

## AEEGSI consultation n. 607/2015 on gas transportation tariffs 2010-2013



### EFET response – 19 January 2016

#### Introduction

EFET<sup>1</sup> welcomes the opportunity to answer the consultation document n. 607/2015 and reiterates the message contained in the letter sent you on 1 December 2015 - *EFET communication on the review procedure of gas transportation tariffs 2010-2013* – which we attach as Annex at the bottom of this document.

While we appreciate the obligation for AEEGSI to swiftly start the procedure to comply with Court ruling n. 2888/2015, we wish that the mechanism that will be identified is such as to prevent the recurrence of new complaints or legitimate claims by third parties. The Regulator should avoid triggering a vicious circle of appeals, rulings, counter-appeals that could occur both in case of non-compliance with the judgment and in case of retro-active compensation mechanisms (as explained below), which would produce many negative effects on market participants and on the whole system.

However, as already stated several times in the past, our main message is that **unexpected and retroactive changes to the tariff levels should be avoided**; in fact, this represents a major regulatory risk able to dramatically affect the reputation and hence, the attractiveness, of the Italian gas and electricity markets. Instead, as a solution to this specific problem, we counter-propose the **introduction of a dedicated forward-looking coefficient to be charged on shippers in the future and starting from the next gas year.**

#### Retrospective modifications are to be avoided

Regarding the cost recovery of self-consumption, AEEGSI is proposing the retroactive introduction of a specific charge (CVfuel) applicable for the calendar years 2010, 2011, 2012 and 2013 to all entry points.

Considering that shippers operating in the regulatory period above have already contributed in kind, the AEEGSI proposes an adjustment process to reallocate the difference between the value of the quantities of gas delivered in kind by shippers and the new equalised charge multiplied for the same quantities. It appears that

---

<sup>1</sup> The European Federation of Energy Traders (EFET) promotes and facilitates European energy trading in open, transparent and liquid wholesale markets, unhindered by national borders or other undue obstacles. EFET currently represents more than 100 energy trading companies, active in over 27 European countries. For more information: [www.efet.org](http://www.efet.org)

AEEGSI is proposing to recoup this amount in a retroactive manner in the form of adjustments to payments due in the future.

**EFET strongly disapproves the ex-post introduction of such a retroactive charge**, for the reasons explained in the above introductory paragraph. On more general terms, we would like to emphasize once again the importance of regulatory certainty and predictability. Sudden and retroactive changes are a very bad practice which exposes traders to unnecessary and unmanageable costs and risks and generate lack of confidence in the regulatory framework. This may ultimately represent a barrier for trading activities in the Italian market, impacting competition and liquidity.

We suggest AEEGSI to look at and benefit from foreign best practices on the subject: in particular, we refer to the UK experience and to the way the regulator of one of the most liquid gas hubs in Europe operates. In 2001, Ofgem released guidelines on retrospective changes to network codes, applicable to both power and gas<sup>2</sup>. The UK regulator considers that “retrospective changes to the [Network Code] will damage market confidence in, and efficient operation of, the new trading arrangements. Rather than protecting Parties from “unforeseen unfairnesses”, Ofgem believes market participants “prefer the assurances of rules that are unlikely to be changed retrospectively.”

Ofgem believes that there are generally accepted and well understood legal reasons why retrospective modifications are to be avoided: in first place, market participants prefer the assurances of rules that are unlikely to be changed retrospectively; second, in Ofgem’s opinion it is a general principle of law that rules ought not to change the character of past transactions completed on the basis of the then existing rules.

### **EFET counter-proposal to the application of the CVfuel charge for the period 2010-2013**

We believe that the proposed adjustment mechanism is not in line with the decision of the Council of State. Moreover, this may be rendered partially impossible from the considerable time elapsed, which entails that the recovery of some of the amounts is not feasible.

Moreover, retroactive charges represent gains and losses for market players that market participants would never be in a position to recover or correctly attribute. As they are linked to already executed contracts and trades they may be related to

---

<sup>2</sup> Ofgem guidelines followed London Electricity’ proposal of modification to a power network code that would have fixed volume notification errors at gate closure (prospectively). However, market participants could have also requested a retrospective correction to errors that had happened before the modification was proposed. London Electricity argued that the retrospective corrections would as a principle protect market participants from “unforeseen unfairness”. Ofgem rejected the modification.

counterparties that do not exist any longer. Furthermore, it is possible that, had rules and costs been different at the relevant time, these contracts may have not been concluded at all, hence the gas would have not flown.

As already proposed in our communication of 1 December and consistently with what has already been done in the past when losses had to be recouped from network users, **we propose that, to cover legitimate retroactive effects, AEEGSI introduces an additional dedicated forward-looking coefficient to be charged on shippers in the future and starting from the next gas year with publication updates before the start of the trading season.** This would leave untouched the relevant tariff methodology and would be easily repealed once the targeted amount is reached.

### **Remarks for the regulatory period 2014-2017 and after**

EFET understands that the current consultation only relates to the period 2010-2013. We believe that it is of utmost importance that the Regulator consults, as soon as possible, on the possible introduction of the transportation charge for the regulatory period 2014-2017 and after.

The consultation should include the AEEGSI proposal on clear mechanisms for the calculation of the amount of fuel gas yearly required by the system, for the method for the sourcing of the gas, for the price setting and for the allocation of costs to the shippers.

Should AEEGSI confirm the introduction of a fuel charge in the future, the coefficient used to recoup the amount due per effect of the Court ruling and for any future year should be treated separately and independently from such charge, rather than as an adjustment.

We appreciate AEEGSI's availability in hearing to market participants' feedback on any relevant issue and we remain available for any additional clarification on the above messages.

## ANNEX

To the attention of:

**AEEGSI, Autorità per l'Energia Elettrica, il Gas ed il Sistema Idrico**

Piazza Cavour, 5

20121 Milano

**Direzione Mercati Energia Elettrica e Gas (DMEG)**

Mrs. Clara POLETTI

*Director*

**Direzione Infrastrutture, Ubundling e Certificazione (DIUC)**

Mr. Andrea OGLIETTI

*Director*

1 December 2015, Brussels

*Via electronic email*

**Subject:** EFET communication on the gas transportation tariffs 2010-2013

Dear Mrs Poletti, dear Mr. Oglietti,

EFET believes that any unexpected change to the tariff levels, especially if relevant for the past, represents a major regulatory risk able to dramatically affect the attractiveness of the market. For this reason and in view of the forthcoming consultation foreseen by AEEGSI Deliberation n. 430/2015/R/GAS implementing the State Council ruling n. 2888/2015, EFET would like to share some general considerations that we hope will be taken into account in preparing the draft proposal. While we appreciate the obligation for AEEGSI to swiftly comply with a definitive Court ruling, we believe that there is scope for limiting the impact of the legal proceeding.

The importance to limit the extent of the necessary regulatory intervention is two-fold:

- On one hand, it is important to avoid consequences that go beyond what it is strictly legally necessary, as the opposite would contribute to **an increased perceived unpredictability** of the Italian gas market rules;
- On the other hand, the process is fundamental as any proposed solution is **likely to set a precedent** for the future, relevant both for other legal cases and for a potential future revision of the tariff methodology once the new regulatory period starts.

More in particular, EFET recommends:

**1. Avoiding any retroactive intervention.** This would leave suppliers exposed to losses that could not be recouped as most of the contracts with customers relevant for the period 2010-13 have already expired. In some cases, relevant customers may have even ceased to exist. In this respect, we understand that a retrospective intervention is not strictly legally necessary. Therefore, any retroactive intervention may become subject to further legal challenges, increasing the regulatory risk. Furthermore, retrospective actions create uncertainty and generate lack of confidence in the regulatory framework. This may ultimately represent a barrier for trading activities in the Italian market, impacting competition and liquidity.

**2. Introducing a forward looking coefficient.** Consistently with what has already been done in the past when losses had to be recouped from network users, AEEGSI may introduce an additional coefficient to be charged on shippers in the future and starting from the next gas year with publication updates **before the start of the trading season**. This would leave untouched the relevant tariff methodology and would be easily repealed once the targeted amount is reached.

**3. Avoiding implement other tariff adjustments.** This specific tariff adjustment becomes necessary as a result of a legal action and should be treated in isolation. Given that the impact has the potential of being very substantial, EFET believes that in this process AEEGSI should limit itself only to what it is strictly legally necessary, complying with the CdS ruling n. 2888/2015. Any other potential adjustment to the tariffs levels AEEGSI may find appropriate should be exclusively dealt with as part of a potential revision of the existing tariff methodology and following a comprehensive consultation process.

Finally, we notice that deliberation n. 430/2015/R/GAS commits AEEGSI to conclude on the implementation of the Court ruling by 31.12.2015. While we understand and appreciate the intention of AEEGSI to launch an open consultation before the implementation act becomes binding, we wonder how the above deadline could be met at this point.

We appreciate AEEGSI's availability in hearing to market participants' feedback on any relevant issue and we remain available for any additional clarification on the above messages.

Sincerely yours,



Pietro Baldovin