



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%20Re

[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**

EconGas GmbH

*** 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)

If you are a network user and you have booked capacity at IPs, where the FDA UIOLI mechanism is applied, to which extent does paragraph 2.2.3.5 of the CMP GL (i.e. the exception from the renomination restriction, if less than 10% of average technical capacity was booked by you in the preceding year) apply to you?

Possible answers:

- The renomination restriction **DOES NOT APPLY** to me at **ALL** my booked IPs, where the FDA UIOLI is applied. (“small shipper”)
- The renomination restriction **APPLIES** to me for a **MINORITY** of all my booked IPs, where the FDA UIOLI is applied
- The renomination restriction **APPLIES** to me for a **MAJORITY** of all my booked IPs, where the FDA UIOLI is applied
- The renomination restriction **APPLIES** to me for **ALL** of my booked IPs, where the FDA UIOLI is applied. (“big shipper”)
- I don’t know / I don’t want to answer this question

*** 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:

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:

Secondary market KPIs at a certain interconnection point shall not be taken into account as congestion indicators. These KPIs (no. of traded capacity rights, traded/offered volume, length of period etc.) do not provide sufficient evidence neither for future capacity availability nor capacities on offer.

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:

FDA UIOLI is an appropriate mechanism for shippers using short-term arbitrage opportunities between the markets and to balance smaller suppliers portfolios . For any other longer-term purposes, other mechanism are more appropriate to match the interest of capacity holders and shippers demanding capacity (such as secondary market and surrender). We strictly object against any other form of UIOLI incl. the long-term UIOLI. It undermines the shippers rights of using their long-term capacity contracts.

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:

Basically we are fine with the provision if surrendered capacity or secondary offers are not taken into account when defining the term "Offered capacity".

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):

see b.)

What would be an appropriate implementation period for b):

For shippers it is essential to know BEFORE an auction about all terms and other conditions such as where FDA UIOLI is applied to a certain capacity (and interconnection point respectively). Hence the definition whether FDA UIOLI applies or not should be known to the shippers before the annual capacity auction and should stay valid for the entire contract duration. ACERs report shall be aligned with the auction calendar accordingly. Already existing capacity contracts must under no circumstances be affected by ex-post implemented FDA UIOLI.

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:

Based on the availability of annual products and capacity, FDA UIOLI should be applied in the respective gas years. If a shippers buys (e.g. yearly) capacity at a time where not FDA UIOLI is applied, the shippers capacity shall not become subject to UIOLI at a later stage!

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:

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:

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

- 1.) Contractual stability: As indicated in Q6 FDA UIOLI must not be imposed on existing capacity contracts when at the time of booking the FDA UIOLI mechanism was not applied to this point and/or to the contract period.
- 2.) Conditional Surrender: The implementation of Conditional Surrender is on the one hand essential for a functioning CAM Code in terms of fair treatment of long-term capacity holders (doublepayments for bundled capacity) and on the other hand a key element to avoid artificially created contractual conquestion. Therefore it has to be included in the CMP provisions. Forcing shippers to buy bundled capacity although they already hold capacity on one side of the border implies that capacity will be bought without having use for it.

Contact

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