



ACER Call for Evidence

on the conditions for the application of FDA UIOLI pursuant to paragraph 2.2.3.1 a) - d) of the CMP Guidelines

(“congestion indicators”)

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Fields marked with * are mandatory.

Background & objective

According to paragraph 2.2.1.2 of the Commission Guidelines on Congestion Management Procedures[1] (hereafter, the ‘CMP GL’) the Agency for the Cooperation of Energy Regulators (‘the Agency’) has to publish a yearly monitoring report on contractual congestion[2] at interconnection points (‘IPs’), taking into consideration, to the extent possible, capacity trading on the secondary market and the use of interruptible capacity.

Paragraph 2.2.3.1 specifies the conditions[3] under which a specific CMP - i.e. the Firm day-ahead Use-It-Or-Lose-It mechanism (‘FDA UIOLI’) - is to be applied. The Agency has used each of these conditions as an indicator for contractual congestion (‘congestion indicators’). Accordingly, in the ACER Congestion Reports[4], the Agency had identified contractual congestion at those IP sides where at least one of the conditions of the ‘congestion indicators’ (conditions 2.2.3.1 a) – d)) was fulfilled.

Some stakeholders (including TSOs, NRAs and network users) have expressed doubts on whether the ‘congestion indicators’ are able to correctly identify actual situations of contractual congestion. Some stakeholders suggested also to include other elements or criteria in the

decision-making process on whether an IP side is to be considered “contractually congested” and therefore would require the application of the FDA UIOLI.

To investigate these issues, **the Agency is inviting stakeholders to formulate concrete suggestions to improve the “congestion indicators”**. The aim is to check if it is possible to improve the existing “congestion indicators” and/or define criteria to be used by the Agency in its congestion analysis. Such criteria would have to:

- appropriately reflect / describe circumstances that identify persistent existence of contractual congestions at IP sides,
- be objective and replicable,
- be based on data which is or will have to be made available at least to the Agency in a timely manner,
- and be applicable - with reasonable efforts - across the EU.

Please note that, by launching this exercise in the form of a survey, the Agency does not commit to propose amendments[5] to the existing provisions related to the “congestion indicators”. Whether the Agency will do so depends to a large extent on the proposals which will be received, the support these proposals enjoy among stakeholders, and the Agency’s assessment of whether such proposals would be an improvement compared to the current formulation.

Next to the above mentioned main topic, the questionnaire covers a number of additional issues which were raised in the recommendations section of the Agency’s latest Congestion Report.

[1] Commission Decision of 24 August 2012 on amending Annex I to Regulation (EC) No 715/2009 of the European Parliament and of the Council on conditions for access to the natural gas transmission networks:

<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32012D0490&from=EN>

[2] Article 2(1)(21) of Regulation 715/2009 (

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:211:0036:0054:en:PDF>)

defines contractual congestion as a situation where the level of firm capacity demand exceeds the technical capacity

[3] i.e. points a) – d) of paragraph 2.2.3.1

[4] Latest Report: ACER annual report on contractual congestion at [interconnection points \(period covered 2015\)](#), 3rd edition, 31.05.2016:

http://www.acer.europa.eu/Official_documents/Acts_of_the_Agency/Publication/ACER%202016%20Rep

[5] The CMP GL may be amended according to Article 23 of Regulation (EC) No 715/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the natural gas transmission networks (Gas Regulation):

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:211:0036:0054:en:PDF>

Respondent identification

E-mail address

Question 0 – Respondent identification: Please indicate your name, e-mail address, company/organisation, type of stakeholder (organisation) you are representing and whether or not you agree that your answer is published.

Name and Surname (not to be published)

██████████

*** Company/organisation**

Eurogas

*** Please let us know the type of stakeholder (organisation) you are representing**

- Network user
- TSO
- Producer
- NRA
- EU or international organisation
- National association
- Government
- Other (please specify)

*** Do you agree that your answer will be published?**

- Yes
- No

Survey questions

Question 1: Do you consider the existing “congestion indicators” (conditions 2.2.3.1 a) – d) of CMP GL) appropriate and sufficient to determine the existence of contractual congestion (as defined in Regulation 715/2009) at IP sides? In case not, what alternative indicators would you suggest? Please be as concrete as possible with your proposal and provide a justification.

- Yes
- No
- Neutral / I don't know

Reasons and alternative formulation:

Eurogas has frequently expressed our concerns about the use of the congestion indicators set out in paragraph 2.2.3.1 of the CMP Guidelines. The definition that “contractual congestion” means a situation where the level of firm capacity demand exceeds the technical capacity is shown, as experience is gained, to be too wide. That situation can arise in different

circumstances, not all meriting the same “management” response. The main objective of the CMP Guidelines, which is supported by Eurogas, is to ensure that unused capacity is not unjustifiably withheld from the market, frustrating others’ attempts to obtain capacity. The definition, however, covers cases which may be solved by the auction process, but because cases like this are included, the received picture is one of widespread congestion, which is not a true reflection. In the experience of Eurogas members, there are very few points where real congestion occurs.

Eurogas is concerned because the findings of the ACER Report, based on the use of this problematic definition, may lead more NRAs to lean towards the firm-day ahead use-it-or-lose-it (FDA UIOLI) mechanism that entails negative consequences for shippers. Eurogas maintains its preference for the mechanism of Over Subscription and Buy-Back, the understood default approach.

Therefore, any CMP measures should be focused on solving congestion targeted at avoidance of hoarding.

An alternative formulation could refer to a situation linking in what is happening in the auctions, and the spreads between linked markets. If there is a premium on the reserve price, while booked capacity is underutilised, this would be more significant evidence of congestion to be managed or the premium could be an indicator by itself.

The picture, however, becomes more complex, because currently a more serious issue is the capacity mismatch on some IPs that is distorting the cross-border gas flow picture, as well as bringing costs and efficiency problems for industry. This problem should be sorted out, and Eurogas is calling for a process to address this.

Question 2: Do you think that the “congestion indicators” should further specify how to take into consideration capacity trading on the secondary market and the use of interruptible capacity[6]? If so, please indicate how this should be done. Please give reasons for your answer.

[6] In its past annual congestion reports, the Agency applied the current “congestion indicators”, but also reported on other elements, such as on the extent of secondary capacity trading, the application of CMPs, the offer and bookings of interruptible capacities, actual interruptions of interruptible capacities, the occurrence of unsuccessful requests, a congestion comparison with previous years, and on further specific market conditions at IP sides found contractually congested by applying the “congestion indicators”.

- Yes
- No
- Neutral / I don't know

Reasons and specification:

No, this could make the indicator more complicated. However, a process could be envisaged that takes into consideration these elements to get the most complete picture possible of the situation at an IP before recourse to

FDA UIOLI as, if this tool is maintained, it should be a last resort. The mentioned considerations are supported, as secondary market capacity trading and interruptible capacity are both important in a dynamic capacity market.

Question 3: In cases of contractual congestion, do you consider FDA UIOLI to be an appropriate mechanism to mitigate the effects of the identified contractual congestion? If not, what alternative or additional measure would you suggest to address the congestion and why?

Your view:

As mentioned above, Eurogas maintains its reservations about the application of FDA UIOLI. Such restrictions on suppliers' renomination rights can cause problems, particularly in a market in which there are increasing requirements for flexible and dynamic responses if a sudden cross-border demand occurs, notably in relation to gas-fired power.

If maintained, FDA UIOLI should be seen as a last resort, determined in the context of improved indicators.

Although CMP is based on a tool-box solution, preferably the same CMP instruments should be used either side of an IP. It is imperative that there is improved cooperation and coordination of CMP measures at affected IPs.

Question 4: In its latest congestion report[7], the Agency recommends clarifying the scope of criterion d) of paragraph 2.2.3.1 of the CMP GL to align it with the other congestion criteria. The current wording of criterion d) considers an IP side not congested, if capacity for at least one month was offered out of the 12 months in the preceding year’s rolling monthly auction procedures. The Agency would propose amending the text so that all 12 monthly products should be offered at an IP in order for it not to be considered as contractually congested, as there is no way to test “demand exceeding offer” in auction regimes if no such product is offered. (Also, no quota applies for monthly products.)

[7] Latest Report: ACER annual report on contractual congestion at interconnection points (period covered 2015), 3rd edition, 31.05.2016: http://www.acer.europa.eu/Official_documents/Acts_of_the_Agency/Publication/ACER%202016%20Report%20on%20Congestion%20at%20IPs%20in%202015.pdf

Do you support this recommendation? Please provide reasons.

- Yes
- No
- Neutral / I don't know

Reasons:

A more realistic approach would be to assess the picture over a longer period, but not necessarily a full year, perhaps 3-6 months.



Question 5: With respect to paragraph 2.2.1 of the CMP GL, the Agency recommends in its latest congestion report that the Commission clarifies

a) until when the Agency shall produce congestion reports (or under which conditions the reports are no longer required);

b) an implementation period for the FDA UIOLI mechanism, if congestion is identified at IP sides only after 1 July 2016.

Please provide your views on these 2 issues, including concrete suggestions and reasons.

Your view on a):

The reports only offer added-value for as long as real congestion remains an issue. Until it is evident there is full implementation of the CMP Guidelines (preferably with improved definitions) and better cooperation, then periodic if not yearly reporting should continue.

What would be an appropriate implementation period for b):

If FDA UIOLI is maintained, we support clarification of a process to end its implementation, when the circumstances justifying its use no longer

apply. Furthermore, where it currently exists, if new criteria on introducing FDA UIOLI are set, then it should be tested against these, and if not justified, the FDA UIOLI should be withdrawn.

Question 6: Do you think the CMP GL should set out an implementation process for the FDA UIOLI, specifying when (under which measurable conditions) to terminate the application of FDA UIOLI?

- Yes
- No
- Neutral / I don't know

Your view:

It can be made clearer in the GL, in which circumstances an NRA can withdraw FDA UIOLI application, but more is not required on its implementation.

Question 7: In its latest congestion report, the Agency also suggests to consider extending the scope of "contractual congestion" to the day-ahead timeframe between hubs (requiring the Agency to assess auction premia and the non-offer of firm DA products at a cross-zonal level), which could then also result in the mandatory application of the FDA UIOLI mechanism at IPs/VIPs/IP sides between the corresponding market areas, to promote a short-term gas market price convergence.

Do you support this suggestion? Please provide reasons.

- Yes
- No
- Neutral / I don't know

Reasons:

See response to Q1.

Question 8: In your view, should the Agency assess in more depth[8] the possible existence of physical congestion at IPs? Please provide your view, reasons and concrete suggestions for further possible indicators.

[8] To date, the Agency has used the occurrence of actual interruptions of nominated interruptible capacity as an indicator for the (temporary) existence of physical congestion.

- Yes
- No
- Neutral / I don't know
- I don't know

Your view:

Eurogas has no strong views on this, but the motivation for looking at physical congestion would normally be to assess if there is a need for incremental investment, and this issue is now addressed by the soon-to-be revised CAM Code. Therefore, perhaps this should not be a priority for ACER.

Question 9: Do you have any other suggestions on how to improve the CMP GL?

At this stage, no. Our main concern has been the way the definition has led to perverse results, and we remain opposed to FDA UIOLI, particularly its emphasis at the expense of overcapacity buy-back. If this concern is

addressed effectively, then that should bring gains. If, however, a wider consultation on the CMP GL emerges, then Eurogas will think about other detailed points.

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