



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**

Enagás S.A.

*** 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:

Although ACER uses conditions 2.2.3.1 a) - d) to determine the existence of contractual congestion, those indicators only determine the conditions under which FDA UIOLI should be applied. Current EU Regulation does not provide set of indicators to determine the existence of congestion. Enagás considers that Regulation 715/2009 should be amended in order to

provide clear set of indicators for the identification of contractual congestion.

“Congestion indicators” (conditions 2.2.3.1 a) - d) of CMP GL) permit only to determine whether the demand exceeds - or not - the offer during an auction 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.

Thus “current congestion indicators” can only identify a risk of contractual congestion no later than in the monthly auction, but the situation at a given IP could change. To make sure this risk is relevant a daily action has to be conducted.

In order to improve ACER’s congestion report (which shows what happens the year before), it would be relevant to include additional indicators considering final nominations as they provide the actual use of the capacity. For this purpose, Enagás would like to propose the following additional ratios:

- Actual nominations vs booked capacity
- Actual nominations vs technical capacity

Besides, “congestion indicators” (conditions 2.2.3.1 a) - d) of CMP GL) are calculated based on averages during the year. But, some IPs are only 100% booked (long-term or short-term) and/or used in certain point in time of the month; Enagás sees merit in identifying those points and including them in ACER’s congestion report.

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:

First of all, Enagás would like to reiterate its proposal of building up “congestion indicators” and not to take the conditions for the application of FDA UIOLI as “congestion indicators”.

Enagás recognizes the added value of taken into consideration in ACER’s report capacity trading on the secondary market as well as the use of interruptible capacity.

Each Member State has its own interpretation of interruptible capacity, so

ACER's congestion report does not properly capture the role that interruptible capacity could play in solving congestion. Some TSOs offer interruptible capacity at the same time as firm capacity and not just when firm capacity has been exhausted, if this is the case interruptible capacity is not used to solve congestion.

Thus, it is worth to distinguish between interruptible capacity as defined in article 16.3 a) of Regulation 715/2009 (i.e: "in the event of contractual congestion, the transmission system operator shall offer unused capacity on the primary market at least on a day-ahead and interruptible basis") and interruptible capacity due to physical constraints in the network (capacity that can only be offered under certain physical conditions or gas paths). For the purpose of "congestion indicators", it is only relevant the former. Thus, instead of reporting only the offer and bookings of interruptible capacities which could be misleading, Enagás proposes to define an indicator which captures the amount of day-ahead interruptible capacity offered to the market when firm capacity is fully booked, defined as follows: amount of booked non-nominated capacity before the day-ahead auction.

Additionally, with the new wording included in the amended version of the CAM NC, where interruptible capacity can only be offered when the corresponding standard capacity product has been sold out at the auction premium, the information provided by ACER's congestion report in the offer and bookings of interruptible capacities would be harmonized; and , new congestion indicators could be built up for example: amount of yearly interruptible capacity offered to the market, amount of quarterly interruptible capacity offered to the market, etc.

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 could be an appropriate procedure to solve congestion in the short term but not the only one. OSBB could play a similar role. The selection of OSBB and FDA UIOLI should be up to each Member State; however, taking into account that CMP Guidelines apply to IPs, it is a must that the same mechanism is implemented in a coordinated way at both sides of the IP, otherwise CMPs will not be an effective solution to mitigate the effects of the identified contractual congestion. Besides, EC's interpretative note recommends OSBB.

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:

The indicator proposed by ACER will be valuable to identify IPs that are only congested during certain periods of time in the year due to several circumstances: injection/extraction of gas from underground storages, usage of congested upstream points, etc.

Besides, daily analysis is also highly recommended because in some networks, TSOs are not able to offer monthly capacity due to maintenance but it will be offer afterwards as daily 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):

The gap between congestion reports will mainly depend on the relevance of the topic in the EU market. If in future congestion is reduced then it might not be necessary to publish a yearly report and if congestion increases then it should be published more often.

What would be an appropriate implementation period for b):

According to paragraph 2.2.3.6 NRAs may decide to not apply FDA UIOLI if OSBB is already in place.
Enagás agrees that if OSBB is already implemented, it should not be

mandatory to implement FDA UIOLI because:

- Both OSBB and FDA UIOLI have the purpose to solve contractual congestion in the short term, and
- The interaction between both procedures is difficult to manage by TSO in the daily operation of the network.

Enagás considers that CMP Guidelines intention is to prevent contractual congestion, so TSOs should have in place either FDA UIOLI or OSBB in order respond to market needs as soon as possible.

Otherwise, if neither of the procedures are in place, when contractual congestion occurs it would be very difficult to solve the situation in the short term. In order to implement FDA UIOLI or OSBBB complex IT developments are needed which will take time.

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:

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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:

Enagás agrees to monitor day-ahead timeframe between hubs. However, this should not result in an automatic mandatory application of FDA UILOI, OSBB could also solve the situation.

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:

As from 2017, the existence of physical congestion will be somehow capture by the market demand assessment to be done within the context of the CAM NC amendment.

Besides, ENTSOG's TYNDP also tries to identify investment gaps.

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

The objective of the CMP Guidelines is to prevent congestion. Rules should be in place prior the occurrence of congestion, otherwise when congestion occurs the situation could not be solved in the point in time it happens. CMP Guidelines should clearly state this principle.

A clear set of congestion indicators should be designed and take the conditions for the application of FDA UIOLI as “congestion indicators”. More coordination rules are needed in order to have a harmonized implementation of CMP Guidelines at each side of IPs. It is a must that the same mechanism is implemented in a coordinated way at both sides of the IP, otherwise CMPs will not be an effective solution to mitigate congestion. The current CMP GL seems to be designed implying a contrast between the application of OS&BB and FDA UIOLI conditions. CMP Guidelines could be improved by the clarification that these two mechanisms may co-exist in the same system or at each side of an IP.

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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