

**RESPONSE TO ERGEG'S RECOMMENDATIONS FOR GUIDELINES
ON CONGESTION MANAGEMENT PLANNED FOR ADOPTION BY A COMITOLGY
PROCEDURE**

General

Eurogas agrees on the importance of developing an efficient market in gas transmission capacity rights, a key aspect of which is the objective of improving congestion management. The draft Guidelines provide a good basis for discussion.

Eurogas, however, has a general concern that the closely linked issues of capacity allocation and congestion management, because they are following different approval procedures, will not be treated in a coherent way. Capacity made available under CMP rules must be compatible with CAM allocation, otherwise it would then be necessary to revise the CMP Guidelines, which should be avoided because of the uncertainties it would entail in the implementation process. Furthermore, CMP appears in the list of network Codes given in Regulation N°715/2009 8.6. Eurogas would like clarification on how an early direct comitology process will relate to the regular Code building procedures.

Eurogas also considers it essential that there will be continuing opportunity for discussion on the proposal to amend the Annex to the Regulation. Any proposal should be discussed in the October Madrid Forum and contacts maintained with stakeholders throughout the process.

Eurogas starts from the following points

- Existing capacity rights must be respected
- TSOs should consider a dynamic approach to capacity calculation
- Congestion management should not involve any shipper in being unable to honour firm delivery contracts
- Market participants use their rights efficiently and capacity hoarding is not permitted
- It is premature to consider an approach involving any restrictions of existing renomination rights at least on a Europe-wide basis.
- Long-term UIOLI should only be considered as a last resort

1. SCOPE OF THE ARRANGEMENTS

C.1.1 Scope

The definition of scope should take account of the consideration that congestion problems can be expected to change over time as the market develops. Therefore any arrangements should be flexible to deal with congestion that may arise unexpectedly, and any list published of interconnected points should be open to periodic review in consultation with TSOs and stakeholders. Some level of regulatory oversight should still be envisaged for all interconnection points, for data transparency or UIOLI.]

2. BORDER SPECIFIC ADJUSTMENTS

C.1.2 Border specific adjustments

Compatibility is essential, and should be facilitated by improved NRA and TSO co-operation.

3. EXISTING CONTRACTS

C.1.3 Existing contracts

A shared understanding is necessary on the likely impact of new capacity markets on existing access terms and conditions. Eurogas considers that the introduction of efficient markets in gas transmission capacity rights must not abrogate or undermine existing contractual rights to use effectively the network. Maintaining existing contractual rights contributes to a stable framework for investment and security of supply. In the event that historic rules and procedures are inconsistent with the desired future model, system operators should work with shippers and Regulators to ensure an appropriate and acceptable path for reflecting the economic rights enjoyed under the historic contracts in the new arrangements.

Furthermore at a pragmatic level, the period of 6 months during which network users shall be entitled to reduce or terminate their contracts seems inadequate. A realistic implementation period should be allowed to ensure smooth implementation.

4. INCENTIVISATION

C.1.4 Incentivisation

Eurogas considers it appropriate that incentives are given to system operators to promote the efficiency of their system management. The system operator has a direct interest in optimising the construction, maintenance, operation and use of the transmission network and makes appropriate economic trade offs with their duties to operate a secure system. It is essential that incentives are strong enough to facilitate a commercial transmission service by offering additional returns for exceeding relevant performance targets including increasing network utilisation and reducing congestion etc.

The proposed measures for improved capacity utilization on cross-border points can only become truly effective if they work on both sides of the border, and ACER should be best placed to ensure this, grounding the approach in appropriate and harmonized incentives.

5. CAPACITY CALCULATION

C.2.1 Capacity Calculation

Eurogas supports the emphasis in C.2.1 on the objective of maximising the availability of firm capacity for users. This should be the objective and outcome of the incentives to which C.1.4 refers. The link with Guideline C.2.4 should be more explicit.

Although transmission capacity over time may depend on the pattern of inputs and outputs to the network, system operators are in a unique position to optimise the construction, maintenance and operation of the transmission network to optimise the availability of firm capacity against the likely pattern of deliveries. Regulators should encourage TSOs seriously to consider a dynamic approach to capacity calculation, taking into account the IT resources that will be required.

Also the Guideline should recognize the need for greater co-operation between TSOs in calculating capacity on each side of an interconnection point.

C.2.2 Network Security

In addition to a requirement on TSOs to take into account network security, they should also be required to take account of supply security and any requirements arising from relevant legislation, such as the future Security of Supply Regulation.

C.2.3 Emergencies

Eurogas can by and large agree with this provision, but its inclusion in the Guideline should not imply that emergency will only affect congested points. Finally any recommendation will have to be coherent with the Code on network security and reliability. Compatibility with other relevant legislation has also to be ensured.

6. CAPACITY INCREASE BY OVERSUBSCRIPTION AND BUY-BACK ARRANGEMENTS

C.2.4 Oversubscription and capacity buy-back

Eurogas supports Oversubscription and Capacity Buy-Back as an optional approach for TSOs to consider, on an appropriately incentivised basis. There should be no risk, however, in the capacity allocation system that shippers are not able to honour their firm delivery contracts. Any over-subscription and capacity buy-back managed by the TSOs has to guarantee no disruption to shippers' business. Such an approach should not be a European level obligation, and if a TSO opts for it after consultation with stakeholders, there should be back-up arrangements including a clear compensation system for any possible negative effects on shippers' business. At no point should shippers be under any obligation to give-back capacity to the TSO, unless there is a particular prior agreement for each occasion. It is no use if a shipper is locked into a fixed price for gas purchases and sales if there is any risk of non-delivery.

Therefore more guidance is required on safeguarding shippers' interests and an eventual compensation mechanism, or approaches if buy-back is not successful.

7. CAPACITY INCREASE BY PROCUREMENT OF SYSTEM ENERGY

C.2.5 Increase of available capacity by Procurement of System Energy

It is not clear what is meant by "system energy" but as already mentioned TSOs should seek to maximize available capacity. If the reference is to line pack, its relevance to the objective of capacity increase may vary in different systems. There would always need to be a proper consideration of how costs arising from such actions are handled.

8. CAPACITY CHARGES

C.2.6 Capacity Charges

This would probably be better placed in the eventual Guidelines on tariffs. At the very least compatibility of this provision would have to be assured, recognizing that capacity prices will increasingly be set by auction.

9. RE-MARKETING BOOKED CAPACITY

C.2.7 Surrender of Capacity

Capacity hoarding should not be permitted, but Eurogas would prefer to see a provision emphasizing market-based incentives for shippers to resell capacity they are not using. Also it should be clear that such arrangements are complementary to the establishment of a robust secondary market.

10. FIRM DAY-AHEAD UIOLI

C.3 Congestion Management

C.3.1 Firm day-ahead UIOLI procedure

Similarly the emphasis should be on incentives for shippers. Incentives to resell capacity on fast, efficient platforms should be introduced, with a diminishing compensation scheme, the longer unused capacity is held. There should be a collective market emphasis on use-it-or-sell-it (UIOSI) in preference to use-it-or-lose-it (UIOLI).

C.3.1.1 Nomination schedule

The Guideline should ensure clear rules on this point with an emphasis on a harmonized approach as far as is practicable.

C.3.1.2 Limitation of existing renomination rights

To improve the availability of short-term firm capacity, procedures that involve some restrictions of existing renomination rights could develop in a fully liquid market but today when the flexibility to renominate is essential, any such solutions can only be envisaged at a limited number of interconnection points on a case by case basis when other solutions have failed, in a regional context, and therefore it would be premature to consider it as a Europe-wide approach.

C.3.1.3 Offer and Allocation of firm day-ahead capacity

In principle, this approach is acceptable, but it will depend on the design of auction to ensure a market-based, non discriminatory outcome, and allocation of capacity released through CMP rules has to be in line with the CAM Guidelines.

11. LONG-TERM UIOLI

C.3.2 Withdrawal of under-utilised capacity

Long-term firm UIOLI could be an instrument for consideration but it is a complex and delicate issue, as it touches on matters in the domain of competition law. It should only be considered as a last resort, modelled on best practice existing approaches.

C.3.2.1 Definitions

The approach should be in line with the comment under C.3.2.

C.3.2.2 Specific procedures and C.3.2.3 Withdrawal

Eurogas suggests the following main principles should be recognized in specific procedures and withdrawal.

- From a network user's perspective, one of the main principles is that firm capacity rights, must be protected and respected.
- Long-term firm UIOLI mechanisms can be expected to vary according to different national approaches. They should, however, be transparent and fair as well as operable within a reasonable timescale.
- Wherever possible and practicable if hoarding is alleged then the parties involved should be encouraged to find a solution on a voluntary basis.

- The process, however, should permit holders of firm capacity who do not need the capacity (perhaps over a period) to justify to the competent authorities why they are not using the capacity (e.g. security of supply). This would be without prejudice to any later right of appeal.
- The process should also specify the liabilities for compensation for damages in the event that a user whose capacity had been withdrawn without his agreement encounters as a result problems with his supply obligations.
- Any retention of exit capacity rights linked to end users should be prevented by booking conditions which are in line with supply obligations as this would be hoarding.