

RESOLUTION OF 21 JULY 2016

422/2016/R/GAS

**INTEGRATIONS AND AMENDMENTS TO THE PROVISIONS RELATING TO THE
SYSTEMATIC UNDERUTILIZATION OF CONTRACTED CAPACITY AT INTERCONNECTION
POINTS WITH OTHER COUNTRIES OF THE NATIONAL GAS PIPELINES SYSTEM**

**THE ITALIAN REGULATORY AUTHORITY FOR ELECTRICITY
GAS AND WATER**

In the meeting of 21 July 2016

HAVING REGARD TO:

- Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009;
- Regulation (EC) of the European Parliament and of the Council No. 713/2009 of 13 July 2009;
- Regulation (EC) of the European Parliament and of the Council No. 715/2009 of 13 July 2009 (hereinafter: EC regulation 715/2009), as amended by the Commission Decision of 24 August 2012;
- Law No. 481 of 14 November 1995 (hereinafter: Law 481/95);
- Legislative Decree No. 164 of 23 May 2000;
- Decree of the President of the Italian Republic No. 244 of 9 May 2001;
- Law No. 239 of 23 August 2004;
- Legislative Decree No. 93 of 1 June 2011;
- Resolution No. 137/02 of 17 July 2002 of the Italian Regulatory Authority for Electricity Gas and Water (hereinafter: the Authority), as subsequently amended and integrated (hereinafter: Resolution 137/02);
- The Authority consultation document No. 270/2013/R/gas of 20 June 2013;
- The Authority Resolution No. 332/2013/R/gas of 25 July 2013;
- The Authority Resolution No. 411/2013/R/gas of 26 September 2013, (hereinafter: Resolution 411/2013/R/gas);
- The Authority Resolution No. 555/2015/R/gas of 20 November 2015;
- The Authority consultation document No. 60/2016/R/gas of 18 February 2016, (hereinafter: consultation document 60/2016/R/gas);
- The network code of Snam Rete Gas S.p.a. (hereinafter: Snam Rete Gas), approved by the Authority with Resolution No. 75/03 of 1 July 2003;
- The document containing “*Guidance on best practices for congestion management procedures in natural gas transmission networks*” (hereinafter: *CMP Guidance*), published on 11 July 2014 by the European Commission.

WHEREAS:

- the provisions provided for in Annex 1 of EC regulation No. 715/2009, as amended by the Commission Decision of 24 August 2012 (hereinafter: CMP regulations – *Congestion Management Procedures*), require that the transmission system operators make available to the market any capacity which has not been used by the primary users by means of one of the following congestion management procedures:
 - a) “oversubscription and buy back” system;
 - b) capacity release;
 - c) long-term “use-it-or-lose-it” mechanism (hereafter: LT UIOLI);
 - d) day-ahead based “use-it-or-lose-it” mechanism;
- with Resolution No. 411/2013/R/gas, the Authority approved, inter alia, the provisions related to the implementation of the LT UIOLI mechanism within national regulations;
- following a consultation of users, Snam Rete Gas, with a letter of 19 December 2014 (Authority reference No. 37259), submitted to the Authority a proposal to update its network code with the aim of implementing the provisions of Resolution 411/2013/R/gas relating to LT UIOLI;
- with the consultation document 60/2016/R/gas, the Authority outlined, inter alia, the amendment and additions of some provisions of article 14ter of resolutions 137/02, based on observations of the stakeholders and discussion with the TSO, with the aim of ensuring a more efficient implementation of the LT UIOLI mechanism;
- the stakeholders who participated in the consultation expressed their support for the amendments and additions proposed by the Authority, insofar as they are deemed to promote a more transparent and efficient management of the mechanism;
- Snam Rete Gas requested to set 30 November rather than 15 November, as the deadline for the TSO to send to the Authority the results of verifications on user capacity use, in consideration of the timing for the last transmission balance of the thermal year of reference.

CONSIDERED:

- appropriate to confirm the guidelines of the Authority on the integration and amendment of the provisions relating to LT UIOLI, outlined in the consultation document 60/2016/R/gas, envisaging their entry into force as of 1 October 2016, and also taking into account the request by Snam Rete Gas to set 30 November as the deadline for the TSO to send to the Authority the results of verifications of user capacity use;
- appropriate to provide that Snam Rete Gas prepare a proposal to update its network code to implement the provisions of this resolution relating to LT

UIOLI and submit it to the Authority by 8 September 2016, in order to guarantee the implementation of the new methods as of 1 October 2016;

- that the abovementioned proposal does not require further user consultation by Snam Rete Gas, as it purely aims at implementing the amendments envisaged by this resolution and already consulted by the Authority in the framework of the consultation document 60/2016/R/gas.

RESOLVES

1. To amend and integrate Article 14ter of Resolution 137/02, “*Provisions in case of systematic underutilization of contracted capacity*” as follows:
 - i. In Paragraph 1, Part b), the words “and in the absence of proper justification in compliance with that established in Paragraph 14ter.5” are deleted;
 - ii. At the end of Paragraph 1, the following sentence is added:

“The main TSO shall check the conditions outlined in Parts a) to d) and, if they occurred, notifies the interested user and the Authority by 30 November following the thermal year ATr, indicating the amount of capacity that must be made available, determined pursuant to Paragraph 14.2.6.”;
 - iii. Paragraph 3 is replaced with the following paragraph:

“Within seven (7) working days after the end of thermal year ATr, the user may send to the main TSO and to the Authority a note providing documented justifications, to explain the systematic underutilization, as outlined in Paragraph 14.2.1, Part b) above,. In the event that the user sends this note within the established deadline:

 - a) the main TSO sends the Authority, together with the communication as of Paragraph 14.2.1, its own assessment of the justifications provided by the user, with particular reference to any possible elements pertaining to the national transmission system,;
 - b) the Authority decides on the capacity to be made available, specifying the timeframes.”
 - iv. In Paragraph 5, the sentences “The main TSO shall check the conditions outlined in Parts a) to d) and, if they occurred, notifies the interested user and the Authority, indicating the capacity that said user is required to make available for allocation to third parties, determined pursuant to Paragraph 14.2.6.” and “Without prejudice to the right of the interested users to make a complaint to the Authority, in compliance with Resolution 188/2012/E/COM.” are deleted;
 - v. At the beginning of Paragraph 6, the following words are added “Without prejudice to that established in Paragraph 14.2.3,”;
 - vi. In Paragraph 6, Part a), the word “December” is replaced by “February”;

- vii. After Paragraph 7, the following Paragraph 8 is added:
“The provisions of this article are also applied to bundled capacity products for the share of capacity that can be made available on both sides of the interconnection. The TSO shall coordinate with the operator of the interconnected transmission system to this end”;
2. To provide that Snam Rete Gas prepare a proposal to update its network code to implement the provisions of this resolution relating to LT UIOLI and submit it to the Authority by 8 September 2016, in order to guarantee that the new methods are implemented as of 1 October 2016;
 3. To submit this provision to the Ministry of Economic Development, to the Austrian and Slovenian Energy Regulatory Authorities and to Snam Rete Gas;
 4. To publish this provision and Resolution 137/02, as amended, on the Authority website: www.autorita.energia.it.

21 July 2016

THE PRESIDENT
Guido Bortoni