

Deliberation of the French Energy Regulatory Commission (CRE) of 27th June 2013 deciding on the rules for the implementation of the Annex I to Regulation (EC) n° 715/2009 on the Congestion Management Procedures

Present: Philippe de LADOUCKETTE, President, Olivier CHALLAN BELVAL, H el ene GASSIN and Jean-Pierre SOTURA, Commissioners.

The present deliberation is taken having regard to Article L. 134-2 of the French Energy Code. Its purpose is to define the rules for the implementation of the European Commission decision amending Annex I to Regulation (EC) n° 715/2009¹ on the Congestion Management Procedures (hereafter "CMP Annex").

1. Context

The European Commission decision on the CMP Annex was published in the Official Journal of the European Union on 28th August 2012 and entered into force on 17th September 2012. The CMP Annex 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 capacities despite their 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 1st October 2013. The firm day-ahead use-it-or-lose-it (UIOLI) mechanism shall be implemented as of 1st July 2016 based on the evaluation of congestion realised by the Agency for the Cooperation of the Energy Regulators (ACER).

The CMP Annex aims at resolving situations of contractual congestion by freeing up unused capacities and offering them for commercialization in the regular allocation processes notably by auctions in the conditions described in the Network Code on Capacity Allocation Mechanisms (CAM)². The text acknowledges however the inefficiency of the CMPs in the event of physical congestion, i.e. situations where physical flows are limited by the technical capacity in a chronic manner.

According to the CMP Annex, the congestion management procedures apply to physical or virtual interconnection points (IPs) between adjacent entry and exit systems 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 Taisni eres H and B (France/Belgium), Obergailbach (France/Germany), the North-South link, PIR midi, Larrau and Biriadou (France/Spain). The application to the IPs of Oltingue (France/Switzerland), Dunkerque (France/Norway) and Jura (France/Switzerland) is submitted to CRE's decision.

Building on the discussions held within the group Concertation Gaz and on the common proposal of GRTgaz and TIGF, the envisaged rules for the implementation of the CMP Annex were submitted to a

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

² 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 Taisni eres H and Obergailbach.

public consultation by CRE from 4th to 23rd April 2013. Twenty contributions, including one confidential, were received: eleven from shippers, three from associations, three from Transmission System Operators (TSOs), two from infrastructure operators and one from the Bundesnetzagentur, the German regulatory authority.

In addition to the results of the public consultation, the present deliberation takes into account the coordination works carried out with the regulation authorities of the neighbouring countries, including the Comisión Nacional de Energía (Spain) within the framework of the South Gas Regional Initiative, and on a bilateral basis, the Bundesnetzagentur (Germany) and the Commission de Régulation de l'Electricité et du Gaz (Belgium).

2. The surrender of contracted capacity mechanism

According to the CMP Annex, the TSOs accept 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 or shorter. Proposed for reallocation through the standard reallocation process, the surrendered capacity cannot be reallocated unless all the available capacity has been allocated. 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.

2.1 Scope of application of the surrender mechanism

CRE is in favour of the implementation of the surrender mechanism at all the PIR and links of the networks of GRTgaz and TIGF, including at IPs with third countries Dunkerque, Oltingue and Jura, to the extent that this mechanism does not put any financial risk on the TSO and can contribute to prevent situations of contractual congestions during the allocation of capacities. In the public consultation, a large majority of stakeholders supported this principle of generalized implementation.

Concerning the IP of Dunkerque, the capacity return mechanism currently in place provides for that the users holding more than 20% of the firm technical annual capacity has the obligation to return a share of these capacities to GRTgaz from the moment that third shippers' requests cannot be served. The functioning of this mechanism is satisfying and is compatible with the application of the voluntary surrender mechanism provided by the CMP Annex. The capacity return mechanism will thus be maintained at Dunkerque.

2.2 Rules for surrendering the capacity and commercialization by the TSO of the surrendered products

CRE is in favour of the general principles submitted to consultation which received a large support from the respondents.

The users have the possibility to surrender, as of 1st October 2013, in full or in part their booked capacities without any limitation in volume and duration (with the exception of capacity products having a duration of a day or shorter). These products will be reallocated under the form of quarterly (until four consecutive products) and monthly products, subject to the fact that this surrender is in line with the commercialization calendars planned by the TSOs. These products will be offered to commercialization during the regular procedures for capacity allocation on each concerned point.

According to many contributors to the public consultation, the rules proposed by the TSOs for the practical implementation of the surrender mechanism are too restrictive, making the mechanism unattractive comparing to the secondary market. In order to address these concerns, CRE considers that the surrender mechanism should be made more flexible for the users. Thus, any surrendered non reallocated capacity shall be given back to the initial holder after each commercialization period. The surrendered capacity cannot be proposed by the initial holder on the secondary market before the end of the commercialization window by the TSO of the corresponding products.

When a user has booked capacities in a bundled form from two adjacent TSOs, he does not have the

possibility to surrender them in an unbundled form, i.e. surrender these capacities separately to each TSO. The surrendered bundled products shall be commercialized by the French TSOs in a bundled form. The TSOs will have to make their best efforts to achieve a coordinated application of this latter principle with the adjacent TSOs, in order to avoid situations where an initial holder of a bundled product retains his rights and obligations under the capacity contract with one of the two TSOs, the other one having reallocated the capacity which has been surrendered to him.

Concerning the priority rule for reallocating surrendered products, the capacities surrendered first will be reallocated first. This rule is widely supported by stakeholders in the public consultation.

2.3 Tariffs treatment of the surrender mechanism

The majority of stakeholders contributing to the public consultation supported the fact that the surrender mechanism should not be systematically charged to the initial holder of capacity as proposed by GRTgaz and TIGF. Several contributors indicated that charging this mechanism will make it less attractive to the users, who will prefer the “free of charges” secondary market. CRE’s view is that the surrender mechanism should be part of the basic transmission services associated to the capacity bookings by the users. CRE is not in favour of charging the surrender mechanism.

Furthermore, in order to ensure the financial neutrality of this mechanism for the TSO, CRE supports the fact that the initial holder of capacity owes any positive differential between the initial and the reallocation price. This principle was massively supported by contributors.

The actors are more divided regarding the treatment of potential over-revenues generated by this mechanism, i.e. when the reallocation price is higher than the initial price of the capacity. Several respondents (six users and one association) are not in favour of CRE’s proposal to redistribute these over-revenues to the market. They consider that the initial holder of capacity should benefit, at least partially, from the opportunity of a reallocation at a higher price. CRE’s proposal is supported by five users and one association. For CRE, the perspective of a financial gain during a subsequent surrender should not introduce any bias in the actors’ behavior during the capacity allocation process. The potential over-revenues will thus be redistributed to the network users via the Expense and Revenue Clawback Account (CRCP) for the surrendered capacities reallocated between 1st October 2013 and 1st April 2014 in line with the requirements of the tariffs decision of 13th December 2012³. The rules for redistributing these over-revenues for the capacities surrendered after 1st April 2014 will be defined later by CRE on the basis of a proposal from the TSOs and discussion within the group “Concertation Gaz”.

The initial price which will be charged to the user in case of a non-reallocation of the surrendered capacity or of a reallocation at a lower price than the initial price, and which will be considered as a reference to calculate the differential between the initial price and the reallocation price, will be equal to the clearing price in case of an auction (or the regulated tariff term applied if the product was not booked through auctions) of the product booked by the initial holder divided by the duration of the surrendered product. For instance, the initial price of a surrendered monthly product stemming from an annual product will be equal to 1/12th of the clearing price resulting from the corresponding auction (or the annual product tariff term if the product was not booked through auction).

2.4 Coordination with the operators and regulators of the adjacent networks

The implementation rules of this mechanism were subject to bilateral works with the regulation authorities and TSOs from Spain (within the framework of the South Gas Regional Initiative), Germany and Belgium. However, some differences remain in the application of this mechanism in the different Member States. CRE will continue its works in collaboration with GRTgaz and TIGF and the regulatory authorities of adjacent Member States in 2013 and 2014, in the view of achieving a better convergence of the implementation of the rules on both sides of the IPs, in particular for bundled products.

³ Deliberation of the French Energy Regulation Commission of 13th December 2012 deciding on the tariffs for the use of natural gas transmission networks.

3. Capacity increase through oversubscription and buy-back scheme

According to the CMP Annex, the TSOs offer firm additional capacity in addition to the technical capacity at the IPs on the basis of statistical scenarios for the use of the capacity. In order to determine additional capacity, the TSO takes into account a risk analysis in order to avoid excessive buy-back obligations, according to a calculation based on a dynamic approach. These additional capacities are only reallocated after all the other capacities, including capacities resulting from the other congestion management procedures. The overselling and buy-back mechanism is based on an incentive regime reflecting the risks born by the TSOs when offering additional capacity. Where necessary to maintain system integrity, TSOs shall apply a market based buy-back procedure. The sharing of the revenues and costs arising from the overselling and buy-back scheme between the TSO and the network user is decided by the regulator.

CRE highlights that the unique aim of this mechanism is to improve the use of existing technical capacities. This mechanism does not imply an increase of the technical capacities.

3.1 Scope of application of the oversubscription and buy-back scheme

In their responses to the public consultation, many stakeholders have some reservations with regards to a generalized implementation on 1st October 2013 of this mechanism, as it is perceived as a risky mechanism. These actors called for a progressive application based on a risk analysis per IP.

CRE shares this view. CRE considers that the rules for the implementation of the oversubscription and buy-back mechanism should be set in a progressive and coordinated manner between the TSOs and the regulators of the adjacent networks. The implementation of this mechanism should be realized within the framework of a dynamic process allowing to learn from experience. It should also be based on a precise risk analysis on each IP, taking into account in particular the analysis of the historic use of the entry-exit point and the capacity bookings.

The risk analyses carried out by GRTgaz and TIGF accompanying the present deliberation show that on 1st October 2013, only the points of Taisnières H and Obergailbach will be concerned by this scheme. These risks analyses should be updated by GRTgaz and TIGF at the latest on 1st July of each year, with the view of a reassessment of the application of the overselling and buy-back scheme on the 1st October.

CRE approves the proposals of GRTgaz and TIGF to apply the overbooking and buy-back mechanism on the PIR of Taisnières H and Obergailbach on 1st October 2013 and not to apply it on the following entry-exit points:

- liaison North-South, subject to a strong physical congestion, with significant buy-back risks;
- the PIR Midi, to the extent that the available capacities at this interconnection will not be commercialized as of 1st April 2015, date of merger of the GRTgaz South and TIGF zones.
- the IPs with Spain, the Larrau IP being characterized by a strong physical congestion in the direction of France to Spain since 2 years. Furthermore, the increase of technical capacities as of 1st April 2013 at Larrau does not give enough visibility to the TSOs to analyse shippers' behaviour. Furthermore, as firm capacities at the IP of Biriadou are very low, the oversubscription and buy-back mechanism does not present a real interest to the market.

CRE asks TIGF to continue its cooperation with Enagas with the view to offering, as soon as possible, the additional capacity at Larrau in the direction of Spain to France in a coordinated manner.

Concerning the IPs with third countries, the actors widely supported the postponement of the application of the oversubscription and buy-back mechanism. CRE is not in favour of the implementation of this mechanism to the points of Dunkerque, Oltingue and Jura on 1st October 2013. The application of this scheme on these IPs requires a specific analysis taking into account the characteristics of adjacent systems which are not concerned by the 3rd Energy Package obligations (Regulation (EC) n°715/2009 and Directive 2009/73/CE).

3.2 Offer of additional capacity

On 1st October 2013 and given the results of the risks analysis and the statistical scenarios for the use of capacity, CRE considers that the offer of additional capacity of GRTgaz at Taisnières H and Obergailbach should concern quarterly, monthly and day-ahead products and represent around 5% of the firm technical capacity. The volume of additional capacity offered on the quarterly and monthly products could be revised during the year by CRE upon motivated request of the TSOs. The TSO shall inform CRE before potential revisions of the volume of additional capacity offered on day-ahead products.

According to the CMP Annex, the additional capacity is offered in addition to the technical capacity and proposed to commercialization through the regular capacity allocation processes.

3.3 Buy-back procedure

In case the additional capacity has been booked, it may be that the TSO is not able to ensure the totality of the nominations. CRE submitted to consultation the proposal of GRTgaz and TIGF consisting in an implementation of a simplified mechanism as of 1st October 2013, i.e. a buy-back from each shipper on the basis of the prorata of the booked firm capacities. Nine contributors (7 shippers, one association and Bundesnetzagentur) express their disagreement with this scheme, to the extent that it is not a market-based procedure, i.e. a procedure where the shippers express their willingness to give their capacity back to the TSO according to the price paid by the TSO. For several actors, a buy-back based on a prorata approach could be envisaged, but only as a last resort mechanism, with a first phase founded on the willingness to pay of the shippers. Nine responses (from two associations, four users, two TSOs and one infrastructure operator) support the adoption of an interim mechanism (prorata) in order to test the scheme.

Having regard to these elements and given the fact that an interim mechanism would not be market based, whereas this is required by the CMP Annex, CRE requests GRTgaz to implement a first buy-back phase based on the willingness to pay of the shippers. Until the implementation of an electronic platform coordinated with the adjacent TSOs, GRTgaz shall implement a simplified procedure calling for offers from the market. In case this voluntary market-based procedure is not sufficient to reduce the nominations, the TSO will resort to the following default rule: the TSO will buy-back from each shipper holding firm capacities on the concerned point, firm capacities on the prorata of the booked firm capacities, after interruption of the interruptible capacities at the concerned IPs.

3.4 Buy-back price

CRE proposed in its public consultation a buy-back price based on the price spread of the adjacent market places, capped to three times the regulated price of the day-ahead capacity. Eight actors (two associations and six users) support this measure, even if three users are not in favour of a capped buy-back price. Nine respondents (one association, four users, three TSOs and one infrastructure operator) do not agree with this buy-back proposal. A few stakeholders prefer the cautious approach proposed by the TSOs consisting of buying back the capacity at the regulated price.

In order to reflect the market price while limiting the risks of increasing buy-back costs for the TSO, CRE considers that, for the first phase of call for market, the maximum buy-back price should be equal to the average of the clearing prices of the quarterly, monthly and day-ahead auction weighted by the booked quantities during these auctions, plus 25%, for the type of capacity (bundled or unbundled). In case of an implementation of the default rule, the buy-back price will be equal to the above mentioned price without an increase of 25%. When the TSO does not offer day-ahead products, the clearing price considered will be equal to the regulated price of the concerned day-ahead product.

When the buy-back procedure is launched on an IP, 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.

3.5 Tariffs treatment of the oversubscription and buy-back scheme

The CMP annex provides for the implementation of an incentive regulation in order to frame the

oversubscription and buy-back mechanism. In the public consultation, a majority of actors supported CRE's proposal to cover 50% of the revenues and costs by the CRCP. Several actors voiced that the totality of revenues and costs should be integrated to the CRCP, others consider that the revenues should benefit to those stakeholders taking the risks behind this mechanism.

In the views of CRE, the revenues linked to additional capacity and the potential costs generated by the buy-back should be covered at 50% in the CRCP. This sharing of revenues and costs allows giving remuneration to the efforts of the TSO, while incentivizing him to maximize the effective capacity available to the shippers.

3.6 Coordination with the regulators of the adjacent TSOs

Several works with the regulators of the adjacent networks were led by CRE with the view of coordinating the implementation of the oversubscription and buy-back mechanism. It was not possible to arrive to a full convergence of the implementation on each side of the IPs.

CRE will continue its works with the CNE with the view of a coordinated implementation of the oversubscription and buy-back mechanism as soon as possible at the IPs of Larrau and Biriadou.

The implementation of this mechanism at PIR Taisnières H was discussed with the Belgian regulator (CREG) and the TSO (Fluxys Belgium). A certain level of convergence on the offer of additional capacity as of 1st October 2013 on the day-ahead products will be ensured on each side of the IP. GRTgaz and Fluxys Belgium, subject to a favourable decision of CREG, will commercialise additional capacities on day-ahead products as of 1st October 2013. CRE asks GRTgaz to make its best efforts in order to bundle the additional capacity with the additional capacities offered by Fluxys Belgium and to coordinate the buy-back procedure.

Concerning the PIR Obergailbach, the system of oversubscription and buy-back will not be implemented a priori in Germany. The Bundesnetzagentur cites the requirement of the CMP Annex which allows a Member State not to apply the mechanism if the firm day-ahead UIOLI mechanism has been introduced. This latter mechanism was unilaterally implemented in Germany in 2012. Almost all contributors to the public consultation (15 respondents out of 16) are not in favour of an application of the firm day-ahead UIOLI at the IP of Obergailbach, to the extent that it would reduce the flexibility of the shippers to ensure their balancing needs. In addition, the CMP Annex provides for a binding application of this mechanism as of 1st July 2016, on the basis of an evaluation of the congestion realised by ACER. CRE thus decides to implement the oversubscription and buy-back scheme as of 1st October 2013 and not the firm day-ahead UIOLI. CRE asks Bundesnetzagentur to consider implementing the oversubscription and buy-back scheme on the German side of the IP (Medelsheim).

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

The long term UIOLI mechanism required by the CMP Annex is very similar to the system already in force in France for several years now. A few actors indicated the need to take into account the implementation of the CAM network code, in particular with regards to the capacity withdrawal on each side of the IP for bundled products.

Only a few adjustments are necessary in order to make the long term UIOLI mechanism already implemented in France compliant with the CMP Annex. CRE asks consequently GRTgaz and TIGF to adapt the mechanism, as of 1st October 2013, in line with the following:

On all the PIR and links of the networks of GRTgaz and TIGF, the TSO monitors cases of systematic underutilization of capacity by a network user, i.e. when the shipper uses annually on average between 1st April and 30 September and between 1st October and 31st March, less than 80% of its contracted capacity with an effective contract duration of more than one year.

If other network users request firm capacities on this IP and this demand could not be satisfied within the regular allocation processes, the TSO informs CRE and analyzes the situation of congestion at the

concerned entry-exit point. If the user is not able to provide a proper justification, the withdrawal of capacity is proposed by the TSO and decided afterwards by CRE.

The withdrawal decision of bundled products should be coordinated between the TSOs and the regulators of adjacent systems. CRE is currently discussing with its counterparts with the view of a coordinated implementation of withdrawal decisions at the IPs.

5. CRE's decision

CRE approves the rules for implementation of the annex I of the Regulation (EC) n°715/2009 on the congestion management procedures proposed by GRTgaz and TIGF (see annexes), subject to the modifications introduced by CRE.

As of 1st October 2013, GRTgaz and TIGF shall implement the CMPs with the main characteristics described below:

Concerning the capacity surrender mechanism

- The surrender mechanism will be implemented at all the PIR and links (including Dunkerque, Oltingue and Jura).
- The shippers have the possibility to surrender as of 1st October 2013 in full or in part their booked capacities without any limitation in volume and duration. These products will be reallocated under the form of quarterly (until four consecutive products) and monthly products. These products will be proposed to commercialization during the regular procedures for capacity allocation on each concerned point.
- Any surrendered non reallocated capacity shall be given back to the initial holder after each commercialization period.
- The surrendered capacity cannot be proposed by the initial holder on the secondary market, before the end of the commercialization window by the TSO of the corresponding products.
- The network user does not have the possibility to unbundle a bundled product, i.e. surrender separately initially bundled capacities to two adjacent TSOs.
- The TSO shall commercialise the surrendered bundled products in a bundled form.
- The capacities surrendered first will be reallocated first.
- The surrender mechanism is part of the basic transmission services associated to the capacity bookings by the users. This service should not be subject to fees. When the initial price is higher than the reallocation price, the TSO charges the differential to the initial holder of the capacity.
- When the reallocation price is higher than the initial price of capacity, the over-revenue will be redistributed to network users via the CRCP for the surrendered capacities reallocated between 1st October 2013 and 1st April 2014. The rules for redistributing these over-revenues for the surrendered capacities reallocated after 1st April 2014 will be defined by CRE on the basis of a proposal from the TSOs and discussion within the "Concertation Gaz" group.
- The initial price which will be charged to the user in case of a non-reallocation of the surrendered capacity or of a reallocation at a lower price than the initial price, and which will be considered as a reference to calculate the differential between the initial price and the reallocation price, will be equal to the clearing price in case of an auction (or the regulated tariff term applied if the product was not booked through auctions) of the product booked by the initial holder divided by the duration of the surrendered product.

Concerning the oversubscription and buy-back scheme

- Given the risks analysis led by GRTgaz and TIGF attached to the present deliberation, only the IPs of Taisnières H and Obergailbach are concerned by this mechanism as of 1st October 2013. These risks analyses shall be updated by GRTgaz and TIGF regularly on 1st July 2014 at the latest with the view of a reassessment of the application of the overselling and buy-back scheme on the 1st October 2014.
- The additional capacity at Taisnières H and Obergailbach will be offered on quarterly, monthly and

day-ahead products and will represent around 5% of the firm technical capacity. The volume of additional capacity offered on the quarterly and monthly products could be revised during the year by CRE upon motivated request of the TSOs. The TSO shall inform CRE before potential revisions of the volume of additional capacity offered on day-ahead products.

- In line with the CMP Annex, the additional capacity is offered in addition to the technical capacity and proposed to commercialization through the regular capacity allocation processes.
- If the buy-back procedure is triggered, GRTgaz proposes a first phase based on the willingness to pay of the shippers. During this first phase, the maximum buy-back price is equal to the average of the clearing prices of the quarterly, monthly and day-ahead auction weighted by the booked quantities during these auctions, plus 25%, for the type of capacity (bundled or unbundled).
- In case this voluntary market-based procedure is not sufficient to reduce the nominations, the TSO will resort to the following default rule: the TSO will buy-back from each shipper holding firm capacities on the concerned point, firm capacities on the prorata of the booked firm capacities, after interruption of the interruptible capacities at the concerned IPs at the above mentioned price without an increase of 25%.
- If the TSO does not offer day-ahead products, the clearing price considered is equal to the regulated price of the concerned day-ahead product.
- When the buy-back procedure is launched on an IP, 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.
- The revenues linked to additional capacity and the potential costs generated by the buy-back are covered at 50% in the CRCP.
- CRE asks GRTgaz to make its best efforts in order to bundle the additional capacity with the additional capacities offered by the adjacent TSOs and to coordinate for the buy-back procedure.
- CRE asks TIGF to continue its cooperation with Enagas with the view to offering, as soon as possible, the additional capacity at Larrau in the direction of Spain to France in a coordinated manner.

Concerning the long term use-it-or-lose-it mechanism (UIOLI)

CRE asks consequently to GRTgaz and TIGF to adapt the existing long term UIOLI mechanism, as of 1st October 2013, according to the following:

- On all the PIR and links of the networks of GRTgaz and TIGF, the TSO monitors cases of systematic underutilization of capacity by a network user, i.e. when the shipper uses annually on average between 1st April and 30 September and between 1st October and 31st March, less than 80% of its contracted capacity with an effective contract duration of more than one year.
- If other network users request firm capacities on this IP and this demand could not be satisfied within the regular allocation processes, the TSO informs CRE and analyzes the situation of congestion at the concerned entry-exit point. If the user is not able to provide a proper justification, the withdrawal of capacity is proposed by the TSO and decided afterwards by CRE.
- The withdrawal decision of bundled products should be coordinated between the TSOs and the regulators of adjacent systems.

The present deliberation will be published at the Official Journal of the French Republic.

Done in Paris, on 27th June 2013.

For the Commission de Régulation de l'Énergie,
The President,

Philippe de LADOUCKETTE