, Vesterled, Statpipe, Zeepipe, Franpipe, Europipe II, Åsgard Transport and Oseberg Gas Transport. When Gassled was established, each company was assigned a participating interest in the new partnership. The participating interests were based on each of the partners receiving an expected cash flow with the equivalent present value they could expect to achieve as a partner in the original systems if Gassled had not been established. Based on this, the value of each system was calculated as a discounted cash flow based on the tariffs that were originally stipulated for each system and the expected future gas volumes. These values were then used as a basis for the exchange ratios and the participating interests in Gassled.

The tariff level for most of the original systems was set such that it would give the owners a real return of approximately 7 per cent before tax on the total capital. For Statpipe, which was granted its licence prior to the establishment of the administrative practice with a 7 per cent return, a higher return was presupposed. The cash flow that the owners could expect from these systems was therefore decided by a tariff based on the return that was presupposed in the original licences. When the exchange ratios in connection with the establishment of Gassled were calculated based on this cash flow, this was therefore based on the presupposed return on the historical investments. These values were laid down in the establishment agreement for Gassled and were reflected in the capital tariffs that were stipulated in the Tariff Regulations in 2002.

Gassco's calculations show that the present value of the capital tariff revenues for the original transport systems from 2003 until 2028, based on transport agreements that have been entered into, will exceed the amounts in the establishment agreement. The original transport systems will therefore achieve the return that was presupposed in the licences.

The systems incorporated after Gassled was established in 2003 are¹: Kollsnes, the facilities for CO₂ removal at Kårstø, Langed transport system,

¹ Increased capacity at Kårstø (DPCU II Project) is included as part of the Gassled establishment since these investments were committed upon establishment.

Tampen Link, Kvitebjørn gas pipeline, Norne gas pipeline, Etanor and Gjøa gas pipeline.

When determining the K-element for tariff area E (Kollsnes), it was found that the original investors in this system achieved the presupposed return by reserving all capacity in the system. The capital element was therefore set at zero. Investments in Kollsnes are therefore not included in the calculations of achieved returns for Gassled.

Based on transport agreements that have been entered into, the investments in the Langeled system will achieve a return in line with the principles regarding the 7 per cent real return before tax on total capital. For area F (Tampen Link), area G (Kvitebjørn gas pipeline), area H (Norne gas pipeline) and area I (Gjøa gas pipeline), a 7 per cent real return before tax on the total capital will not be achieved with the transport agreements that have been entered into.

In summary, investments in the systems that presently comprise of areas A-E in Gassled, including the Langeled system, will achieve the presupposed return based on the transport agreements that have been entered into. Based on the transport agreements that have been entered into, areas F-I will achieve a real return of less than 7 per cent.

As was stated in the consultation paper, it has been calculated that all the Gassled areas from the commencement of investments in Norpipe and until 2028 will together achieve a real return before tax of 10.5 per cent based on the transport agreements that have been entered into. For all areas in which new, lower tariffs have been set, it has been calculated that a real return on historical investments of a minimum of 7 per cent will be achieved by 2028.

3.4 Stipulating new tariffs

Low tariffs reflect the low socio-economic cost of transport and handling in Gassled. The stipulation of new, lower tariffs therefore facilitates good resource management. As shown in Section 3.3, the return for Gassled facilities with the transport agreements that have been entered into will exceed the amount that was used as a basis when stipulating the respective capital tariffs, with the exception of certain tariff areas. Therefore, a considerably lower K-element can be stipulated for new transport agreements.

The Ministry has found that the K-element must be stipulated such that the tariffs will also give the owners in Gassled a reasonable profit from new transport agreements. Among other things, emphasis has been placed on

Gassled constituting a vital part of the infrastructure on the Norwegian continental shelf and representing important utility value for the oil and gas producers. The Ministry has also taken into consideration the risk which the Gassled owners will assume as a result of new transport agreements. Consideration has also been made to there being uncertainty related to the scope of the new capacity reservations and therefore the size of the revenues that can be expected from new transport agreements.

The Ministry has continued the principle regarding the same K-element for all exits from area D. This gives the producers the incentive to exploit price differences between the various gas markets.

The Ministry has maintained the tariffs for removal and blending services.

For services relating to the Etanor facility, the Ministry has stipulated a new tariff that will give the investments in the facility a real return of approximately 7 per cent.

For areas F (Tampen Link), G (Kvitebjørn gas pipeline), H (Norne gas pipeline) and I (Gjøa gas pipeline), the transport agreements that have been entered into will give a lower return than what was used as basis when stipulating the tariffs. The Ministry has therefore decided to maintain the K-element in these areas. For areas G and H this entails a change to the proposal in the consultation paper.

The Ministry has considered a postponed implementation date for new tariffs. The stipulation of new, lower tariffs will have a positive, resource-related effect in the short-term. This is particularly relevant for decisions related to producing fields. For many decisions regarding exploration, development, increased extraction and operation it will take a certain amount of time from the decision-making date until the produced gas is transported and handled. The effects on resource management of low tariffs will therefore gradually assert themselves more strongly over time. After an overall assessment, the Ministry has decided to postpone the implementation date for the new tariffs such that these tariffs will apply for volumes that are transported and handled from and including the gas year 2016 (i.e. from 1 October 2016) under transport agreements that are entered into after the amended regulations have entered into force (1 July 2013).

Stipulating new tariffs now provides predictability about future tariff levels. The users can then use this as a basis for their decisions.

The tariff for interruptible capacity will be 50 per cent of the applicable tariff for entering into new transport agreements. This entails that the tariff for interruptible capacity will remain unchanged until 1 October 2016.

4 The individual submissions - the Ministry's remarks

The Ministry has received submissions from oil companies, Gassled partners and shareholders and lenders to some of these companies, interest groups and various authorities. The most comprehensive submissions have come from the four partners in Gassled that acquired interests in 2010-2012 (Infragas, Njord, Silex and Solveig). After the deadline for submissions expired these four companies have also had meetings with the Ministry and have sent letters and memos.

Below we have reviewed the comments that were received and the Ministry's remarks to these (in italics) and this has been arranged in accordance with the following topics:

- Consequences relating to resource management
- Returns
- Tariffs for the Tampen Link and Gjøa gas pipeline
- Regulatory regime and future infrastructure investments
- Rules for reserving capacity
- Consequences for domestic use of gas
- The approval processes in accordance with the Gassled transactions
- The Ministry's case handling and procedures for the preparation of the tariff proposal
- Other remarks of a legal nature

4.1 Consequences relating to resource management

Bayerngas and *Idemitsu* considered the Ministry's proposal to be good. It will entail that a larger part of the profit will be derived from the fields rather than infrastructure payments. The proposal promotes an important societal consideration by reducing the threshold for access to infrastructure for projects that are less financially robust.

Centrica indicates that they are, in principal, positive towards the proposal. They asserted that the proposal is an important contribution to creating framework conditions that make the exploration and development of marginal fields more attractive. The proposal could stimulate the connection of the Barents Sea Region to the existing transport system.

Det Norske was of the view that the proposed changes to the Gassled tariffs will be positive for the oil and gas activities on the Norwegian continental shelf. The tariff level for Gassled is an important framework condition for both oil and gas projects and reduced tariffs will ensure good resource management. The profitability of marginal projects will be improved with the proposed changes and could be a decisive factor in projects being realised.

DONG stated that the proposed tariff reduction will not have any real importance for whether a development decision will be made for any of the existing discoveries and was therefore doubtful about the robustness of the basis for the tariff reduction.

On the whole, *E.ON* supported the Ministry's proposal. *E.ON* asked the Ministry to consider a system with equal tariffs for existing and future bookings or alternatively, an annual review of the K-element based on data from the previous booking round.

ExxonMobile agreed that the Gassled tariff level will have increased importance for future field development on the Norwegian continental shelf and therefore supported transparent and predictable reductions in future tariff levels.

Nordland County Municipality (NO: Fylkesrådet i Nordland) was of the view that it is positive that the Gassled tariffs have been revised such that the best possible social economy can be attained based on the gas resources located on the continental shelf. However, *Nordland County Municipality* had objections relating to the domestic use of gas, cf. Section 4.6.

GDF SUEZ's general view was that the Ministry's proposal to reduce the K-element for future transport agreements in the parts of Gassled that have achieved reasonable returns is a good one. *GDF SUEZ* agreed that the tariffs for marginal fields should be reduced to promote good resource management, however was of the opinion that the tariff reduction should be viewed in connection with the rules relating to the reserving of capacity (cf. Section 4.5).

Industri Energi stated that they support good resource management by making it possible to utilise marginal fields, however was of the view that solutions other than pipeline tariffs had to be found.

Infragas stated the following in their submission:

- It has not been documented that positive resource management effects will arise for specific gas resources as a result of the proposed tariff reduction.
- The tariff reduction will first and foremost favour existing fields and producing fields as well as fields that will be developed regardless of tariff reductions.
- A lower K-element will only have a marginal effect on exploration.
- There is no clear evidence that marginal discoveries will be economically viable as a result of the proposed tariff reduction.
- The tariff reduction will have limited positive effects with regard to the recovery factor for oil and gas. The reduction could have a certain impact on the closure date for producing fields, however then only to the extent to which it is unnecessary to make major investments to continue production.

Infragas was of the view that there are more targeted alternatives to the proposed general tariff reduction. The submission made reference to an extension of the licence period and more targeted measures for stimulating production of marginal resources.

After the hearing round, Infragas, Silex and Solveig presented a proposal to the Ministry for the K-element to be reduced by 90 per cent only for new fields in the rich gas areas.

The Norwegian Sea Council (NO: Norskehavsrådet) was of the view that it is positive that the Gassled tariffs are being revised such that the best possible social economy can be achieved based on the gas resources located on the continental shelf. However, the Norwegian Sea Council had objections relating to domestic use of gas, cf. Section 4.6.

Njord stated that:

- The consequences of the tariff proposal on exploration activities are marginal, however there could be a certain positive effect for gas close to infrastructure. The companies primarily explore for oil and large gas fields and lower gas tariffs would not greatly influence the exploration for such fields.
- The tariff proposal would not make unprofitable fields profitable. Among other things, this is due to gas transport costs constituting a small part of the total costs of a project.
- Lower tariffs will not cause a significant extension to tail-end production on existing fields if additional production wells or other major investments are necessary.

Njord proposed that lower tariffs can be applied for new projects which will provide incentives to explore for and develop new fields. In order to promote increased extraction from existing fields, a scheme was proposed in which existing fields are given free transport for the final two years. To ensure that the tariff reduction only applies to the final two years of production, the shippers shall be repaid the tariff for the final two years after production has concluded.

RWE Dea stated that the type of reduction in the tariff proposed by the Ministry will contribute to and facilitate both the development of new, marginal fields and extend the gas infrastructure northwards. RWE Dea agreed that resource management considerations require that the reduction in the tariff should apply for new transport agreements. In addition, RWE Dea was of the view that the tariff reduction should be viewed in connection with the rules regarding the reserving of capacity, cf. Section 4.5.

Shell noted that the tariff level has a direct influence on the profitability of the projects and a considerable reduction in the tariff level would therefore contribute to ensuring that as many of the socio-economically beneficial projects as possible are completed.

Silex and *Solveig* jointly prepared their submission. The companies stated that the proposal from the Ministry is not suitable for achieving the objective of the best possible resource management. It was asserted that:

- The proposal primarily favours existing fields and gas volumes that will be produced regardless.
- The current tariffs do not hinder increased production. The tariffs are relatively low and the K-element constitutes an extremely limited part of the total costs of transporting the gas to the market.
- For exploration activities, the existence of infrastructure will be of greater importance than the tariff level.
- The K-element's low share of the total operating costs means that a tariff reduction will also have a limited effect on the development of new fields.
- The proposal also does not appear to have a noticeable effect on the implementation of measures that promote production at existing fields.

Silex and *Solveig* were of the view that an extension of the licence period should be considered such that integrity investments can be repaid over a longer period, something that will reduce the I-element in the tariff. In addition, the Ministry was encouraged to consider more targeted measures for stimulating production of marginal resources.

Statoil agreed that the proposed solution provides stronger incentives for future use of existing infrastructure and continued exploration activities and field development, particularly for the development of time-critical fields near infrastructure.

Total agreed with the Ministry's emphasis on resource management considerations and cost-effective development of gas resources and also agreed that a general reduction in tariffs will be an important element for achieving this. *Total* also stated that reduced downstream tariffs will improve the profitability of a possible pipeline from the Barents Sea.

Wintershall was positive to the Ministry's proposal and otherwise supported the content of the submission from *Bayerngas*.

The Ministry notes that there is broad agreement with the objective of reducing the tariffs - to facilitate good resource management through tariffs that ensure that as much as possible of the socio-economically profitable petroleum resources are utilised. There are different viewpoints about whether the proposed tariff reduction is an effective means of achieving good resource management and whether other means could be more effective. The oil companies largely agree with the Ministry's assessment of the resource-related consequences of the proposal. The objections to the proposal have particularly come from some of the Gassled partners.

New, lower tariffs will increase the value of discoveries that are established and thereby stimulate exploration activities. This applies in particular to exploration for gas resources, however also concerns exploration for oil fields since these could contain larger or smaller amounts of gas and require a gas transport solution in order to be developed.

Lower tariffs will increase the profitability of development projects. New lower tariffs will have major importance in particular for discoveries that contain large amounts of gas and that must use a large part of existing infrastructure to transport the gas to the market.

Lower tariffs for Gassled will strengthen the incentives to develop resources in the North by better facilitating the development of the gas transport system northwards. This will also improve the utilisation of existing gas infrastructure.

For fields that are already in production, lower tariffs will provide resource-related benefits. This is relevant to both new projects on the fields and the many operating decisions that are continually made. Lower tariffs strengthen the profitability of all such projects and decisions.

If lower tariffs are only made applicable for new fields or certain new projects, resource management considerations will not be supported for all resources. Low tariffs on all new transport agreements better facilitate good resource management by the correct incentives being provided for the extraction of all resources. The solution that was proposed by some of the Gassled partners will also involve a system with field-based tariffs and will differ from the system in the Tariff Regulations in which tariffs are stipulated for various Gassled tariff areas, regardless of the field in which the gas is produced.

Providing existing fields with free transport during the tail-end phase by repaying the tariffs in the fields' final two years of operation does not support resource management considerations. The amount that is repaid will largely depend on the volume of gas produced at the fields during the repayment period. Since, as a main rule, production is reduced over time the repayment could be greater the earlier the field is closed and this type of solution could therefore have the opposite effect to what was intended.

An extended licence period would result in lower tariffs through a lower l-element. The Ministry will address the issue concerning the extension of the licence period for Gassled at a later date.

Equal tariffs for existing and future reserves would involve intervening in existing transport agreements. New, lower tariffs for new capacity reservations are a more accurate means of facilitating good resource management.

4.2 Returns

Infragas asserted that the Ministry's reference to cash flows from 1975 are misleading and entail a new and unforeseen development. Among other things, reference was made to the fact that the return in the period prior to the establishment of Gassled was not publicly known and that large parts of the return were due to returns from the Statpipe systems in the 1980s and 1990s. Reference was also made to the fact that since the historical return was 7.2 per cent already in 2003, this indicates that the tariffs were "reset" at this point in time. There were further objections to the Ministry having implicitly approved updated, future revenues for Gassled because these were used as a basis for the incorporation of Langeled and other systems after 2003.

Njord could not see that the historical returns prior to the establishment of Gassled in 2003 can provide a reasonable basis for changes to the tariffs today. In addition, reference was made to the fact that Statpipe constituted major parts of the return prior to the establishment of Gassled and that the average return therefore does not give any meaning.

RWE Dea asserted that a 10.5 per cent real return on invested capital in what is now Gassled is more than sufficient given the risk associated with such investments.

Silex and Solveig asserted that using historical revenues prior to the establishment of Gassled as a factor for assessing a reasonable return breaches the fundamental condition for the establishment of Gassled. It was also asserted that the reference to a return of 10.5 per cent is irrelevant and misleading and that a great deal of the return went to Statpipe which operated under a completely different regulatory regime. It was further asserted that owners of incorporated infrastructure and owners that later acquired interests have a justified expectation of being able to realise future cash flows based on what was used as a basis for the various incorporations of systems into Gassled.

As described in Section 3.3, the historical investments form the basis for the assessment of the achieved return. For tariff areas A-E, including Langeled, historical and future capital tariff revenues from transport agreements that have been entered into will together provide the return that was presupposed in the original licences.

For the facilities that presently constitute Gassled it was, as mentioned, calculated that by 2028 a real return will be achieved before tax of 10.5 per cent with the transport agreements that have been entered into. The authorities have used a real return of approximately 7 per cent before tax on the total capital for the majority of transport systems, however not all. A higher return was used as a basis for Statpipe. When Gassled was established in 2003, the remaining cash flows, which were based on the return on historical investments, formed the basis for the amounts which the parties included in the establishment agreement. Therefore, the amounts in the establishment agreement express the return that was presupposed under the respective, original licences. These amounts have now been redeemed in the form of achieved capital tariff revenues and future transport commitments.

The achieved return upon the establishment of Gassled was just over 7 per cent in total for all the original transport systems. However, at this time neither Statpipe nor the other systems had received the presupposed return in accordance with the original licences. There was therefore no basis to set lower tariffs at this point in time.

As mentioned in Section 3.3, new gas transport systems have been incorporated into Gassled since its establishment in 2003. For incorporations after the establishment of Gassled, Langeled became part of an original tariff area (area

D), while separate tariff areas have been established for the other systems. The stipulation of tariffs is based on investments in the physical facilities and a gas volume profile that includes base volumes (secure volumes) and upside volumes. Whether or not the presupposed return will be achieved is calculated based on the stipulated tariff and the transport agreements that have been entered into.

As mentioned in Section 3.1, the historical investments in the facilities form the return basis. When establishing a new transport system, the investments in the physical facilities will form the basis for the Ministry's specification of the K-element in the Tariff Regulations. When incorporating a new system into Gassled, the partners in the respective partnerships negotiate the valuation of the systems and participating interests in Gassled. Gassco prepares the process and carries out various financial calculations which the parties request Gassco to carry out. The Ministry consents to the transfer of participating interests pursuant to Section 10-12 of the Petroleum Act and approves amendments to the Gassled ownership agreement. This does not entail that the Ministry assesses or makes a decision on the parties' valuation of the systems in connection with the incorporation.

4.3 Tariffs for Tampen Link and Gjøa gas pipeline

ExxonMobil, Shell and Wintershall have noted that they do not see any grounds on which to maintain the tariff level in area F (Tampen Link) and area I (Gjøa gas pipeline) because this is considered to be inconsistent and contrary to the argument for equal exit tariffs to achieve market benefits. In addition, it was claimed that different tariffs for different areas do not contribute to creating a neutral system and will entail suboptimal use of the infrastructure and thereby influence the competition in the gas infrastructure.

The resource management effects of low tariffs viewed in isolation argue for stipulating new and lower tariffs as early as possible, however an important issue for the Ministry is also to safeguard incentives for investments in new infrastructure (cf. Section 3.2). Reducing tariffs for systems that have not achieved the presupposed return could create uncertainty for investors in new infrastructure. Therefore, after an overall assessment the Ministry has not found grounds to stipulate new tariffs for tariff areas where transport agreements that have been entered into will not give the presupposed return.

4.4 Regulatory regime and future infrastructure investments

Infragas, Njord, Silex and Solveig and some shareholders and lenders to these companies have stated that the regulation of the tariff has been unpredictable and not very transparent. They have also stated that the proposal will result in the view that there is an increased regulatory risk which will result in higher financing costs. The consultative bodies' opinions of the extent of this effect vary. Some only make note of increased financing costs for some of the Gassled partners, while others also state that the petroleum industry in general and other sectors regulated by the Norwegian authorities will be affected.

Some of the Gassled partners stated that available information has not indicated that the tariffs will be reduced. Njord, Silex and Solveig also stated that the regulatory regime is apparently "price cap regulated" and the tariffs are set for the entire licence period. Njord stated that if the system is regulated according to rates of return, the method for calculating returns should be published and a statement of returns should be available. Silex and Solveig stated that previous practice indicates that the system is "price regulated", particularly because the Ministry did not reduce the tariffs earlier, even though a 7 per cent return has been achieved for a long time.

Some of the Gassled partners also stated that the proposal will reduce the access to capital for new infrastructure investments because in the future investors will require higher returns. This will prevent optimal resource management.

The Confederation of Norwegian Enterprise (NO: Næringslivets Hovedorganisasjon) stated that they have registered the reactions in the consultation paper and consider the Ministry's approach to this matter to be unfortunate.

A number of oil companies have emphasised the importance of a predictable and transparent regulatory regime. The companies *Centrica, ExxonMobil, Statoil and Total* stated that it is important to have transparent and predictable conditions to secure incentives for infrastructure investments and in order for new gas infrastructure to be effectively incorporated into Gassled.

Statoil and Total stated that low tariffs can provide stronger incentives to wait for available capacity in existing systems rather than increasing capacity or establishing new infrastructure.

Total asserted that in order to arrange for new infrastructure in the Barents Sea a process should be commenced to find new financing models that allow investors other than the resource owners to invest in infrastructure.

E.ON and GDF SUEZ asked the Ministry to clarify how tariffs will be stipulated in the future for existing pipelines that are not included under the proposal for reduced tariffs and new infrastructure that shall be incorporated into the tariff regulation. GDF SUEZ proposed that the K-element be reduced by 90 per cent for existing and new infrastructure when a real return of 7 per cent before tax is achieved.

Since Report to the Storting no. 46 (1986-87) was presented and authorisation to install and operate Zeepipe was granted in 1987 it has been emphasised that transport must be seen as means and not a goal in resource management. From this point in time it has been emphasised that the majority of the profit must be derived from the fields and that investments in gas infrastructure shall give a real return of approximately 7 per cent before tax on the total capital. Furthermore, it is emphasised in the remarks to Chapter 9 of the Petroleum Regulations that, in addition to a real return of 7 per cent, the owners also have the possibility of minor additional income.

The Ministry's right to stipulate and change tariffs appears in Section 4-8 of the Petroleum Act, cf. Section 3.1. In the letters of approval for transfers of interests in Gassled to Infragas, Njord, Silex and Solveig it was explicitly stated that the return in the system is regulated and that the Ministry can make changes to the tariffs stipulated in the Tariff Regulations.

The Ministry has only stipulated new tariffs for new transport agreements for existing infrastructure that have already achieved reasonable returns. The Ministry uses as a basis that future infrastructure also will be regulated such that reasonable returns can be achieved on the investments. Therefore, good incentives exist for investing in new infrastructure.

In certain instances, tariff reductions can provide incentives to wait for available capacity rather than increase capacity or establish new parallel infrastructure. However, this can be a correct approach.

4.5 Rules for reserving capacity

The companies *Bayerngas, Centrica, Det Norske, E.ON, GDF SUEZ, RWE Dea and Wintershall* stated that the rules for reserving capacity should be changed when the tariff for new capacity reservations is reduced. It was asserted that the changes to the rules that were made in 2011 gave the owners of fields with high daily production capacity (swing capacity) compared with annual production, increased opportunities to reserve long-term capacity. Lower tariffs will give these shippers a greater incentive to reserve long-term capacity, something that could have negative

consequences for developing new fields that are owned by shippers without swing capacity. The companies asked the Ministry to once again assess the capacity reservation rule in light of the tariff reduction.

RWE Dea proposed that the capacity reservation rule should be limited to a field's annual expected production for long-term reservation and that the field's daily production capacity is used as a basis for the right to carry out monthly and daily reservations.

The capacity reservation rule in Gassco's "Booking Manual" was changed in 2011. The change gave owners of fields with high swing capacity the increased ability to plan the use of swing capacity on a long-term basis and thereby increase their opportunities to create value.

The Ministry has not found any reason to take the initiative to change the rules for capacity reservation in connection with the stipulation of new tariffs.

4.6 Consequences for domestic use of gas

Nordland County Municipality and the Norwegian Sea Council maintained that the tariffs must not be formulated in such a manner that export solutions are preferred ahead of national, industrial solutions.

Finnmark County Municipality (NO: Finnmark fylkeskommune) and Industri Energi stated that the proposed change could contribute to higher prices for the purchase of gas for domestic use and reduce the possibilities of industrial gas use in Norway. Finnmark County Municipality asked the Ministry to assess the consequences of the proposed change for domestic use of gas.

The domestic use of gas was properly addressed in Report to the Storting no. 28 (2010-2011).

The Ministry makes reference to the fact that most of the annual Norwegian gas production is exported. The domestic use of gas is 1-2 billion Sm³ – or 1-2 per cent of the exported volume. Large amounts of gas are now physically available at many landing points along the Norwegian coast.

Lower tariffs will stimulate the overall production and sales of gas from the Norwegian continental shelf. The tariff regulation is not a suitable means of increasing the domestic use of gas.

4.7 The approval processes in accordance with the Gassled transactions

Silex and *Solveig* noted that the investment in Gassled was based on the assumptions of stable and predictable framework conditions and that any changes would be balanced and prepared in consultation with the affected parties. Njord made note of equivalent factors and wrote that their assumptions for a stable system were clearly communicated during their almost 10 month long approval process in 2010-2011. Infragas wrote that the tariff reduction was not possible for the Gassled owners to predict.

Considering the short period of time between the implementation of the transactions and the Ministry's notification of the revision of the tariff level, *Silex* and *Solveig* were of the view that it does not exactly inspire confidence that the possibility of this type of unilateral change that the Ministry has proposed was not communicated by the Ministry in connection with the comprehensive approval process. Infragas wrote that events immediately after the date of their investment in Gassled appear to indicate, at least from the outside, that potential tariff reductions were already under consideration when the investment was made. Infragas noted that they did not receive any information about such assessments during their various contact with the Ministry in connection with the acquisition. *PSP*, which owns Infragas, claimed that the Ministry neglected to share important information prior to the acquisition.

Njord noted that the approval came after comprehensive discussions with the Ministry during 2010 and 2011. When the issue of tariff changes was brought up during these discussions this always occurred in the context of consensus-based changes with a corresponding licence extension beyond 2028. *Silex* and *Solveig* wrote that as part of the approval process, emphasis was placed on a possible future need to redistribute tariff revenues in connection with a licence extension through a negotiated solution between the involved parties to facilitate the best possible management of resources.

Infragas and Njord made reference to the fact that in its approval of the transfer of the ownership interest in Gassled pursuant to Section 10-12 of the Petroleum Act, the Ministry noted that the tariffs can be changed. Njord stated that they understood this as solely being a reference to Norwegian law, subject to restrictions in the legislation. Infragas stated that they are well aware of the Ministry's general authority to change existing tariffs in certain situations and this is apparently the authority that was referred to in the approval letter, and that it speaks for itself that the Ministry could not have intended to impose new restrictions for all Gassled owners in a letter that was only sent to the new investors.

The commercial conditions upon the transfer of participating interests in Gassled are matters between the buyers and sellers. New Gassled partners themselves bear the risk of the assumptions they accepted when they purchased their interests in Gassled.

In the contact between the Ministry and the companies in connection with approval pursuant to Section 10-12 of the Petroleum Act of the transfer of participating interests in Gassled to Infragas, Njord, Silex and Solveig, the Ministry stated as a general information that the Gassled tariffs could be changed.

In the Ministry's approvals of transfer, explicit reference was made to Gassled's importance to Norwegian resource management and it was noted that the authorities place major emphasis on the regulation and ownership of Gassled serving resource management considerations at all times. In these approvals, the Ministry also stated that an important consideration in petroleum policy is that as much as possible of the profit from petroleum activities is derived from the fields and not from the infrastructure and that the Ministry, based on the consideration of resource management and to ensure incentives for necessary investments, regulates the returns in the system. In connection with this, the Ministry also, as mentioned, explicitly noted that the Ministry could also make changes to tariffs as stipulated in the Tariff Regulations.

When approval of the transfer was granted in 2011, the Ministry did not have specific plans to change the tariffs.

In a letter of 24 August 2012, the Ministry gave notice that it had commenced work on assessing the Gassled tariff level as this is stipulated in the Tariff Regulations. On 20 September 2012 the Ministry consented to the transfer of a smaller participating interest to Solveig. As for previous approvals in 2011, it was then stated that the Ministry could make changes to tariffs as stipulated in the Tariff Regulations. In addition, explicit reference was made to the Ministry's letter of 24 August 2012.

When, prior to the approvals, the Ministry asked the buyers about their ability to move cash flows from the period prior to the expiry of the licence in 2028 until the period after 2028 this was related to transport agreements that had been entered into. The Ministry wanted to assess the buyers' capital structure and financial flexibility in relation to a possible development such as this. The Ministry's consultation proposal and the decision to stipulate new tariffs which the Ministry has now handed down, apply to volumes for which no transport agreement has been entered into.

4.8 The Ministry's case handling and procedures for the preparation of the tariff proposal

Infragas was of the view that the Ministry's process up to the hearing was unsatisfactory and deviated from previous practices when concerning petroleum activities. They made particular note of the lack of dialogue with the industry prior to the proposal being submitted for hearing. They were of the view that the stability of the Norwegian regulatory regime and practices of having dialogue with the industry are fundamental to infrastructure investors investing in the Norwegian gas transport system.

Infragas was of the opinion that they did not have access to important information and that this was withheld by the Ministry and Gassco. *Infragas* further requested the Ministry to delay the implementation such that there is more time for dialogue, the exchange of information and clarification of legal restrictions.

Njord placed emphasis on them wanting to invest in Gassled and Norway based on Norway's reputation as a country with stability, openness, a long-term petroleum policy and strong adherence to due process by law. Their impression was that the Ministry had a long tradition of consensus-based decisions in cooperation with the owners of Gassled. They were of the view that the Ministry's proposal conflicts with this tradition.

Njord reported that they were only given access to parts of the legal assessment from law firms Kluge and Arntzen de Besche which the Ministry has received and that this access was granted shortly before the submission deadline. They further reported that their legal remarks were based on the limited legal argumentation in the consultation paper and could be supplemented. *Njord* was of the view that the Ministry's unwillingness to be transparent about a matter with such dramatic consequences for those affected by the proposal is not in accordance with good public administration.

Njord also asked the Ministry to delay the implementation of the proposal and to carry out a broad process in which all interested parties work towards an improved solution through consensus. They considered this to be more in line with Norwegian traditions for consensus-based solutions.

Silex and *Solveig* made reference to the fact that the close cooperation with the industry, including in connection with regulatory changes, has been vital in the development of Norwegian petroleum activities. *Silex* and *Solveig* noted that this has been followed up in practice and made reference to the

work and process in connection with amendments to Regulations no. 1625 of 20 December 2005 relating to the use of facilities by others.

Silex and Solveig found it difficult to understand that such a radical proposal could be handled as an urgent matter by the Ministry and that it was prepared without the involvement of the industry despite their repeated requests for dialogue. They also raised questions about the reason for a shorter submission deadline than what is normal for important matters. Silex and Solveig were of the view that the process was carried out in a manner than does not inspire confidence and which is capable of damaging the general trust in such processes.

The procedure in connection with the submission of the proposal has been in accordance with applicable regulations and practices. The proposal was submitted for hearing to a number of consultative bodies, including Gassled partners, who were then given the opportunity to provide statements before changes were approved.

The consultation paper provides a good basis on which to understand the background to the case and the Ministry's assessments in the case. The Gassled partners were also granted access to the figures which Gassco based its calculations on. The Ministry also granted access to parts of an external legal opinion. Other parts of this are exempt from public access pursuant to Section 15, paragraph two of the Freedom of Information Act. The submissions were posted on the Ministry's website in the usual manner.

The deadline for submissions must normally be three months and not less than six weeks. Shorter deadlines can be set when special circumstances make this necessary. In this case the Ministry considered it important that the proposal should enter into force prior to the next capacity reservation round that was postponed until 1 May 2013. The submission deadline was set for two months. None of the consultative bodies requested an extension to the submission deadline.

The Ministry decided to postpone the implementation until 1 July 2013 when the assessment was that more time was required to review the responses and to evaluate certain aspects of the proposal in more detail.

4.9 Other remarks of a legal nature

Infragas asserted that in accordance with applicable legislation there is no doubt that the rights of the Gassled owners pursuant to the Tariff Regulations are legally protected in the same manner as rights stipulated in individual decisions and that such rights can only be infringed if strict

conditions have been satisfied. Infragas was of the view that the conditions for intervening in the applicable Gassled tariffs as these appear, among others, in Section 4-8 of the Petroleum Act, entail that new, unforeseen and specific factors must be demonstrated compared with the situation when Gassled was established, that tariff changes are necessary to ensure that specific projects are carried out with due regard to considerations relating to resource management and that such considerations are considerably more important than the interests of the Gassled owners in having received returns based on the applicable tariffs and always such that the owners have the right to receive a reasonable return. Infragas was of the view that the Tariff Regulations stipulate tariffs during all of Gassled's licence period until 2028 and cover capacity that has already been reserved and available capacity that shall be reserved in the future. Infragas was of the view that the strict requirements for changes to tariffs apply for both reserved capacity and non-reserved volumes and that additional and even stricter requirements become applicable if the Ministry attempts to intervene in private agreements that have been already entered into. Infragas was of the view that, in all instances, the establishment of Gassled must be considered to have restricted the Ministry's authority to change existing tariffs. Infragas asserted that the Ministry's proposal to reduce future capital tariffs by 90 per cent is disproportionate when one balances general resource management considerations against the individual owner's fundamental right to obtain returns in accordance with the stipulated tariffs.

Njord disagreed that the proposed changes will not interfere with established legal relations. *Njord* noted that both the standard contract for transport in Gassled and the tariffs are stipulated by the Ministry and asserted that the proposal must be considered as a change to stipulated tariffs pursuant to Section 4-8, paragraph two of the Petroleum Act, that this provision codified the applicable non-statutory legal doctrine for reversal of administrative decisions and that the threshold for exercising the authority under this doctrine to reduce the tariffs is very high. *Njord* was of the view that even if one accepted the Ministry's viewpoint regarding this, the consultation paper does not satisfy the conditions in the Act. *Njord* asserted that the consultation paper did not take into consideration that the Tariff Regulations involve individual decisions for the Gassled partners, that this restricts the Ministry's authority to amend the Tariff Regulations and this entails that the process does not satisfy the procedural rules that apply for individual decisions pursuant to the Public Administration Act. *Njord* also asserted that the large value transfer the proposal involves demonstrates the unreasonableness of the proposal.

Silex and Solweig asserted that the proposal has no legal basis. These companies noted that the Ministry has the right, within the applicable

regulations, to make changes to the regulated tariff and access regime to ensure good resource management, however that it is equally clear that the Gassled owners' legitimate interests have legal protection through the petroleum legislation and general administrative law principles. Silex and Solveig asserted that the proposal exceeds the administration's legal framework and entails retroactive and expropriation-like interference in the private right of ownership. In their view, the proposal entails considerable retroactivity related to past returns that is irrelevant to the current infrastructure owners' requirements for a reasonable profit. Silex/Solveig asserted that the proposal does not satisfy the strict requirements for statutory authority, review and grounds for such comprehensive intervention against private parties and that the proposal also conflicts with the justified expectations the Ministry itself has created concerning stable framework conditions.

As described in Section 3.1 above, Section 4-8, paragraph two of the Petroleum Act grants the general authority to both stipulate new tariffs and to change previously stipulated tariffs. The amendment to the Regulations involves the stipulation of new tariffs for new transport agreements that are entered into after the entry into force. As stated in Section 3.2-3.4, the new tariffs will ensure good resource management and provide the owners with a reasonable return in accordance with the requirement in Section 4-8 of the Petroleum Act.

During the licence period the owners will receive the returns which they could have expected in accordance with the terms of the licences and long-term administrative practices. The amendment to the Regulations does not contradict the assumptions for the establishment of Gassled and the approval of the Tariff Regulations. The Ministry cannot see that any justified expectations could have been created that restrict the Ministry's authority in accordance with Section 4-8 of the Petroleum Act to decide this amendment to the Regulations.

The amendment to the Regulations does not involve an amendment to already stipulated tariffs. The amendment to the Regulations will not interfere with transport agreements that have already been entered into. Even though the Ministry has stipulated tariffs in the Tariff Regulations and approved the standard conditions for transport and handling for Gassled, the individual legal relations are first established when capacity is reserved. The decision therefore does not involve a change pursuant to the Act. The decision also does not involve any retroactive or expropriation-like intervention. It is therefore not relevant to go into any more detail about the statutory authority or the conditions for changes to tariffs in established legal relations.

Prior to the establishment of Gassled the Ministry approved each transport agreement. In connection with this, the tariffs were also approved or stipulated

for each agreement. The approval of the Tariff Regulations and the introduction of pre-approved standard conditions involve a practical change since the Ministry's control through individual approvals is replaced by control through regulations and standard conditions. However, the legal difference between stipulating and changing tariffs is the same as before. Neither the approval of the Tariff Regulations nor approval of standard conditions restrict the authority the Ministry has pursuant to Section 4-8 of the Petroleum Act to stipulate new tariffs for new transport agreements.

The Tariff Regulations are not an individual decision for the Gassled partners. The Tariff Regulations are regulations - including for the Gassled partners. The Regulations are directed at those who are, at any time, owners and users of the Gassled facilities and, together with Chapter 9 of the Petroleum Regulations, constitute the overall, objective and non-discriminatory regulation of access to upstream gas pipeline networks in accordance with the EU gas market directive.

Furthermore, the Ministry's authority pursuant to Section 4-8 of the Petroleum Act to stipulate and change tariffs does not depend on the type of decision. Whether or not the tariff was previously stipulated by individual decision or regulations is therefore not decisive to the right to stipulate new tariffs for the future or other tariffs in existing legal relations. Therefore, the Ministry can stipulate new tariffs for new agreements even if the previous tariffs were stipulated by individual decision. As mentioned above, this was previously the normal arrangement.

With regard to certain submissions that the new tariff is unreasonable and disproportionate, the Ministry would note that the tariff is stipulated under the provisions of Section 4-8 of the Petroleum Act and that it ensures that the owners receive a reasonable return taking into account, among other things, investments and risks.