Shell Energy Italia S.r.l.

Milano, 25/01/2016

Subject: response to the DCO 607/2015 on the review of gas transportation tariffs 2010-2013

Dear Mrs. Poletti, dear Mr. Oglietti,

Shell Energy Italia S.r.l. on behalf of the Royal Dutch Shell Group ("Shell") welcomes the opportunity to answer the consultation document n. 607/2015.

While we appreciate the obligation of AEEGSI to comply with Court ruling n. 2888/2015 without delay, we observe that there is scope for containing the impact of such obligation by **limiting** its **implications to what it is strictly legally necessary**.

We believe there are strong legal arguments that AEEGSI:

(i) Is not obliged to modify retroactively and/or with erga omnes effect the tariff methodology applied during the period 2010-2013 and therefore the decision complying with the ruling 2888/2015 does not necessarily have to introduce a new and different tariff regime;

(ii) In performing its responsibility to comply with the Court ruling, has a wide discretion at least equal to the discretion it enjoys in the performance of its ordinary powers, being limited only to the extent it cannot reproduce the very same defects aknowledged by the ruling;

(iii) In any case, it shall not regulate beyond what is stricly necessary to satisfy the requests of the successful claimant (Enel Trade S.p.A.) and comply with the request of the Court ruling.

The above is addressed in the annex to this letter which we request you to treat confidentially.

Shell also believes that **any unexpected change to the tariff levels**, especially if relevant for the past, **represents a major regulatory risk capable of dramatically affecting the reputation and therefore the attractiveness of the Italian gas market**. This may ultimately represent a barrier for trading activities impacting competition and liquidity and ultimately end-users costs.

In particular, any retroactive intervention would leave suppliers exposed to losses that could not be recouped as most of the supply contracts relevant for the period 2010-13 have already expired. In some cases, relevant customers may have even ceased to exist. Secondly, it is possible that, had

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rules and costs been different at the relevant time, some of these contracts would not have been concluded at all and the gas would have not flown. Thirdly, some of the shippers active in the regulatory period 2010-2013 have left the Italian market and this means that intervening retroactively will inevitably be insufficient to recoup the overall targeted amount. This would force AEEGSI to intervene further and ask the other shippers to compensate the missing delta.

On this basis it is likely that any retroactive intervention would become subject to further legal challenges, increasing the regulatory risk. Moreover, it must be noted that any proposed solution is likely to set a precedent for the future, potentially relevant both for other legal cases and for future revision of the tariff methodology. On these premises other regulators in Europe have expressed views similar to ours in their respective markets and they have chosen to rule against any analogous outcomes (see *2001 Ofgem guidelines on retrospective changes to network codes, applicable to both power and gas*).

With the above in the background, Shell proposes for your consideration **a solution based on a forward looking coefficient to be charged on shippers to be introduced as soon as possible.** This would leave untouched the relevant tariff methodology and it could easily be repealed once the targeted amount is reached.

Such coefficient should be introduced on an ad hoc basis and, as it would intervene to compensate a loss occurred at entry points, we agree with AEEGSI that it should be charged at the entry points of the system.

In conclusion, we observe that the current consultation only relates to the period 2010-2013. Therefore Shell believes that **it is of outmost importance that the AEEG consults as soon as possible on the possible introduction of a fuel gas transportation charge for the remaining part of the regulatory period 2014-2017 and after**, should this be confirmed as the favoured approach. 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 setting of the price and for the allocation of the cost to the shippers.

We remain at your disposal for any additional clarification and we look forward to reading your final decision on the matter.

Sincerely,

Michele Petz

Country Lead Italy & Commercial Manager

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