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

[redacted]

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)

[redacted]

* **Company/organisation**

Eustream

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

- [ ] Network user
- [x] 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
- [x] Neutral / I don't know

Reasons and alternative formulation:

The existing indicators can be completed by other assessment mechanisms.. The indicators permit only to determine whether the demand exceeds - or not - the offer during a capacity subscription window in the past on an IP and for a certain period but there can be no conclusion made on the fact that there will effectively be congestion or not in the future on that point.

For example, it could be that due to the quota foreseen in the CAM NC no capacity is offered during a yearly auction but that capacity is offered during a subsequent auction for a shorter product; or it can be that there is no capacity available in monthly but well in daily.

When a risk of contractual congestion is identified, the situation at a given IP could turn into a physical congestion, a contractual congestion or an absence of congestion (due to market condition for instance).
Then, to make sure this risk is relevant , a day-to-day action has to be conducted, showing, for example, if a CMP tool has been or it is going to be used (OSBB, surrender and possibly other mechanism making capacity available, such as secondary market).

More dynamic evaluations, close to the considered period (e.g. results of M-1 auction) can also represent an effective way to show contractual congestion situations to be possibly solved via FDA UIOLI (applied to days of month M in a selective way, avoiding to extend the mechanism to periods where no evidence of congestion is identified).

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
- [x] Neutral / I don't know

Reasons and specification:

Since secondary trading permits to make unused capacity available it could also represent a tool to prevent congestion. Moreover, the secondary trading is a market based tool.
The indicators for triggering FDA UIOLI should therefore take into account also these aspects.

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 to solve contractual congestion on short term basis (daily). However, to determine a contractual congestion, day-to-day actions may be necessary so it makes sense to analyse daily capacity, also through the picture becoming evident through M-1 monthly auctions for month M days.
However, the obligatory application of the FDA UIOLI mechanism does not seem useful in all the cases to solve long-term congestions (monthly and longer terms periods). Additionally, the mechanism punishes shippers with more than 10% capacity and it may determine restrictions to flexibility required by them to react to changing market conditions and pricing signals.
Due to its nature not implying restrictions to network users rights, OS&BB mechanism should be preferred as CMP measure, unless clear and reliable congestion signals emerge.

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
- [x] Neutral / I don't know

Reasons:

Eustream proposes to leave the wording as it is. The new definition might lead to the situation, that an IP is considered to be congested even if this is not the case. This can occur for instance in case of longer maintenance measures where a TSO has to reduce the offer of available monthly capacity.
If a TSO is not able to offer monthly capacity (due to maintenance for instance), but can still offer daily capacity to accommodate its users or interruptible capacity it might be sufficient to prevent contractual congestion. Besides, there may be active secondary trading as well
However, if ACER is considering the amendment of the text of Reg. 715 Annex 2 it would be sensible to focus the monthly analyses to the emergence of auction premia (demand>offer) than to the simple lack of offer of monthly products (which can be due to maintenance or temporary technical problems, as suggested in the previous paragraph).

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):

Up to ACER, depending on relevance of the problem in the future (effort to produce the report can cost more than benefits, if contractual congestion is becoming less relevant)

What would be an appropriate implementation period for b):

As soon as possible (taking into account necessary time before enforcement like implementation period) when a risk of congestion is identified and the NRA approves its usage.

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
- [x] Neutral / I don't know

Your view:

The implementation of FDA UIOLI mechanism should be restricted only to periods when clear and reliable congestion signals emerge, being substituted by OS&BB in the other situations. Indeed, as indicated also by Commission Guidelines, in normal circumstances OS&BB mechanism should be preferred since it does not imply restrictions to network users rights.

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
- [x] Neutral / I don’t know

Reasons:

The implications and added value of an assessment of daily congestions at are questionable.

However, to determine a contractual congestion, a day-to-day analysis might be necessary so it makes sense to set up actions on daily capacity. These actions may materialise also in terms of daily auctions, where FDA UIOLI apply if previous and clear sign of congestion are recorded.
However, the obligatory and mechanistic application of the FDA UIOLI does not seem necessary per se and OS&BB appears the mechanism to be applied in normal circumstances.

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
- [x] No
- [ ] Neutral / I don’t know

☐ I don't know

Your view:

No , the incremental process and the national, regional and European network development plan will take care of a potential need of additional capacity to address a risk of physical congestion
From 2017 on Incremental Capacity (NC CAM 2.0) will be used to assess possible existence of physical congestion at IPs.
Furthermore it should be noted that the development of the European gas transmission system is addressed in other processes, e.g. in the ENTSOG European Ten Year Network Development Plan (TYNDP) and complemented by respective national processes as e.g. national network development plans. These plans build on scenarios for the future development of supply and demand and are therefore considered to be better suited to analyse the future transport needs than isolated analyses of historical interruptions at IPs.

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

The current CMP GL seems to be designed implying a contrast between the application of OS&BB and FDA UIOLI conditions. An first improvement to the text can be represented by the clarification that these two mechanism may co-exist also in the same system.
Another important improvement would be to clarify that the incentive regime designed in the context of the OS mechanism have to be applied to the offer of additional capacity and not to its allocation. TSOs should be appropriately remunerated for making available additional capacity independently from its allocation, since the risk they bear is inherent to the capacity put on offer over the technical levels. A remuneration linked only to the actual allocation of additional capacity would generate an incentive scheme too skewed towards risks (ineffective for triggering the

offer of additional capacity or, on the opposite, extremely costly for the system).

Contact

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