

Unofficial Translation

**CONSULTATION DOCUMENT
60/2016/R/GAS**

NATURAL GAS MARKET

**COMPLETING THE IMPLEMENTATION OF EUROPEAN PROVISIONS
RELATING TO THE RESOLUTION OF CONGESTION
AT INTERCONNECTION POINTS WITH OTHER
COUNTRIES OF THE NATIONAL GAS PIPELINES SYSTEM**

*Consultation document
Impacted Market: natural gas*

18 February 2016

Introduction

This consultation document by the Regulatory Authority for Electricity Gas and Water (hereinafter: the Authority) is aimed at the completion of the implementation of European provisions regarding congestion management at interconnection points with other countries of the national gas pipelines system, contained in Annex I to EC Regulation No 715/2009 of the European Parliament and of the Council (as amended by the Decision of the Commission of 24 August 2012).

*Stakeholders are invited to submit their comments and proposals in writing to the Authority, preferably in electronic format, **by not later than 31 March 2016.***

Stakeholders who wish to safeguard the confidentiality or the privacy, in whole or in part, of the documentation submitted are required to indicate which sections of their documents are to be treated as confidential.

It is advisable that stakeholders submit their observations and comments through the interactive service that is available on the website of the Authority. Alternatively, comments and suggestions should be sent to the following address by only one of these means: by email (the preferred option) with a file attachment containing the comments, by fax or by mail.

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1. Introduction

- 1.1 The purpose of this document is to illustrate the measures identified by the Authority to complete implementation of European provisions on congestion management at interconnection points with other countries of the national gas pipelines system, contained in Annex I to EC Regulation No 715/2009 of the European Parliament and of the Council, as amended by the decision of the Commission on 24 August 2012 (hereinafter: CMP regulation – *Congestion Management Procedures*). The first phase of the implementation process was launched in 2013 with Consultation Document 270/2013/R/GAS that led to the adoption of Resolution 411/2013/R/GAS of 26 September 2013.
- 1.2 Furthermore, the provisions that are outlined in this Consultation Document form part of a wider process towards the Authority’s objective to promote, through all available instruments, an ever increasing integration with neighbouring markets.
- 1.3 Hereafter there are explanations about the background regulatory context (section 2) and the Authority’s reform proposals (sections 3 and 4).

2. The regulatory context

- 2.1 The CMP Regulation defines European rules for the management of so-called contractual congestions, i.e. situations where transport capacity is poor because it is entirely given – often on a multiannual basis – even in case of available physical capacity. Contractual congestions are considered as one of the main obstacles to the integration of the European market.
- 2.2 To this end, the CMP Regulation provides that operators of the transmission system operator (hereinafter: TSO) shall offer, within their own allocation procedures, any possible capacity unutilized by users. Unutilised capacity at an interconnection point is made available by means of the application of one of the following procedures:
 - a) “*oversubscription and buy-back*” (hereinafter: OS&BB) or, alternatively, “*use-it-or-lose-it*” on a *day-ahead* basis (hereinafter: FDA UIOLI);
 - b) surrender of contracted capacity;
 - c) long-term “*use-it-or-lose-it*” mechanism (hereinafter: LT UIOLI).
- 2.3 The above procedures, already described in Consultation Document 270/2013/R/GAS, came into force on 1 October 2013, with the exception of the “*use-it-or-lose-it*” mechanism on a *day-ahead* basis whose introduction will be mandatory as from 1 July 2016 for interconnection points where, on the basis of the annual monitoring report by ACER¹, demand will exceed supply, at the

¹ This report is published in accordance with section 2.2.1. paragraph 2 of the CMP Regulation. The last report published by ACER (regarding 2014) is available on the following link:

reserve price in the case of auctions, in the course of procedures for capacity allocation in the year covered by the monitoring report for products to be used in that year or in one of the next two years:

- for at least three firm capacity products with a duration of one month;
- for at least two firm capacity products with a duration of one quarter; or
- for at least one firm capacity product with a duration of one year or more; or
- where firm capacity product with a duration of one month or more has been offered.

2.4 However, national regulators have the discretion to make an assessment of the relationship between the FDA UIOLI mechanism and OS&BB and to decide not to apply OS&BB at their own interconnection points.

2.5 The CMP regulation provides that the OS&BB system is introduced on the basis of a proposal drawn up by TSOs; the Authority on 13 May 2013, therefore, called upon SNAM to prepare this proposal.

2.6 By means of Consultation Document 270/2013/R/GAS of 20 June 2013, the Authority expressed its guidelines on the application of European provisions on capacity allocation² and congestion resolution³ at interconnection points with foreign countries.

2.7 By means of Resolution 411/2013/R/GAS of 26 September 2013, the Authority has:

- a) introduced mechanisms regarding capacity surrender and LT UIOLI;
- b) postponed to a subsequent resolution the approval of provisions on “*oversubscription and buy-back*”, in view of the time needed for the definition of the proposal containing implementation details by SNAM, and for its subsequent evaluation by the Authority including the coordination with the regulators of neighbouring countries; the decision also took into account the absence of situations of contractual congestion at interconnection points of the national network as well as the successful implementation that already took place of available mechanisms for daily unused capacity, albeit on an interruptible basis, with effects similar to those of the “*oversubscription and buy-back*” system;

http://www.acer.europa.eu/Official_documents/Acts_of_the_Agency/Publication/20150529_ACER%202015%20Report%20on%20Congestion%20at%20IPs%20in%202014.pdf

² To transpose into national law the provisions of Regulation (EU) No 984/2013 of the Commission of 14 October 2013 establishing a network code concerning capacity allocation mechanisms in gas transport systems (so-called CAM NC).

³ To start the transposition of the Decision of the Commission of 24 August 2012 amending Annex I of Regulation (EC) No 715/2009 of the European Parliament and of the Council on conditions for access to natural gas transport networks.

- c) introduced the possibility for users to make available, for allocation to third parties, a firm capacity of the unbundled type that they possess, foreshadowing a later measure, to be taken following coordination with the Authorities of neighbouring countries, regarding the management of products having a bundled capacity.
- 2.8 The additions referred to in the preceding paragraph c) were introduced (following coordinating activities with the regulatory authorities of neighbouring countries) with Resolution 555/2015/R/GAS of 20 November 2015. In order to promote the harmonization of management processes for the allocation of capacities between interconnected transport systems, the above resolution allows network users to recall totally or partially the surrendered capacity at all times, provided it is outside the timeframe in which this capacity is subjected to allocation procedures. This timeframe was identified between the time of the release by the user of the capacity and the conclusion of the relative allocation procedure. Consistent with this planning, it was also established that in the event that capacity is made available by several network users and the total capacity is not fully allocated to third parties, SNAM must identify the share of the capacity assigned to each network user according to the chronological order of the release.
- 2.9 On 11 July 2014, the European Commission published the document “*Guidance on best practices for congestion management procedures in natural gas transmission networks*” (subsequently *CMP Guidance*⁴) aimed at the optimization and harmonization at European level of the national rules regarding congestion management, with special reference to processes for the management of the so-called bundled capacity.
- 2.10 The following sections explain the Authority’s proposals for the conclusion of the process for the transposition of the CMP Regulation at interconnection points with other transport systems of the European Union (Tarvisio and Gorizia), with special reference to:
- a) OS&BB and FDA UIOLI mechanisms (chapter 3);
 - b) implementing provisions on LT UIOLI (chapter 4).

⁴https://ec.europa.eu/energy/sites/ener/files/documents/20140711guidance_congestion_management_ngt_n.pdf

3. Oversubscription & Buy-Back and Firm Day Ahead Use It Or Lose It

- 3.1 Regulation EC No 715/2009 stipulates (point 2.2.2. of Annex 1) that TSOs have to draw up a proposal for the introduction of an “*oversubscription and buy-back*” system in order to offer additional firm transport capacity at EU interconnection points.
- 3.2 The OS&BB mechanism allows TSOs to offer more firm capacity than is technically available at interconnection points of the national network, on the assumption that not all the allocated capacity will be actually used by network users. This mechanism should provide an adequate incentives system that reflects the risks to which the TSO is exposed in offering additional capacity. In fact, if the demand for an effective use of the capacity by users exceeds the technical available at the interconnection point, the TSO shall be responsible for applying a *buy-back* procedure.
- 3.3 In the *CMP Guidance*, the European Commission highlighted that the OS&BB mechanism must be considered as the “*basic tool to prevent contractual congestion*”. However, as the Commission acknowledges in this document, the OS&BB mechanism, in order to be truly effective and efficient, must be designed carefully, taking into account the level of demand and the characteristics of the network in order to prevent that the system incurs high costs without any significant benefits.
- 3.4 Following consultation with users, on 18 March 2014 SNAM sent a proposal to the Authority for the implementation of the OS&BB mechanism, accompanied by a possible incentives system. The scheme proposed by SNAM foresees the recognition of additional revenues just for the offering of additional capacity, even if this is then not allocated. This proposal also provides, as the only possible *buy-back*, the repurchase of capacity on the secondary market by means of the Prisma platform.
- 3.5 By letter dated 13 June 2014, the Authority invited SNAM:
 - to integrate the OS&BB proposal with specific quantitative details;
 - to reassess the incentive mechanism proposed in order to avoid the risk of establishing incentives that are inconsistent with benefits in terms of the reduction of any possible contractual congestion that can be obtained by the introduction of the OS&BB mechanism;
 - to expand the possibility of *buy-back* providing additional options instead the sole purchase on the secondary market through the Prisma platform, in order to minimize the risk of the reduction of network users’ transport programmes to meet a possible request for a physical flow that is greater than the technical capacity.

- 3.6 By letters dated 7 August 2014 and 19 December 2014, SNAM sent to the Authority the quantitative analysis of data regarding transport capacity and to a large extent reaffirmed the contents of its own OS&BB proposal, highlighting its consistency with the provisions of the CMP Regulation.
- 3.7 The problems that emerged throughout the process for the detailed definition of the OS&BB mechanism lead to the view that its adoption, in the specific context of the Italian market, might not be the most efficient solution in terms of costs and benefits for the system.
- 3.8 In recent years, in fact, at interconnection points of the national network with foreign countries no events of contractual congestion were registered. For example, in thermal year 2014/2015 at the Tarvisio point the available capacity that remained available for entry into Italy was equivalent to a value of around 15 million sm³ per day. During the same period at the exit point at Arnoldstein there was an available capacity of almost 1,8 million sm³ per day. Even for thermal year 2015/2016, the transport capacity was not fully allocated: at the Tarvisio entry point for the winter semester there is available capacity of around 15 million sm³ per day whereas that for the summer semester is of about 13 million; on the Austrian side available capacity is less than 1 million sm³ per day. Data available on the Transparency Platform of ENTSOG confirms that for these thermal years no cases of contractual congestion were registered for products with a duration lasting one year, a quarter and one month. Even for the coming thermal years no instances of contractual congestion are forecast.
- 3.9 The Authority, on the strength of the information mentioned above, is of the view that the application in Italy of the OS&BB mechanism might present the risk of burdening the system with costs that cannot be determined *ex ante*, potentially very high, not necessarily offset by corresponding benefits. In this regard, one can find in the mechanism proposed by the TSO various critical issues relating in particular to:
- (i) the risks involved in an incentives scheme to the TSO linked to the capacity on offer rather than to that one allocated in the context of absence of contractual congestion;
 - (ii) lack of flexibility in buy-back options (the proposal by SNAM envisages, as the sole possibility for buy-back, the purchase of the capacity on the secondary market), as well as the risk of a reduction in the planning of holders of firm capacity in the event that the amount of the transport capacity offered by users on the secondary capacity market does not satisfy the request for repurchase.
- 3.10 Ultimately it is believed that the OS&BB mechanism brings a significant administrative complexity as well as risks that are associated with uncertainties of the effects for the system. This issue might be avoided by the adoption of the

alternative FDA UIOLI mechanism envisaged by the CMP Regulation described below.

The FDA UIOLI mechanism

- 3.11 Regulation EC No 715/2009 envisages, (point 2.2.3 of Annex 1) the possibility of introducing a mechanism for congestion management that allows a modification of the initial nomination of users on a *day-ahead* basis (the so-called FDA UIOLI).
- 3.12 According to the FDA UIOLI mechanism, capacity renominations are possible up to a maximum of 90% and a minimum of 10% of the contracted capacity held by a user at a specific interconnection point. However, if the renomination is higher than 80% of the contracted capacity, half of the not nominated volume may be nominated upwards. If the nomination, instead, is not higher than 20% of the contracted capacity, half of the nominated volume may be renominated downwards. The limitation of the right to renominate does not apply to network users who in the previous year held less than 10% of the average technical capacity at the interconnection point.
- 3.13 CMP rules foresees for the binding introduction of FDA UIOLI as from 2016 only for interconnection points where, on the basis of the annual monitoring report by ACER, demand will continue to exceed supply for an established number of cases and capacity products. However, it is without prejudice to the possibility for national regulators to carry out an evaluation of the relationship between the FDA UIOLI mechanism and OS&BB and to decide not to apply OS&BB in their own interconnection points.
- 3.14 The above option has been exercised by the Austrian regulator E-Control that in 2013, after a preliminary analysis, decided to launch a one-year trial for the application of the FDA UIOLI mechanism and urged TSOs to prepare by 1 October 2014 a report on the effects of FDA UIOLI and on the possibility of the introduction of OS&BB. In 2015, also following a public consultation, E-Control confirmed its decision of not wanting to apply OS&BB because it was considered too risky and costly.
- 3.15 The CMP regulation includes no obligation to use the same measure on the two sides of the same IP, but the application of different mechanisms actually makes the offer of *bundled* products more complex.
- 3.16 The operation of the FDA UIOLI mechanism is defined in the CMP regulation in a detailed manner and does not make provision for any risky options regarding repurchase or for the application of a system of incentives and is therefore easy to implement. FDA UIOLI seems ultimately to be regarded as a more effective and efficient tool than OS&BB to ensure the resolution of any possible contractual

congestion that may be registered at Italian interconnection points with EU countries.

- 3.17 In addition, the application even in Italy of FDA UIOLI would facilitate the coordination of the management of possible contractual congestion with neighbouring countries that already make use of this instrument, as repeatedly called for by the European Commission itself.
- 3.18 In the light of what has been noted, it is considered appropriate to collect the feedback of users on the possibility of the introduction in Italian regulation of the FDA UIOLI mechanism instead of the OS&BB mechanism. The FDA UIOLI mechanism could be applied in our system as from 1 October 2016.

S1. Do you consider appropriate to implement the FDA UIOLI mechanism instead of the OS&BB mechanism at national interconnection points? If not, why?

S2. Do you agree with the timing of its implementation? If not, why?

4. Long-term “use-it-or-lose-it” mechanism

- 4.1 EC Regulation No 715/2009 stipulates in paragraph 2.2.5. of Annex 1 that the regulatory authorities require TSOs to partly or fully withdraw contracted capacity that is systematically underutilized on an interconnection point by a network user where the latter has not offered his unutilized capacity under reasonable conditions and where other network users request firm capacity. In particular, contractual capacity is deemed systematically underutilized if:
- the network user uses less than on average 80% of its capacity in the summer and winter semesters, against a contract with a duration of one year or more;
 - the network user systematically nominates downwards in relation to a percentage that is close to 100% of its contracted capacity.
- 4.2 As previously noted, the provisions regarding long-term “use-it-or-lose-it” were introduced in Italy by means of Resolution 411/2013/R/GAS of 26 September 2013.
- 4.3 These provisions require that a network user is obliged to make available to SNAM, for allocation to third parties, the firm capacity that is at its disposal at interconnection points at Passo Gries, Tarvisio and Gorizia, should it occur in these points all the following conditions:
- (i) the user, on 1 October of the reference thermal year ATr is the holder of firm capacity for a period that exceeds one year;
 - (ii) the contracted capacity has been systematically underutilized by the user in thermal year ATr without adequate justification;

- (iii) the user has not offered to third parties underutilized capacity in thermal year ATr on reasonable terms;
 - (iv) other network users request firm capacity at the above-mentioned points but capacity is not available because it has been fully allocated.
- 4.4 The contracted capacity is considered systematically underutilized when in the thermal year ATr the average utilization by the network user is lower than 0,8 both in the period between 1 October and 31 March as well as in the period between 1 April and 30 September.
- 4.5 Unutilized capacity is considered as being offered at reasonable conditions if the user has made it available to third parties at a price that is not higher than the reserve price that is envisaged in the allocation of primary capacity products for an equal duration, according to procedures that allow the widest participation of users as well as the verification of offer conditions by the company itself.
- 4.6 By 1 November of the thermal year following year ATr, SNAM is obliged to verify the existence of the conditions described above and, in the case of a positive outcome, to inform the interested network user and to give the Authority an indication of the capacity that the same user is obliged to make available. It should be withdrawn from the user, for the remaining the contractual period, a capacity quota that corresponds to the amount not utilized. The user retains the rights and the obligations that are associated with the capacity contract to the extent the capacity is not allocated to third parties. This is without prejudice to the right of users who would like to submit a complaint to the Authority pursuant to Resolution 188/2012/E/COM.
- 4.7 By means of letter dated 19 December 2014, SNAM presented to the Authority a proposal to update its network code aimed at the transposition of the above-mentioned provisions. SNAM has, moreover, submitted the results of the consultation process on the above mentioned proposal.
- 4.8 Following the analysis of the comments received from stakeholders and the discussion with SNAM, it appeared necessary to proceed with a review and an integration of various provisions of article 14ter of Resolution 137/02 to ensure an effective implementation of the long-term “*use-it-or-lose-it*” mechanism.
- 4.9 In the first place, the Authority considers it appropriate to undertake a revision of the following timings of the process in order to improve its efficiency and its consistency with accounting deadlines for transport services that are envisaged in SNAM’s network code:
- the user presents to SNAM and to the Authority the proper justifications that led to the systematic underutilization of contracted capacity in the Reference Thermal Year within seven working days from the end of the Reference Thermal Year (instead of 30 September of the Reference Thermal Year);

- SNAM will examine whether conditions exist for the application of the long-term “use-it-or-lose-it” mechanism and will send to the Authority and to the interested network user the outcomes of the above-mentioned verifications by 15 November of the Thermal Year following the Reference Thermal Year (instead of 1 November of the Thermal Year following the Reference Thermal Year);
 - the withdrawn capacity is made available from 1 February of the Thermal Year following the Reference Thermal Year (instead of 1 December of the Thermal Year following the Reference Thermal Year).
- 4.10 Resolution 411/2013/R/GAS provides that the user, by the end of the thermal year ATr, can submit to SNAM a document that will provide information on the reasons that have led to the systematic underutilization of the contracted capacity. These reasons constitute adequate justification of the underutilization if they fulfil the conditions set in SNAM’s network code.
- 4.11 The Authority, in the light of the observations submitted by the TSO regarding difficulties in stating in its transport code an exhaustive list of potential reasons for an underutilization of contracted capacity in the Reference Thermal Year and considering that even users failed to submit any suggestions on this issue, considers it appropriate to expect that the same reasons are expressed freely by interested network users and evaluated on a case-by-case basis in order not to exclude reasonable justifications that are not listed on the network code.
- 4.12 The Authority, in order to ensure a transparent and efficient management of the long-term “use-it-or-lose-it” mechanism and also to preserve the right of network users who are affected by capacity withdrawal to be heard, also intends to define two different procedures that shall be followed by the TSO in the event that conditions arise for the application of the above-mentioned mechanism.
- 4.13 In brief, these procedures include the following:
- (i) the TSO shall automatically withdraw capacity only in the absence of the submission by the user of proper justifications within the expected deadline;
 - (ii) in all other cases, the TSO shall forward to the Authority its own assessment of the evidence provided by the user (with particular reference to any issues regarding the national transport system) and will proceed or otherwise with the withdrawal of the capacity at the direction of the Authority that will be expressed in this respect by means of an *ad hoc* resolution.
- 4.14 Finally, with reference to bundled capacity, it is considered appropriate to provide that the TSO will adopt the same procedures that are envisaged for unbundled capacity for the share of capacity whose withdrawal is possible on both sides of the interconnection. The TSO will coordinate for this purpose with the operator of the interconnected transport system.

S4. *Do you agree with the guidelines of the Authority on the proposed new timetable for the application of the long-term “use-it-or-lose-it” mechanism? If not, why?*

S5. *Do you agree with the new additions that are being proposed? If not, why?*