

4 April 2013

## **Public Consultation of the French Energy Regulatory Commission (CRE) on the implementation of the Annex 1 to Regulation (EC) 715/2009 on the Congestion Management Procedures (CMP)**

### **1. Context and purpose of the consultation**

The European Commission decision amending Annex I to Regulation (EC) n° 715/2009<sup>1</sup> on the Congestion Management Procedures (hereafter Annex CMP) was published in the Official Journal of the European Union on 28 August 2012 and entered into force on 17 September 2012. The Annex CMP introduces four mechanisms aimed at avoiding situations of contractual congestion, i.e. situations where the network users do not have the possibilities to obtain transmission capacity in spite of its physical availability. The use-it-or-lose-it (UIOLI) long term mechanism, the surrender of contracted capacity mechanism and the capacity increase through oversubscription and buy-back scheme shall be implemented as of 1<sup>st</sup> October 2013. The firm day-ahead use-it-or-lose-it (UIOLI) mechanism shall be implemented as of 1<sup>st</sup> July 2016.

According to the Annex CMP, the congestion management procedures apply to physical or virtual interconnection points (IPs) within the European Union, the application to IPs with third countries being subject to the decision of the regulator. On the networks of GRTgaz and TIGF, the points concerned by these measures are Taisnières H and B, Obergailbach, the North-South Link, PIR midi, Larrau and Biriadou. The application to non-EU IPs is submitted to CRE's decision.

The Annex CMP aims at resolving situations of contractual congestion by freeing up unused capacities and proposing them for commercialization in the regular allocation processes according to the point concerned: Open Subscription Period (OSP), First-Come-First-Served (FCFS) or auctions in the framework of the implementation of the Network Code on Capacity Allocation Mechanisms (CAM)<sup>2</sup>. The text recognizes however the inefficiency of the CMPs in the event of physical congestion, i.e. situations where the physical flows are limited by the technical capacity in a chronic manner.

GRTgaz and TIGF consider that, given the current absence of contractual congestion at the IPs concerned by the Annex CMP, the implementation of the capacity surrender mechanism and the capacity increase through oversubscription and buy-back scheme as of 1<sup>st</sup> October 2013 is not necessary. The TSOs propose to realise an annual analysis of the congestion and to communicate it to the market actors in order to define an implementation date in line with market's needs.

As it is a European Regulation directly applicable to Member States, CRE reminds that the Annex CMP should be implemented on all the concerned IPs and should not be subject to an ex-ante analysis of the observed contractual congestion, to the exception of the firm day-ahead UIOLI which is submitted to an evaluation of the congestion realised by the Agency for the Cooperation of Energy Regulators (ACER).

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<sup>1</sup> Regulation (EC) 715/2009 of the European Parliament and of the Council on conditions for access to the natural gas transmission networks.

<sup>2</sup> Deliberation of the French Energy Regulatory Commission (CRE) of 29 March 2013 on rules for the early implementation of the CAM Network Code for the sale of monthly capacity products at the entry point Obergailbach and of daily capacity products at the entry points Taisnières H and Obergailbach.

Building on the discussions held within the group Concertation Gaz, this public consultation aims at gathering the views of the market players on the common proposal of GRTgaz and TIGF (annexed to the present consultation) for the operational application of the CMP provisions as of 1<sup>st</sup> October 2013.

CRE invites all interested parties to submit their contribution, at the latest by 23 April 2013.

## **2. The surrender of contracted capacity mechanism**

### **2.1. Main legal provisions (paragraph 2.2.4 of the annex CMP)**

The annex CMP provides the following provisions for the surrender of contracted capacity mechanism:

- The TSO accepts any surrender of firm capacity which is contracted by the network user at an IP, with the exception of capacity products with a duration of a day and shorter.
- Surrendered capacities are proposed for reallocation through the regular allocation processes.
- As long as the capacity has not been reallocated by the TSO, the network user shall retain his rights and obligations under the capacity contract.
- The TSO shall notify the network user without delay of any reallocation of its surrendered capacity.
- The surrendered capacity shall be considered to be reallocated only after all the available capacity has been allocated.
- The specific terms and conditions applicable to this mechanism shall be approved by CRE.

### **2.2. Practical implementation principles proposed by GRTgaz and TIGF**

Beyond the legal provisions of the Annex CMP, the following principles for the surrender of contracted capacity mechanism by the network user are envisaged, on the basis of the proposals of GRTgaz and TIGF submitted to discussion within the group Concertation Gaz.

- As of 1<sup>st</sup> October 2013, on all the IPs of GRTgaz and TIGF networks, the network user has the possibility to surrender a part or the total of the booked capacity under the form of products with a duration higher or equal to one month and lower or equal to 12 months, with a starting date prior to 30 September of the following calendar year (year Y+1). The TSOs have the possibility to reallocate the surrendered capacity in shorter term products.
- These products will be proposed to the commercialization during the regular capacity allocation processes (OSP, FCFS or auctions within the framework of the CAM network code implementation).
- The user will have the possibility to surrender in full or in part his initial capacity in terms of volume and/or duration, under the condition that the capacity surrender is in line with the commercialization calendars planned by the TSOs. The user does not have the possibility to unbundle a bundled product, i.e. to surrender separately capacities initially booked as bundled from two adjacent TSOs.
- In case the surrendered capacity is not fully reallocated, unsold capacity is given back to the initial holder after the commercialization period of the corresponding monthly products.
- A surrendered capacity is considered to be definitively surrendered; it cannot be proposed on the secondary market before the end of the commercialization window of the corresponding monthly products.
- Concerning the priority rule for the reallocation of surrendered products, the products surrendered first will be reallocated first ("time stamp" rule).
- The fee for surrendering capacity invoiced to the initial holder is equal to the maximum amount between the two terms: 1% of the initial price and the initial price minus the price for reallocation.
- GRTgaz and TIGF propose to keep the over-revenue potentially generated by this mechanism. This over-revenue is defined as the difference (if positive) between the reallocation price and the initial price.

### **2.3. CRE preliminary assessment**

CRE is in favour of a systematic implementation of the capacity surrender mechanism to all the IPs of the networks of GRTgaz and TIGF, including on the IPs with non-EU countries. Designed as a complementary tool to the secondary market, this mechanism does not put any financial risk on the

TSO and can contribute to prevent situations of contractual congestion during the allocation of capacities.

Concerning the products to be surrendered, CRE is in favour at this stage to the non-integration of the annual products starting in Y+2 and beyond to the surrender mechanism, given the provisions of the CAM network code and the Annexe CMP. On one hand, the network code CAM provides for a share of the technical capacity to be systematically set aside for short-term subscriptions (with a maturity lower than one year) and on the other hand, according to the Annex CMP, the surrendered capacity shall be considered to be reallocated only after all the available capacity has been allocated. In these conditions, annual products can only be reallocated during the commercialisation of quarterly and monthly products.

CRE, at this stage, agrees with the priority rule for reallocating the surrendered capacity proposed by GRTgaz and TIGF as it incentivises the user to an early surrender of its capacity.

CRE, at this stage, is not in favour of a systematic fee for the surrender mechanism as proposed by the TSOs. CRE considers that the capacity surrender mechanism is part of the basic transmission service associated to the capacity bookings of the network user.

Nevertheless, CRE is in favour of invoicing to the initial holder of capacity the difference between the initial price of the capacity and the reallocation price (if positive). This invoice would limit opportunistic behaviour of the initial holder of capacity and avoid any distortion in the capacity allocation mechanisms.

At this stage, CRE is not in favour of the TSOs proposal to keep the difference (if positive) between the reallocation price and the initial price. The potential over-revenues related to the commercialisation by auctions, including those resulting from the capacity surrender mechanism will be redistributed back to the market according to the rules to be defined later by CRE on the basis of a proposal from the TSOs and discussion within the group Concertation Gaz.

**Q1 : Are you in favour of an implementation of the capacity surrender mechanism to IPs with non-EU countries ?**

**Q2 : Are you in favour of the priority rule for the reallocation of the surrendered products?**

**Q3: Do you agree with the fact that the surrender mechanism is part of the basic transmission service of GRTgaz and TIGF (thus without an associated fee)?**

**Q4: Are you in favour of charging to the network user surrendering the capacity the difference (if positive) between the initial price and the reallocation price of the capacity?**

**Q5: Are you in favour of CRE orientation with regards to the treatment of potential over-revenues generated by the surrender mechanism?**

### **3. Capacity increase through oversubscription and buy-back scheme**

#### **3.1. Main legal provisions (paragraph 2.2.2 of the annex CMP)**

The annex CMP provides for the following provisions for the mechanism of overselling and buy-back:

- The TSOs shall propose additional capacity on a firm basis in addition to the technical capacity at an IP on the basis of statistical scenarios for the use of the capacity.
- In order to determine additional capacity (firm capacity offered in addition to technical capacity), the TSOs takes into account a risk profile which does not lead to an excessive buy-back obligation. This calculation shall be based on a dynamic approach.
- The overselling and buy-back mechanism is based on an incentive regime reflecting the risks of the TSOs in offering additional capacity.
- Where necessary to maintain system integrity, TSOs shall apply a market based buy-back procedure.

- Technical capacity, in particular surrendered capacity, capacity arising from the short-term UIOLI or long-term UIOLI shall be considered to be allocated prior to any additional capacity.
- The revenues from selling additional capacity and costs arising from the buy-back scheme are shared between the TSO and the network users. NRAs decide on the distribution of revenues and costs between the TSO and the network user.
- Before implementation, the NRA shall consult adjacent NRAs and take account of their opinion.
- The TSO shall regularly report to the NRA on the functioning of the scheme. NRA may request the TSO to revise the scheme.
- The mechanism of overselling and buy-back shall be approved by CRE.

### **3.2. Practical implementation principles proposed by GRTgaz and TIGF**

Beyond the legal provisions provided by the Annex CMP, the following principles for the oversubscription and buy-back scheme are envisaged, on the basis of the proposals of GRTgaz and TIGF submitted to discussion within the group Concertation Gaz.

- The decision to implement the mechanism of oversubscription and buy-back will be based on a risk analysis within a dynamic process, and updated at least every year. A first study on the IPs of Taisnières H and B, Obergailbach, North-South Link, PIR Midi, Larrau and Biriadou will be communicated to CRE in June 2013.
- The capacity increase through oversubscription and buy-back scheme covers two successive phases: first, the additional capacity offered by the TSO in addition to the technical capacity on the concerned IP. The second phase starts when the nominations are higher than the technical capacity, the TSO will then apply the buy-back procedure.
- The calculation of the additional capacity is based on statistical scenarios of capacity use and on the assumptions on the financial risk of buying back the capacity. The volume of additional capacity is regularly updated and calculated according to the maturity of products. In line with the Annex CMP, the additional capacity is aggregated to the technical capacity and proposed to the commercialisation within the regular capacity allocation processes.
- The implementation of additional capacity and of a market-based buy-back mechanism requires coordination with the adjacent TSOs, in particular for the development of an electronic platform for the buy-back.
- For the 1<sup>st</sup> October 2013, GRTgaz and TIGF propose that the buy-back mechanism is based on the following rule: when the nominations of the network users on a given point exceed the performances of the network at a given day, the TSO will buy-back firm capacities from each individual network user holder of firm capacities on the concerned point, on the prorata of the firm booked capacities and after interruption of the interruptible capacities at the concerned point, at a price equal to 1/365 of the annual capacity price.
- The market buy-back mechanism realised on an electronic platform and/or through an option mechanism could be envisaged in 2014-2015.
- Every time the buy-back procedure is launched, the users do not have the right anymore to revise upwards their renominations on the concerned point until the end of the concerned gas day.
- GRTgaz and TIGF propose to keep the revenues generated by the additional capacity offered.

### **3.3. CRE preliminary assessment**

CRE considers generally that the implementation of the oversubscription and buy-back scheme should be based on a risk analysis for each IP and for each type of capacity product. On all the points characterised by physical congestion and thus, by a high risk of buying back the capacity, the financial risk borne by the TSO could be very high comparing to the benefits of using this mechanism. This risk analysis should be part of a dynamic process and updated regularly. In the view of the current state of analysis, it appears that only the IPs of Taisnières H and Obergailbach will be likely concerned by this mechanism on 1<sup>st</sup> October 2013. However, the application of this mechanism on 1<sup>st</sup> October 2013 will be based on the specific study realised by the TSOs in June 2013 on each concerned IP (Obergailbach, Taisnières H and B, North-South link, PIR Midi, Larrau and Biriadou).

The implementation of this mechanism on the IPs with non-EU countries requires a particular analysis taking into account the characteristics of the adjacent systems. The IPs of Dunkerque, Oltingue and Jura will not be concerned by this mechanism on 1<sup>st</sup> October 2013.

At this stage, CRE is in favour of the limitation of the offer of additional capacity to the annual products having a starting date in the year Y+1, quarterly and monthly products, to the extent that the capacity utilization scenarios are likely to be uncertain for the annual products having a starting date on Y+2 or beyond.

Concerning the application rules proposed by the TSOs, CRE agrees with the adoption of a temporary simplified buy-back mechanism in order to benefit from the implementation feedback, enabling to evolve progressively towards a market-based mechanism in 2014. At this stage, CRE is in favour of a buy-back scheme based on the pro-rata of nominated capacities, but, in order to get closer to a market-based procedure, the buy-back should be based on a price difference between two concerned markets capped to three times the regulated price of the corresponding daily capacity product. This cap could be revised if necessary according to experience.

According to the Annex CMP, an incentive regulation should be applied in order to reflect the financial risks borne by the TSOs. CRE is considering a mechanism where the revenues generated by the selling of the additional capacity and the costs linked to the potential buy-back by the TSO would be covered at 50% by the Expense and Revenue Clawback Account (CRCP).

Finally, CRE shares the analysis of GRTgaz and TIGF on the need to coordinate with the adjacent TSOs. CRE indicates that the aggregated offer of technical and additional capacity should be consistent on the two sides of an IP.

Concerning the coordination of the capacity buy-back between the two concerned TSOs, CRE considers that, in situations where the firm technical commercialised capacities are not aligned on each side of an IP, the TSO holding the lower amount of firm capacities should buy-back the necessary entry and exit capacities on the IP. When the firm commercialised capacities are equivalent on each side of the border, CRE is in favour of a buy-back by each TSO of the necessary capacities on its side of the IP.

Discussions are on-going between CRE and the concerned regulators, CNE (Spain) within the framework of the South Regional Initiative, Bundesnetzagentur (Germany) and CREG (Belgium) in the view of a coordinated implementation of this mechanism.

**Q6 : Do you agree with CRE orientation of non-implementation of the oversubscription and buy-back scheme to non-EU IPs?**

**Q7 :Are in favour of an implementation of the oversubscription and buy-back scheme as from 1<sup>st</sup> October 2013 with a temporary simplified buy-back mechanism?**

**Q8: Do you agree with CRE proposal of a buy-back price based on the price differential between two hubs?**

**Q9: Are you in favour of a 50-50 sharing between the TSO and the network users of the revenues and costs related to the oversubscription and buy-back scheme?**

**Q10: Do you agree with CRE's orientation concerning the triggering of the buy-back by the TSO on an IP depending on the alignment of the firm commercialised capacities on each side of an IP?**

## **4. The long-term use-it-or-lose-it mechanism (UIOLI)**

### **4.1. Main legal provisions (paragraph 2.2.5 of the annex CMP)**

The annex CMP provides for the following provisions for the long-term use-it-or-lose-it mechanism (UIOLI).

- The regulator requires from the TSO to partially or fully withdraw systematically underutilized contracted capacity by a network user on an IP when that user has not sold or offered under reasonable conditions its unused capacity and where other network users request firm capacity. Contracted capacity is considered to be systematically under-utilised in particular if:
  - o the network user uses less than on average 80% of its contracted capacity both from 1<sup>st</sup> April until 30<sup>th</sup> September and from 1<sup>st</sup> October until 31<sup>st</sup> March with an effective contract duration of more than one year for which no proper justification could be provided;
  - o the network user systematically nominates close to 100% of its contracted capacity and renominates downwards with a view to circumventing the rules of the firm day-ahead UIOLI.
- The withdrawal shall result in the network user losing its contracted capacity partially or completely for a given period or for the remaining effective contractual term. The network user shall retain its rights and obligations under the capacity contract as long as the capacity is not reallocated by the TSO.
- The TSO shall regularly provide to the regulator with all the data necessary to monitor the extent to which contracted capacities with effective contract duration of more than one year or recurring quarters covering at least two years are used.

#### **4.2. CRE preliminary assessment**

The long-term UIOLI implemented in France several years ago is similar to the mechanism required by the Annex CMP. The only modification which seems to be necessary at this stage concerns the data communication by the TSOs to CRE; it should take into account the provisions of paragraph 2.2.5 of the Annex CMP.

**Q11 : Do you have any particular remarks with regards to the implementation of the long term UIOLI ?**

### **5. The firm day-ahead use-it-or-lose-it mechanism (UIOLI)**

#### **5.1. Main legal provisions (paragraph 2.2.3 of the annex CMP)**

The annex CMP provides for the following provisions for the firm day-ahead use-it-or-lose-it mechanism (UIOLI).

- For a given IP, the rules of the firm day-ahead UIOLI mechanism should be applied, as of 1<sup>st</sup> July 2016, if the monitoring report of ACER shows that at IPs where demand exceeds offer in the course of capacity allocation procedures for products used in the next three years (for at least three monthly, two quarterly or one yearly firm product) or where no firm capacity is offered at all.
- The firm renominations up to 90% and down to 10% of the contracted capacity by the network user at the IP. If the nomination exceeds 80% of the contracted capacity, half of the non-nominated volume may be renominated upwards. If the nomination does not exceed 20% of the contracted capacity, half of the nominated volume may be renominated downwards.
- The original holder of the contracted capacity may renominate the restricted part of its contracted firm capacity on an interruptible basis.
- The restrictions on the renomination rights do not apply to network users holding less than 10% of the average technical capacity in the preceding year at the IP.
- On IPs where firm-day-ahead UIOLI is applied, an evaluation of the relationship with the oversubscription and buy-back scheme is carried out by the regulator, who may decide not to apply the firm day-ahead UIOLI. This decision is notified without delay to ACER and the European Commission.
- A regulator may decide to implement a firm day-ahead UIOLI on an IP. Before adopting its decision, the regulator shall consult and take into account the opinion of the adjacent regulators.

## 5.2. CRE preliminary assessment

The rules for the implementation of the firm day-ahead UIOLI, which should enter into force on 2016 on the basis of an evaluation of the congestion realized by ACER, will be developed by CRE in future works.

However, the entry into force of this mechanism in Germany since 2011 raises the question of its early implementation at the IP Obergailbach. At this stage, CRE is not in favour of an early application of this mechanism on this IP, to the extent that it would reduce the flexibility of the users in particular to ensure their balancing needs. Furthermore, as this point is not contractually congested on a structural basis, the advantages of the application of this measure seem to be minor comparing to the risks induced.

At this stage, CRE gives priority to apply the oversubscription and buy-back scheme as well as the surrender of contracted capacity mechanism which should be implemented as of 1<sup>st</sup> October 2013.

**Q12 : Do you agree with CRE's proposal not to early implement the firm day-ahead UIOLI mechanism at the IP Obergailbach ?**

### **Questions**

**Q1 : Are you in favour of an implementation of the capacity surrender mechanism to IPs with non-EU countries ?**

**Q2 : Are you in favour of the priority rule for the reallocation of the surrendered products?**

**Q3: Do you agree with the fact that the surrender mechanism is part of the basic transmission service of GRTgaz and TIGF (thus without an associated fee)?**

**Q4: Are you in favour of charging to the network user surrendering the capacity the difference, if positive, between the initial price and the reallocation price of the capacity?**

**Q5: Are you in favour of CRE orientation with regards to the treatment of potential over-revenues generated by the surrender mechanism?**

**Q6 : Do you agree with CRE orientation of non-implementation of the oversubscription and buy-back scheme to non-EU IPs?**

**Q7 :Are in favour of an implementation of the oversubscription and buy-back scheme as from 1<sup>st</sup> October 2013 with a temporary simplified buy-back mechanism?**

**Q8: Do you agree with CRE proposal of a buy-back price based on the price differential between two hubs?**

**Q9: Are you in favour of a 50-50 sharing between the TSO and the network users of the revenues and costs related to the oversubscription and buy-back scheme?**

**Q10 : Do you agree with CRE's orientation concerning the triggering of the buy-back by the TSO on an IP depending on the alignment of the firm commercialised capacities on each side of an IP?**

**Q11: Do you have any particular remarks with regards to the implementation of the long term UIOLI ?**

**Q12 : Do you agree with CRE's proposal not to early implement the firm day-ahead UIOLI mechanism at the IP Obergailbach ?**

CRE invites all interested parties to submit their contribution, at the latest by 23 April 2013:

- by e-mail to the following address: [dirgaz.cp1@cre.fr](mailto:dirgaz.cp1@cre.fr) ;
- by submitting their contributions directly on CRE's website ([www.cre.fr](http://www.cre.fr)), under the section "Documents /Consultations publiques";

- by regular post: 15, rue Pasquier - F-75379 Paris Cedex 08 ;
- by entering into contact with the Directorate for Gas Infrastructures and Networks: + 33.1.44.50.42.55

We invite you to indicate explicitly whether your contribution has a confidential dimension.