

DELIBERATION N° 2023-90

Deliberation of the *Commission de régulation de l'énergie* of 30 March 2023 deciding on the implementation of provisions of Article 14 of Council Regulation (EU) 2022/2576 of 19 December 2022

Present: Emmanuelle WARGON, president, Anthony CELLIER and Ivan FAUCHEUX, commissioners.

Translated from French: only the original in French is authentic.

1. CONTEXT

Council Regulation (EU) 2022/2576 of 19 December 2022 enhancing solidarity through better coordination of gas purchases, reliable price benchmarks and exchanges of gas across borders (hereinafter “the Regulation”) provides in its Article 14 for the application of measures aimed at ensuring a more effective use of cross-border gas transmission capacity.

The Regulation provides, in paragraphs 1 to 6 of Article 14, for the application of a “use-it-or-lose-it” (UIOLI) mechanism applied on a monthly basis which is intended to make available for purchase capacity which is unused by their holders at physical or virtual cross-border interconnection points.

Paragraph 7 of this article provides that, before applying this UIOLI mechanism, natural gas transmission system operators (TSOs) shall analyse its potential effects at each interconnection point they operate and inform the national regulatory authority thereof.

According to the same article, “*by derogation from paragraphs 1 to 6 of [Article 14 of the Regulation], and regardless of whether those interconnection points are congested or not, national regulatory authorities may decide to introduce one of the following mechanisms at all interconnection points:*

- a) *a firm day ahead use-it-or lose-it mechanism in accordance with Regulation (EU) 2017/459 and taking into consideration point 2.2.3 of Annex I of Regulation (EC) No 715/2009;*
- b) *an oversubscription and buy-back scheme in accordance with point 2.2.2 of Annex I of Regulation (EC) No 715/2009 offering at least 5 % additional capacity in relation to the technical capacity at the relevant interconnection point; or*
- c) *at least offer initially not nominated capacity on a day-ahead and within-day basis, to be allocated as interruptible capacity.”*

Paragraph 8 of Article 14 of the Regulation provides that, before taking the exemption decision, the national regulatory authority shall consult and take account of the opinion of the national regulatory authority of adjacent Member States. The mechanism foreseen in paragraphs 1 to 6 of Article 14 of the Regulation shall automatically apply if none of the alternative mechanisms pursuant to the first subparagraph is applied by 31 March 2023.

Pursuant to the provisions of the deliberation n° 2021-274 of the *Commission de régulation de l'énergie* (CRE) of 16 September 2021 relating to the functioning of the single gas market area in France, the French natural gas TSOs shall apply at all cross-border interconnection points, and in both directions, the mechanism described under paragraph 7 c) of Article 14 of the Regulation.

GRTgaz and Teréga have informed CRE of their analyses of the effects, at each interconnection point they operate, of the possible implementation of the UIOLI mechanism described in paragraphs 1 to 6 of Article 14 of the Regulation.

From 2 to 13 March 2023, CRE consulted the national regulatory authorities of the neighbouring Member States with which France has gas interconnections, namely the *Commission de régulation de l'électricité et du gaz*

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(Belgium), the *Bundesnetzagentur* (Germany) and the *Comisión Nacional de los Mercados y la Competencia* (Spain), informing them of its intention not to apply the mechanism provided for in Article 14(1) to (6) of the Regulation. The national regulatory authorities consulted did not share any opinion following CRE's consultation.

2. CRE'S ANALYSIS

The provisions of Article 14 of Regulation 2022/2576 aim at facilitating the use of interconnection capacities in a supply crisis situation, in particular by allowing booked capacities to be used by other shippers if they are not used by their holders.

Pursuant to the provisions of CRE's deliberation n° 2021-274 of 16 September 2021 on the functioning of the single gas market area in France, the so-called "use-it-and-buy-it" (UBI) mechanism, which corresponds to c) of paragraph 7 of Article 14 of the Regulation, is applied to all French interconnection points and in both directions.

The UBI allows shippers to acquire, on an interruptible basis, by way of over-nomination, the booked capacity that is not nominated, on a day-ahead or within-day basis. Thus, the owners of the firm capacity retain their rights to nominate, even if this capacity has been reallocated via the UBI.

The analyses carried out by GRTgaz and Teréga highlight the unnecessary nature of the monthly UIOLI mechanism provided for in paragraphs 1 to 6 of Article 14, given the other congestion management mechanisms in force at French gas interconnections, among which the UBI mechanism. These analyses also point out the risks, in a particularly volatile market context, generated by this UIOLI mechanism which consists in withdrawing a share of the capacity subscribed by a shipper on the basis of the average level of use of this capacity over a given month.

In view of these analyses, CRE considers that the UBI is sufficient to meet the objectives pursued by Article 14 of the Regulation and therefore decides not to apply the provisions of paragraphs 1 to 6 of this article.

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CRE'S DECISION

Pursuant to the provisions of paragraph 7 of Article 14 of Regulation (EU) 2022/2576 (hereinafter the "Regulation"), CRE decides to depart from the application of the "use-it-or-lose-it" (UIOLI) mechanism on a monthly basis provided for in paragraphs 1 to 6. Indeed, the "use-it-and-buy-it" (UBI) mechanism already applied to all French interconnection points in both directions meets the characteristics of the mechanism provided for in paragraph 7 c) of Article 14 of the Regulation.

This decision will be published on the CRE's website. It will be sent to the French natural gas system operators GRTgaz and Teréga, who will inform, as soon as possible, the shippers active at the French gas interconnection points that the mechanism provided for in paragraphs 1 to 6 of Article 14 of the Regulation will not be applied at the French gas interconnection points from 1 April 2023.

Paris, 30 March 2023.

For the Commission de régulation de l'énergie,

The president,

Emmanuelle WARGON