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Commission proposal for Guidelines on Congestion Management Procedures replacing Chapter 2.2 and amending Chapter 3 of Annex I to Regulation (EC) No 715/2009 of the European Parliament and of the Council on conditions for access to the natural gas transmission networks

## ANNEX I

### GUIDELINES ON

#### **2. Principles of capacity-allocation mechanisms and congestion management procedures concerning transmission system operators**

##### *2.2. Congestion management procedures*

##### **2.2.1 General Provisions**

1. If not further specified, procedures on contractual congestion management shall apply to all interconnection points regardless of whether they are presently contractually congested or not.
2. On the basis of the information published by the transmission system operators pursuant to Chapter 3 of this Annex, the Agency shall, as part of its monitoring pursuant to Article 6(6) of Regulation (EC) No 713/2009, monitor the status of contractual and physical congestion at interconnection points. Commencing with the year 2013, the Agency shall publish by 1 March of any year a monitoring report on congestion (physical and contractual) at interconnection points for the preceding year, on a yearly basis.
3. In order to ensure that congestion management procedures are applied in the most effective way at all interconnection points and with a view to maximize available capacities, national regulatory authorities and transmission system operators from different Member States and within Member States shall closely cooperate amongst themselves and with each other. The Agency and the ENTSO for Gas shall participate where necessary to ensure that the most effective congestion management procedures are implemented. In implementing these guidelines national regulatory authorities and transmission system operators shall have regard to adopted best practices.
4. Any additional capacity made available through the application of one of the congestion management procedures as described under sections 2.2.2, 2.2.3, 2.2.4 and 2.2.5 of this Guideline shall be offered by the respective transmission system operator(s) alongside the other capacity in the regular allocation process.

## 2.2.2 Capacity Increase by Oversubscription and Buy-Back Arrangements

1. Subject to the approval of the national regulatory authority and with respect for network integrity, transmission system operators shall propose and implement before 1 January 2013 an oversubscription and buy-back mechanism in order to offer additional capacity on a firm basis.
2. In proposing the oversubscription and buy-back mechanism the transmission system operator shall provide all relevant data, estimates, and models to the national regulatory authority in order for the latter to assess the system. In implementing the oversubscription and buy-back system the transmission system operator shall regularly report to the national regulatory authority on the functioning of the system.
3. The oversubscription and buy back mechanism shall make available an extra amount of firm capacity exceeding the maximum capacity calculated pursuant to Article 16 of this Regulation.
4. The oversubscription and buy-back mechanisms shall be structured respectively as revenue- and cost-sharing schemes between the transmission system operators and the network users. In case of actual or potential physical congestion transmission system operators shall apply a market-based buy-back procedure. All relevant network users shall be informed about the applicable buy-back procedure.
5. The oversubscription and buy back mechanism shall be based on statistic scenarios about the probable amount of physically unused capacity at any given time at a given interconnection point. It shall take into account a risk profile for offering additional capacity which does not lead to excessive buy-back responsibility. The oversubscription and buy back mechanism shall also estimate the likelihood and the costs of buying back capacity on the market and reflect this in the amount of additional capacity to be made available.
6. If, on the basis of historic data as well as an outlook on capacity supply and demand it is manifestly improbable that contractual congestion can occur at an interconnection point, the national regulatory authority may decide that the oversubscription and buy-back mechanism does not apply at that interconnection point. Such a decision shall be subject to regular review and shall be notified, without delay, to the Commission, including the assessment of the national regulatory authority.

## 2.2.3 Firm day-ahead UIOLI (use it or lose it)

1. If, on the basis of the results of the monitoring report of the Agency pursuant to article 2.2.1.2 of this Chapter, it is shown that in the year 2015 contractual congestion has occurred in the course of the regular allocation process of capacity products with a duration of one month or longer at any given interconnection point, at least the following principles shall apply per network user per contractually congested interconnection point with respect to altering the initial nomination (re-nomination) as of 1 July 2016:

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(a) Firm re-nominations upwards are permissible up to 50% of the fraction of the initially not nominated booked capacity. The remainder of booked capacity can be re-nominated on an interruptible basis.

(b) Re-nominating downwards is permissible down to 50% of the initial nomination. Where the initial nomination exceeds 90% of the total capacity booked no re-nomination downwards shall be permitted.

2. In its yearly monitoring report pursuant to article 2.2.1.2 of this Chapter, the Agency shall re-assess the situation regarding contractual congestion on the interconnection points where firm day-ahead UIOLI is applied.
3. Without prejudice to point 1 above national regulatory authorities may decide to implement a system of firm day-ahead UIOLI on any interconnection point.
4. In case a firm day-ahead UIOLI is applied, the part of non-nominated capacity that cannot be re-nominated shall be offered as firm day-ahead capacity.
5. In case an interconnection point connects transmission systems in two different Member States, the relevant national regulatory authorities shall take coherent decisions. Article 8(1) of Regulation (EC) No 713/2009 shall apply.

## 2.2.4 Surrender of Booked Capacity

Transmission system operators shall define terms and conditions for network users to surrender – partially or fully – booked capacity to them. Transmission system operators shall be obliged to accept capacity offered for surrender insofar contractual congestion exists. The terms and conditions for surrendering capacity, which should also include rules for surrendering capacity in case there is no contractual congestion, and the methods of rewarding network users for the capacity surrendered, shall be approved by the national regulatory authority.

## 2.2.5 Long-Term UIOLI

1. Network users shall lose systematically underutilised contracted capacity insofar as:
  - (a) other network users request capacity bookings at the particular interconnection point and are unable to obtain this capacity on the primary market and
  - (b) the network user has not sold or offered under realistic circumstances, in due time and at a reasonable price its unused capacity and
  - (c) the network user uses less than 80% of its contracted capacity with an effective or notional contract duration of more than one year for consecutive twelve months for which no proper justification could be provided or

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- (d) the network user systematically underutilises its contracted capacity with effective or notional contract duration of more than one year during a specific period covering at least one winter month including cases where such underutilization has only been halted on a limited number of days for which no proper justification could be provided.
- 2. The application of a short-term UIOLI mechanism shall not be regarded as justification for the purpose of long-term UIOLI.
- 3. Transmission system operators shall regularly provide the national regulatory authorities – in conjunction with the national regulatory authorities' competences pursuant to Article 41(1)(j-k) of Directive 2009/73/EC – with all the data necessary to monitor the extent to which contracted capacities with effective or notional contract duration of more than one year are used.
- 4. The national regulatory authority shall request that the transmission system operator withdraws from the network user systematically underutilised contracted capacity if conditions (a), (b) and (c) or (a), (b) and (d) in point 1 above apply.
- 5. In case an interconnection point connects transmission systems in two different Member States, the relevant national regulatory authorities shall take coherent decisions. Article 8 (1) of Regulation (EC) No 713/2009 shall apply.
- 6. Withdrawal results in the network user losing its contracted capacity, partially or completely for a given period or for the remaining effective or notional contractual term. Furthermore, the network user can be limited in its nomination rights for a given period to the maximum flows of the previous year. The capacity withdrawn or subjected to limits to the nomination rights shall be taken into account when calculating capacity and shall be offered through the regular capacity allocation process by the respective transmission system operator(s). The network user shall keep all its contracted capacity as far and as long the capacity is not reallocated.

### **3. Definition of the technical information necessary for network users to gain effective access to the system, the definition of all relevant points for transparency requirements and the information to be published at all relevant points and the time schedule according to which that information shall be published**

#### *3.3 Information to be published at all relevant points and the time schedule according to which that information should be published*

- h) occurrence of contractual congestion in the course of the regular allocation process of capacity products with a duration of one month or longer including the number and volume of denied or unsuccessful requests and, in case of auctions, if they have cleared at prices higher than the reserve price.