



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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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**

National Grid Gas

*** 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:

The indicators that are defined under the Regulation which may trigger Firm day ahead UIOLI are not appropriate. The report covers the current reporting year and the subsequent two years. This therefore does not take into account a wider horizon in terms of shipper bookings into the longer term.

2.2.3.c also provides for a potential incorrect indication of congestion whereby the TSO's under the CAM Regulation need to withhold a % quota until the year ahead auctions.

In terms of identifying congestion many additional factors need to be considered such as market conditions, the use of secondary market trading between shippers, surrender of capacity to the TSO, use of the OS&BB mechanism and LTUIOLI. In addition the starting reserve price of the auction itself; where the price is discounted or even free which influences the shipper booking behavior.

Such CMP measures should provide the market with the ability to manage capacity holdings and incentivize shippers to book according to their needs. In addition, the new proposed CAM amendment allowing Shippers to trigger incremental capacity (subject to willingness to pay) where physical congestion exists; also ensures that IP points provide capacity to the market going forward.

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:

The use of the secondary market is an important factor in terms of defining contractual congestion. The TSO offers primary capacity to the market. It is for the holder of that capacity to make decisions regarding their capacity and this includes offering it for sale to other shippers via the secondary market.

If contractual congestion occurs and shippers are not flowing to; or offering unutilized capacity back to the market then this may be a

regulatory matter for the relevant NRA. TSOs already have an obligation to report every six months to the NRA in terms of capacity holdings and utilization.

The sale of interruptible capacity and additional firm (such as non-obligated) capacity also needs to be considered as this provides shippers with the opportunity to procure additional capacity which they can flow against.

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 not an appropriate mechanism to mitigate contractual congestion. By implementing appropriate CMP measures and having an established market then FDA UIOLI is not required.

A more appropriate mechanism is to introduce OS&BB, where the TSO is incentivized to offer additional capacity to the market (subject to an appropriate risk v reward framework). Such arrangements offer flexibility for shippers where and when they need additional capacity.

As a majority of TSOs have successfully implemented OS&BB which in our view provides greater benefits and transparency to the market, we do not believe that the introduction of FDA UIOLI is aligned to such a market mechanism. In our view the FDA UIOLI scheme interferes with shipper contractual rights, limits flexibility and could under certain circumstances affect the ability to supply gas to the market where it is needed.

Where on one side of an IP OS&BB is applied and the other side FDA UIOLI applied then these mechanisms are not compatible as one side oversells capacity, whilst the other restricts the shippers ability to flow against

their capacity.

In terms of GB arrangements, to ensure capacity is made available National Grid Gas calculates a rolling 30 day average firm unutilized capacity which is then offered to the market day ahead as interruptible. This still allows for the original firm holder to re-nominate upwards to the firm holding, and the ability for the TSO to scale back the interruptible capacity if required. This therefore does not interfere with shippers firm capacity rights, but provides for an efficient ST UIOLI anti-hording mechanism.

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:

We do not support the current or revised definition as a TSO could maximize availability but still sell out of capacity in any auction. This would however not necessarily mean the point is congested at that time as for example more capacity could be offered in the day ahead and within auctions.

Where OS&BB is introduced this mechanism actively encourages TSO's to offer more capacity to the market in the medium to short term if this is demanded by shippers. In particular additional capacity is made available in the day ahead and within day auctions where a TSO has more information relating to flows and shipper utilization of capacity.

We refer to our response to Question 1 where appropriate CMP measures are

introduced, then capacity can be offered on the secondary market, surrendered, LTUIOLI applied etc... which should ensure capacity is made available by the TSO and utilized by the market in an efficient way.

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):

This is a matter for ACER.

We note that with the introduction of the various EU Regulations (including the CMP annex to 715/2009) commercial congestion should be less of an issue than that foreseen when the CMP changes were introduced a number of years ago.

In terms of physical congestion, the proposed CAM amendment including the introduction of incremental capacity being triggered by shippers should (subject to willingness to pay) increase capacity going forward.

What would be an appropriate implementation period for b):

We have not, and continue to not support any introduction of the FDA UIOLI mechanism.

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:

We have not, and continue to not support any introduction of the FDA UIOLI mechanism.

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:

We have not, and continue to not support any introduction of the FDA UIOLI mechanism.

Extending the scope would be to little effect. Many factors could lead to an auction premia (a shippers willingness to pay above the reserve price compared to another shipper (i.e. market)), the starting reserve price of an auction itself where it is discounted or even free. Firm DA capacity may not be offered due to system conditions, or brought back by the TSO under market conditions. WD capacity could also be offered to shippers thus allowing them to flow across the IPs / zones. The offer / use of interruptible would still allow shippers to flow also.

With the introduction EU codes in particular CAM and Balancing, price convergence at hubs is already a reality. An extension of FDA UIOLI would potentially hinder, not promote price convergence.

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:

The ENTSOG Ten Year Network Development Plan addresses this aspect. It compliments the work done at the National, Regional and EU Network Plans level. The ENTSOG development plans are based on scenarios for future supply and demand and are as such better than interruptions to capacity as a indicator of physical congestion.

To enhance this from 2017 shippers have the opportunity to trigger (subject to willingness to pay) incremental capacity via the proposed CAM code amendment.

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

National Grid Gas maintains that FDA UIOLI is not an appropriate mechanism to mitigate contractual congestion.

By implementing appropriate CMP measures and having an established market then FDA UIOLI is not required. A more appropriate mechanism is to introduce OS&BB, where the TSO is incentivized to offer additional capacity to the market (subject to an appropriate risk v reward framework).

Such arrangements offer flexibility for shippers where they need additional capacity.

As a majority of TSOs have successfully implemented OS&BB which in our view provides greater benefits and transparency to the market, we do not believe that the introduction of FDA UIOLI is aligned to such a market mechanism. In our view the FDA UIOLI scheme interferes with shipper contractual rights, limits flexibility and could under certain circumstances affect the ability to supply gas to the market where it is needed.

Where on one side of an IP OS&BB is applied and the other side FDA UIOLI applied then these mechanisms are not compatible as one side oversells capacity, whilst the other restricts the shippers ability to flow against their capacity.

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