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**Subject: EFET<sup>1</sup> comments on ACM's Draft Methodology Decision GTS 2022-2026**

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EFET welcomes the opportunity to comment on the Ontwerp Methode Besluit (further referred to as “OMB” or “the Decision”) GTS 2022-2026. The decision on the method that sets the tariff level of GTS is of significant importance to gas trading entities both inside and outside the Netherlands. On that basis we would appreciate if the relevant discussions were held in English in the future in order to ensure the broadest participation. Below, we would like to signal a few resolutions within the Decision that may severely impact the economic position of the gas industry in the Netherlands. Our response is not confidential.

To begin with, we would like to highlight that the Decision, in its current form, proposes to deviate from the principle whereby the tariff level reflects the efficient costs incurred by the TSO. We find that very surprising, especially in view of OMBs taken by the ACM in previous years, where the interest of efficiency was narrowly defined<sup>2</sup>. While we agree that the gas grid has an important role to play in the transition towards carbon neutrality, we fear that certain provisions of the OMB may in fact weaken its relevance instead of sustaining its utilization in the future. This is particularly the case for the proposed degressive depreciation (hereinafter DD), as described in the OMB in margin 137 and 154 – 163 and early depreciation (hereinafter ED), as described in OMB margin 135 and 164 -166 as they both constitute a major deviation from efficient cost remuneration principle. We elaborate further on the impact of both resolutions below.

The existing tariff levels in the Netherlands have already been inflated by a number of past decisions. In maintaining security of supply of gas flows in and outside of the Netherlands we fear we will see a number of significant further increases. Introduction of ED and DD under these circumstances will increase tariffs to the detriment of the existing gas consumers. Under

<sup>1</sup> The European Federation of Energy Traders (EFET) promotes competition, transparency and open access in the European energy sector. We build trust in power and gas markets across Europe, so that they may underpin a sustainable and secure energy supply and enable the transition to a carbon neutral economy. We currently represent more than 100 energy trading companies, active in over 27 European countries. For more information: [www.efet.org](http://www.efet.org).

<sup>2</sup> One example can be the OMB of 10 February 2016 (margin 47): *Het uitgangspunt dat de tarieven een afspiegeling dienen te zijn van de werkelijke kosten, voor zover deze overeenkomen met die van een efficiënte, structureel vergelijkbare netbeheerder houdt in dat de tarieven gebaseerd moeten zijn op daadwerkelijke kosten van GTS, maar dat deze slechts in aanmerking kunnen worden genomen voor zover een efficiënte, structureel vergelijkbare, netbeheerder deze kosten in dezelfde omstandigheden ook gemaakt zou hebben.*

this scenario, the OMB would ensure immediate revenues to the regulated entity at the expense of those that consume gas now.

If the OMB results in unreasonably high tariffs in the near future, network utilization will drop faster than originally envisaged, as consumers are incentivised to switch in greater numbers and earlier to other energy carriers. This adds to the deterioration process (tariff – demand spiral), jeopardising the future utilisation of the grid. This in turn may endanger the cost-efficiency of the transition towards carbon neutrality by moving towards low carbon gases, such as hydrogen and biomethane, ultimately at greater cost to consumers.

In this context it is also worth noting that the Decision confirms that the attribution of a greater share of the network costs to the current users is deliberate, since otherwise the future users would be required to pay an “unreasonably large share of the grid expenses”<sup>3</sup>, as the OMB describes in margin 65. Despite all the research into future development of the grid cost (as described under paragraph 4.1 of the OMB) the OMB fails to specify what level of cost would be deemed unreasonable or unaffordable to trigger the proposed amendment to the methodology.

Moreover, while the OMB (in OMB margin 37) describes that according to article 82 of the Gas Act, the regulator is required to balance the interest of efficiency, system integrity, sustainability and a reasonable return, it fails to describe how the interest of reasonability and affordability ought to be incorporated by the regulator in balancing these interests, In fact, neither the interest of affordability nor of reasonability are mentioned in article 82 or in article 13 of regulation 715/2009.

When indeed as the OMB in margin 37 describes<sup>4</sup>, a regulator is required to balance the interest of efficient cost and system integrity, ACM fails to describe or provide any further substantiation or proof in the OMB or any of the prior stakeholder sessions of how a specific level of expenditure should be recovered to safeguard integrity and security of supply for instance, to warrant amending the methodology by imposing DD and ED.

<sup>3</sup> As per point 65 of The Decision: *Dit onderzoek heeft ertoe geleid dat de ACM met dit besluit de definitie van kosten (inclusief een redelijk rendement) op een aantal punten wijzigt. De wijzigingen worden toegelicht in paragraaf 7.2.1. Deze wijzigingen hebben tot gevolg dat de verdeling van de kapitaalkosten van GTS wijzigt, zodanig dat meer kapitaalkosten naar voren worden gehaald. Deze wijziging heeft een opwaarts effect op de tarieven van GTS op de korte termijn, maar voorkomt grotere tariefstijgingen op de lange termijn. Daarmee voorkomt de ACM dat toekomstige gasnetgebruikers een onredelijk groot deel van de kosten van het net dat mede is aangelegd ten behoeve van de huidige gasnetgebruikers voor hun rekening krijgen.*

<sup>4</sup> Margin 37 of The Decision reads: *“Daarnaast heeft de nationale wetgever voorgeschreven dat de ACM rekening moet houden met het belang van voorzieningszekerheid, duurzaamheid en een redelijk rendement op investeringen. Ook hieruit volgt dat de ACM bij de vaststelling van de methode van regulering niet enkel het belang van kostendoelmatigheid voor ogen mag houden. Dat zou er immers toe kunnen leiden dat GTS geen ruimte krijgt om op efficiënte wijze te investeren in voorzieningszekerheid en duurzaamheid.7 Een eenzijdige focus op kostendoelmatigheid op de korte termijn gaat dan ten koste van het belang van voorzieningszekerheid en duurzaamheid op de lange termijn”.*

We further note that while a definition of system integrity is missing from the Decision in question, it has been provided previously<sup>5</sup>. We see no reason why the interpretation of “system integrity” would change over time nor continues to be met by the changes.

Similarly, we note that previous Methodology Decisions did offer an interpretation of the efficient costs that should be considered reimbursable by the TSO<sup>6</sup>. Under such interpretation the decision on DD that moves a disproportionate balance of asset recovery costs into near-term tariffs cannot be recognized and the decision on ED that allows for early depreciation of assets – some of which may be redundant - cannot be deemed efficient. Moreover, both measures should be considered as cross-subsidization over time and should be avoided.

DD will reduce the remaining value of the depreciated grid elements, thereby automatically relieving future users from the burden of a part of the expense of using the gas grid. DD either directly relieves future natural gas grid users or it will relieve future hydrogen grid users if the gas grid is repurposed and can be acquired by hydrogen transport companies at a lower price. By definition, ACM shifts equity in this process between groups in society. This is a form of cross-subsidization and it is to be avoided as per article 13(1) of Regulation 715/2009 and ACM’s own OMB from the past<sup>7</sup>.

Under current circumstances and given the lack of substantiation on how DD and ED maintain the future integrity of the grid the further inflation of tariffs through DD and ED therefore seem incompatible with article 82 of the Gas Act and article 13 of Regulation (EC) 715/2009.

For ED, it should also be noted that while the TSO is entitled to recover costs efficiently incurred and a “reasonable return” on assets, this should not automatically apply to overinvestment. This enables the TSO to bear the risk over the lifetime of their investments,

<sup>5</sup> OMB of 10 February 2016 (margin 46): *“Het uitgangspunt dat rekening gehouden moet worden met de noodzaak van systeemintegriteit wordt uitgelegd als dat het gastransportnet goed en betrouwbaar moet kunnen blijven functioneren. In de regulering moet daarom voldoende financiële ruimte geboden worden voor investeringen die noodzakelijk zijn om de betrouwbaarheid van het netwerk te garanderen, bijvoorbeeld investeringen om congestie op te lossen. ACM houdt hier rekening mee doordat de efficiënte kosten die voortvloeien uit noodzakelijke investeringen worden vergoed via de tarieven.”*

<sup>6</sup> OMB of 10 February 2016 (margin 47): *“Het uitgangspunt dat de tarieven een afspiegeling dienen te zijn van de werkelijke kosten, voor zover deze overeenkomen met die van een efficiënte, structureel vergelijkbare netbeheerder houdt in dat de tarieven gebaseerd moeten zijn op daadwerkelijke kosten van GTS, maar dat deze slechts in aanmerking kunnen worden genomen voor zover een efficiënte, structureel vergelijkbare, netbeheerder deze kosten in dezelfde omstandigheden ook gemaakt zou hebben.”*

<sup>7</sup> OMB of 10 February 2016 (margin 49): *“ACM interpreteert het uitgangspunt dat de tarieven zijn gericht op het vermijden van kruissubsidiëring tussen de netgebruikers en niet-discriminerend zijn als volgt. Het tarief voor een dienst dient een vergoeding te bieden voor de (efficiënte) kosten die zijn gemoeid met het leveren van deze dienst. Andere kosten dan deze kosten dienen niet tot vergoeding te komen in het desbetreffende tarief. Dit betekent dat een afnemer van een bepaalde dienst middels het bijbehorende tarief uitsluitend de kosten betaalt die met deze dienst gemoeid zijn. Hiermee wordt kruissubsidiëring van de ene dienst door de andere dienst, en daarmee (mogelijk) van de ene afnemer door de andere afnemer, voorkomen. “*

since this is exactly the basis for the application of the principle in the first place, as follows from ACM's interpretation of article 13 of regulation 715/2009 in the OMB of 10 Feb 2016<sup>8</sup>.

In the EFET paper "Developing a sustainable pan-EU approach to transmission charging" (published at Madrid Forum 28), EFET recognises it will not be sustainable to recover all costs and returns from tariff increases alone.

- a) One solution that could be examined under existing legislation is that the early overinvestment means that the system is no longer efficiently constructed – the RAV exceeds the Depreciated Optimised Replacement Cost and could be reduced.
- b) As GTS is state-owned, a share of the cost might be socialised through general taxation. Socialisation through the tax base seems to make sense especially since, it were governmental policy decisions that drove investment programmes without being commercially underwritten.
- c) Besides the GTS/ the tax payer, there is a range of other parties who are in a position to defray such costs including: TSOs (where assets have been depreciated fully or even beyond 100% but remain on the RAB) and levies directly on gas consumers (who have previously benefited from increased competition and supply security).

It also needs to be underlined that, as the future demand for gas declines (as per the assumptions under the MORGAN study in OMB margin 54 - 65), these adverse conditions for the remaining gas consumers are bound to deteriorate further. Any increase of tariffs adds to the cost of gas, reduces demand and therefore reducing shipper's margins. This will reduce liquidity on the TTF and efficiency in gas trading. Previously, these were also mentioned as relevant interests a regulator should see to on basis of ACM's interpretation in the OMB of 10 February 2016 in margin 44 and explained further in 50 and 51.

Finally, It is our understanding that the motivation of the ACM to introduce ED and DD is to ensure affordability of future gas supply for the future generations, but no evidence has been provided that the OMB will ensure prolonged network utilization. Considering the substantial ongoing investments and falling demand, the upward pressure on tariffs combined with revised depreciation rules may well result in accelerated asset stranding. With no sufficient grounds, the Decision should not deviate from the efficient cost remuneration principle.

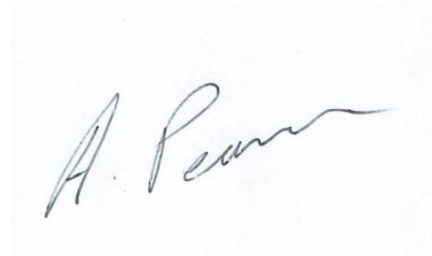
In view of the points stated above, we believe that the proposed OMB implies a number of fundamental changes to the regulatory system and thus contract conditions, causing value-destruction of existing contracts. These changes could not have been foreseen by grid users at the time contracts have been concluded. Drastic changes like this affect the trust and ability from gas shippers to enter into long term capacity bookings. Since the Decision would fundamentally change the way the costs of the transport service are regulated, this may justify

<sup>8</sup> OMB of 10 February 2016 (margin 48). "Het uitgangspunt is dat rekening gehouden moet worden met de nodige winst op investeringen en dat de tarieven gericht zijn op het bieden van stimulansen voor investeringen. ACM houdt hier rekening mee door in de berekening van de efficiënte kosten een redelijk rendement op de investeringen te verwerken."

a review of existing contracts or risk discouraging the uptake of long term contracts in future. Alternative rules for early termination of long-term bookings exist elsewhere e.g. in Germany.

EFET is ready to continue the dialogue around different means to address the problem of asset stranding and efficient transition towards carbon neutrality. We believe that full recovery of the network costs and returns from tariffs alone cannot be considered sustainable and may only exaggerate the problem. Finding the right solution to the problem of ever-increasing transmission charges is of general interest of all EU Member States and we remain at your disposal to discuss the tools that could be considered.

Kind Regards,  
On behalf of EFET TF BeNeLux



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