

**PUBLIC CONSULTATION ON A PROPOSAL  
FOR A HARMONIZED LONG TERM UIOLI MECHANISM  
IN THE VIP IBERICO**

**EVALUATION OF RESPONSES**

March 2020



## **1 INTRODUCTION**

The natural gas transmission system operators (TSO) of Spain and Portugal (Enagas and REN) sent to the regulators a proposal for a common congestion management procedure - Long Term Use-It-Or-Lose-It mechanism (LT UIOLI), to be applied in the virtual interconnection point (VIP Iberico). CNMC and ERSE then submitted the proposal to a public consultation, within the South Gas Regional Initiative.

This LT UIOLI is set in the framework of Regulation (EC) no. 715/2009 and also of Circular 1/2013, approved by the CNMC on 18 December 2013, and Procedure no. 12 of the Manual of Procedures for Access to Infrastructures (Diretiva no. 13/2017), approved by ERSE on September 21, 2017.

The public consultation has been open from 5 to 26 February, 2020, on ACER's website. ERSE also launched a consultation on the national procedure, to national stakeholders, in Portuguese. The two consultation channels were simultaneous and the final decision process considers responses to either of them.

The regulators' evaluation of responses presents a summary of the comments received, in English, but the original non-confidential versions of the responses received are published.

The consultation got six answers by stakeholders: EDP, Endesa, Galp, Naturgy, Repsol and Terèga. Regulators welcome very much all the comments received and present their evaluation, including clarifications and reasoning for accepting or rejecting the proposals.

The new common LT UIOLI mechanism that resulted from the consultation is approved and implemented in a harmonized way starting from April 2020. The harmonized LT UIOLI at the VIP Iberico is part of the South GRI work plan.

## **2 ASSESSMENT OF THE RESPONSES RECEIVED AND FINAL DECISION**

In this section, regulators present a summary of the comments sent by stakeholders and their views about the proposals. The section is organized by topics. The full text of the responses (non-confidential version) is available at ACER's website.

## 2.1 GENERAL COMMENTS

Respondent's feedback	NRA's evaluation
<p><b>REPSOL</b></p> <p>«[...] REPSOL is of the opinion that the application of the proposed mechanism may be further harmonized in order to prevent misunderstandings and different ways of application. This consideration is quite important in a context where the booked capacity is being increasingly bundled and the VIP IBERICO is starting to be quite congested. Therefore, REPSOL considers that a full alignment and more concretion in the terms defined in the Specifications to the Proposal is desirable.»</p>	<p><b>Noted.</b> The purpose of the proposal is to set up common rules for applying congestion management procedures in the VIP Iberico. Therefore, the procedure applied by Enagas and REN should be fully aligned.</p> <p>In order to further ensure the alignment of both texts (Portuguese procedure and common TSO procedure), it was clarified that for unused capacity to be excluded from the LT UIOLI evaluation it should have been offered in the secondary market, though a platform (in adequate price conditions). This way, it becomes clear that spare capacity was offered publicly and in a binding way.</p>

## 2.2 CLARIFICATION OF THE CONCEPT OF LONG TERM CAPACITY SUBJECT TO UIOLI MECHANISM

Respondent's feedback	NRA's evaluation
<p><b>GALP</b></p> <p>[free translation]</p> <p>We consider multi-annual capacity contracts should be clarified, because UIOLI mechanism will only apply to these long term contracts. Although, under European regulation, capacity shall be contracted has bundled in the VIP, being unbundled products exceptional, the proposal is not clear about this:</p> <p>As an example, if capacity was subscribed in consecutive annual contracts (separate contracts), how will capacity withdrawal work in this case? We understand that any withdrawal of capacity will only apply to next year's annual contracts, not to annual capacity further in the future, already reserved. If an underutilization of capacity is found, will it have any impact on the user's capacity requests in the auctions for the next capacity year?</p>	<p><b>Noted.</b> The Congestion Management Procedures (CMP) apply to any capacity contracts, either bundled or unbundled. If unbundled capacity is withdrawn then it should be offered as bundled, if possible. It should be noted that unbundled contracts in VIP Iberico will almost disappear in 2020 and, totally, in 2021. Any future capacity allocation will apply to bundled capacity products as much as possible, according to the European network code for capacity allocation mechanisms (CAM NC). There were no changes to the procedure in this subject.</p> <p>Annual capacity contracts under CAM NC are always separate contracts (even if they were contracted in the same auction window). Any underutilization of capacity will only affect next year's annual capacity rights (no matter if the user also has contracted capacity further in the future and no matter if next year's capacity was contracted before or after the CAM NC entered into force).</p> <p>Any withdrawal of capacity of a user does not harm or limit its participation in capacity allocation processes.</p>
<p><b>EDP</b></p> <p>[free translation]</p>	<p><b>Noted.</b> Any underutilization of capacity will only affect next year's annual capacity rights (no matter if the user also has</p>

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<p>According to section 3.2.3 of MPAI's procedure no. 12, relative to LT UIOLI, the TSO applies the capacity withdrawal to the next capacity year (A+1). There is no reference to any consequence to capacity rights in the following years (the remaining years of a long-term capacity contract), namely if any capacity reduction will apply, similar to that applied in A+1.</p>	<p>contracted capacity further in the future). No change to the procedure is necessary.</p>
<p><b>Naturgy</b> [free translation]</p> <p>There should a consistent approach to the time interval for analysing the underutilization and the period of capacity withdrawal.</p> <p>In paragraph 2, the mechanism considers annual (or longer) and quarterly contracts in the analysis of underutilization. However, only annual or longer contracts will be eligible for capacity withdrawal (paragraph 8), relating the next capacity year. If quarterly contracts are considered for analysing underutilization, then they should also be affected by capacity removal, if it occurs.</p>	<p><b>Noted.</b> Capacity withdrawal happens before the annual capacity auction (according to CAM NC calendar), in order to be offered in that auction and the following. Hence, it is not possible to apply the withdrawal to quarterly products as they are offered in the quarterly auctions that happen later.</p> <p>Regulation EU 715/2009 refers to "contract duration of more than one year or recurring quarters covering at least two years" in the LT UIOLI guidelines, hence those products were included in capacity evaluation.</p> <p>No change to the procedure is necessary.</p>

## 2.3 CRITERIA FOR DETERMINING THE UNDERUTILIZATION OF CAPACITY

Respondent's feedback	NRA's evaluation
<p><b>REPSOL</b></p> <p>«5. In addition, when the TSO detects that there is <del>continued</del> underutilization of the contracted capacity, <b>as defined in the point 4 of this document</b>, it will check whether the network user has offered the capacity on the secondary market under reasonable conditions.</p> <p>Reasonable conditions will be considered if:</p> <p><b>(1) the price offered by the user is equal to or lower than the maximum value between the capacity reserve price at the time of the offer, and the price of the capacity in the capacity market at that time, if any; and the price at which the user acquired the capacity offered.</b></p> <p><b>(2) the amount of the capacity offered on the secondary market is equal to or higher than the underutilized one during the period of reference.</b></p> <p>These data must be provided by the network user, at the request of the TSO if necessary.»</p>	<p><b>Partially Agree.</b> A minor change to the text in paragraph 6 aims to clarify that only the amount of capacity offered in secondary markets, under reasonable conditions, shall be discounted from the underutilization analysis.</p> <p>The criterion of the historical price of capacity for the user is established in Circular 1/2013 and it is a fair criterion to access the offering conditions of unused capacity.</p>

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<p><b>REPSOL</b></p> <p>« 6. Booked capacity <del>may</del> <b>must</b> be withdrawn <b>by the TSO if the network user:</b></p> <p><b>(1) fulfils the criteria established in the point 4 of this procedure and</b></p> <p><b>(2) it has not offered the capacity on the secondary market as established in the point 5 of the procedure.</b></p> <p><del>where there is continuous underutilization of capacity and capacity has not been offered under reasonable conditions on the secondary market. »</del></p>	<p><b>Noted.</b> The interpretation of the wording of paragraph 6 shall include the possibility of not withdrawing capacity to a user, even if the underutilization conditions were met. This includes some situations where facts external to the user may influence its use of capacity (as a technical unavailability of the infrastructure or in special cases with unbundled capacity). The “may” expression does not mean a power of discretion by TSOs but room for special circumstances, which must be duly justified by TSOs.</p> <p>The procedure was adjusted to better reflect the joint conditions.</p>

## 2.4 WITHDRAWAL OF CAPACITY

Respondent's feedback	NRA's evaluation
<p><b>GALP</b></p> <p>[free translation]</p> <p>It is not clear how capacity is withdrawn:</p> <p>As an example, if in a contract of 50GWh/d there is an average utilization of 25 GWh/d, and if the capacity contracted by the user for the following years already decreases to 30 GWh/d, will the capacity withdrawal apply in absolute terms (25 GWh/d), leaving the user only with 5 GWh/d? The CMP should take in consideration these specific situations, avoiding double capacity reduction, when the user had already included that reduction in its contract profile.</p>	<p><b>Noted.</b> The withdrawal of capacity is proportional to the capacity rights of the user for the gas year of the withdrawal. The underuse rate will be deducted from the user's capacity rights.</p> <p>In the example, the withdrawal would be of 15 GWh/d.</p> <p>No change to the procedure is necessary.</p> <p>There is no consideration of any decrease (or increase) of capacity rights of a user for the next gas year. It is a blind rule that applies to whatever capacity rights the user has contracted for a given year.</p> <p>The incentive is for users to avoid any strategies that result in causing bottlenecks in the infrastructure. CMP is a last resource mechanism since it is expected that users manage their capacity needs. In this sense, the secondary market is developed in order to allow users to proactively try to adjust their contracted capacity portfolio to their needs.</p>
<p><b>GALP</b></p> <p>[free translation]</p> <p>The CMP should only apply when the technical/commercial capacity is totally contracted and, simultaneously, there is an underutilization of capacity by any user. If a rule like this is not included, capacity may be withdrawn when no congestion occurs, creating time windows when the user cannot</p>	<p><b>Not Agree.</b> In the past, a similar question was raised in Spain on whether CMP should apply when no congestion occurs. ACER was then of the opinion that CMP apply to international connections irrespective of the existence of a congestion. The interpretation was coincident with the Spanish High Court.</p> <p>No change to the procedure is considered necessary.</p>

Respondent's feedback	NRA's evaluation
<p>trade its capacity rights, which is an, undue, double loss for the user. This is so because the user is bound to pay for capacity that is not allocated to other users.</p>	
<p><b>Terèga</b></p> <p>«The two main conditions for the implementation of the UIOLI LT procedure are complete and aim to demonstrate the under-utilisation of the reserved capacity.</p> <p>Nevertheless, UIOLI LT is a mechanism provided by the CMP Annex which main objective is the management of commercial congestion. The conditions proposed by the project for the implementation of UOLI at the VIP IBERICO could detect an under-utilisation of capacity without considering effectively the existence of a congestion situation. Without vigilance, the UIOLI LT mechanism might therefore result in the triggering of a withdrawal of capacity, without any effective demand for this capacity.</p> <p>In the light of this observation, TEREKA considers that the coordination between TSOs (specified in articles 8 and 9) to decide whether or not to withdraw some capacity is the key step of the good functioning of this mechanism. This step would have to be indeed the assessment of existing commercial congestion by showing that there has been at least one unsatisfied demand for capacity over the studied period. If not, capacity should not be withdrawn.»</p>	<p><b>Not Agree.</b> See the answer to the previous comment.</p>
<p><b>Naturgy</b></p> <p>[free translation]</p> <p>Since CMP aims to manage congestions there should be a condition for its application relating the existence of a contractual congestion.</p> <p>In paragraph 3 it should be added that capacity is only removed when a contractual congestion has occurred during the revision period.</p> <p>Moreover, in paragraph 8 it should be clarified that capacity removal only applies, during the next years capacity allocation procedures, after a contractual congestion occurs in some of the auctions for the same product.</p> <p>In order to implement this suggestion, the concept of contractual congestion must be defined in the mechanism. We considered there is a contractual</p>	<p><b>Not Agree.</b> See the answer to the previous comment.</p> <p>The offer by TSOs of the capacity that was withdrawn by the LT UIOLI is at the condition of allocating first any available technical capacity. Hence, if there is no demand for that capacity, the original user retains its rights.</p>

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<p>congestion when demand for capacity is greater than the offer of capacity and when capacity is allocated at a premium price. The mechanism should identify the auctions considered in implementing the suggestions above.</p>	
<p><b>Endesa</b></p> <p>«The point 8 of the proposal establishes “The capacity to be withdrawn shall be calculated as follows: the highest value of the utilization rate of the two periods will be subtracted in percentage from one hundred. The booked capacity by the network user for the following gas year shall be reduced by this percentage.”. That means to consider the non-use rate of the capacity of the previous year (period April to March) to calculate the percentage of the booked capacity in the following gas year to be reduced.</p> <p>We consider that this percentage or rate cannot be directly applied without taking into account the amount of capacity booked during the analysed two periods and the capacity booked in the following gas year (these quantities can be very different). We consider that the amount of capacity to be withdrawn (in GWh/day) should never be higher than the capacity non-used (in GWh/day).</p> <p>Due to the above, we propose the following wording for the point 8:</p> <p>“8. Each TSO will share the results of the analysis with the adjacent TSO every year before the end of April, and before 15 May, it will be decided whether or not to withdraw the underutilized capacity for the following gas year. The capacity will be withdrawn from the annual contracts (or contracts with a duration longer than one year if applicable) that the network user had in force at the time of the analysis for the period between October of the current year and September of the following year. The capacity to be withdrawn shall be calculated as follows: the highest value of the utilization rate of the two periods will be subtracted in percentage from one hundred. The booked capacity by the network user for the following gas year shall be reduced by this percentage. <b>The amount of capacity reduced in the following gas year will never be higher than the amount of capacity non-used in the two analysed periods.</b> The capacity not withdrawn from the user's original contract, who retains his rights and obligations, will continue to be billed as before. The</p>	<p><b>Not Agree.</b> The user can always prevent the application of the LT UIOLI by offering unused capacity in a secondary market platform. Therefore, the withdrawal of the user's capacity (in the following gas year) is proportionate to the underutilization.</p>



Respondent's feedback	NRA's evaluation
<p>withdrawn capacity will be paid by the original holder until it is reallocated to another user." »</p>	
<p><b>REPSOL</b></p> <p>« 8. Each TSO will share the results of the analysis with the adjacent TSO every year before the end of April, and before <del>15</del> <b>the end of May, the capacity will be withdrawn.</b> <del>it will be decided whether or not to withdraw the underutilized capacity for the following gas year.</del></p> <p>(...) »</p> <p>« 15. Without prejudice of no. 16, the TSO of the interconnections will provide network users with the following information annually before <del>15</del> <b>the end of May:</b></p> <ul style="list-style-type: none"> <li>- Contracts that are subject to revision.</li> <li>- The capacity to be withdrawn and the calculations that lead to the determination of mentioned capacity.</li> <li>- The allocation processes in which the capacity to withdraw would be offered.</li> <li>- The periods in which the capacity to withdraw cannot be offered in the secondary market. »</li> </ul>	<p>Since the capacity withdrawn will be offered in the yearly capacity products auctions (held on the first Monday of July) and taking into account that the capacity to be offered in the yearly products auction must be notified to the market at least one month in advance, the withdrawal of capacity must be done no later than 15 May in order to have enough time for both:</p> <ul style="list-style-type: none"> <li>• to receive reasoned objections from the users whose capacity have been withdrawn (and to evaluate the objections)</li> <li>• to be able to add this capacity in the calculations of the capacity to be offered in yearly products auctions.</li> </ul>
<p><b>REPSOL</b></p> <p>« 16. The network users whose capacity rights are to be withdrawn can submit a reasoned objection to the TSO, until 5 calendar days after receiving the draft decision with the information referred to in the previous paragraph.</p> <p>The TSOs shall evaluate the objection and take a final decision, after receiving the objection <b>and based on the criteria settled in points 4 and 5</b>, informing the network user of their final decision and of their assessment of the objection.</p> <p><b>This final decision shall be validated by the Regulators at both sides of the border.»</b></p>	<p><b>Not accepted.</b> The NRAs consider that the procedure should be easy to implement operationally, and comply with the calendar of capacity allocation auctions. To introduce an approval by the NRAs in the procedure could delay the procedure.</p> <p>The procedure limits the subjectivity in its steps, making it adequate for direct implementation by TSOs. Any complaint about the mechanism by the users can use the same appeal process as any other TPA subject.</p>
<p><b>EDP</b></p> <p>[free translation]</p> <p>In section 3.2.2 of procedure no. 12 of MPAL, underutilization of capacity occurs when:</p> <p>a) the usage rate in both periods of section 3.2.2 is under 80%;</p>	<p><b>Partially Agree.</b> Resulting from the comment, the procedure no. 12 of the Portuguese balancing rules was modified (section 3.2.2) to adopt accurately the wording of the common TSOs' procedure.</p> <p>It is important to notice that the second condition compares the final renomination in each day with the nomination on the day before, for the same day. Differently, the first</p>

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<p>b) At least for 60 days during the analysed periods, the user nominated above 80% of its capacity and then renominated downward for half, or less, of the initial nomination.</p> <p>The second condition may not have sufficient context since for the calculation of the usage rate, last nomination or renomination for each gas day is used.</p>	<p>condition only considers the final confirmed renomination for each day.</p>

## 2.5 USER'S RIGHT TO CONTRACT NEW CAPACITY

Respondent's feedback	NRA's evaluation
<p><b>GALP</b></p> <p>[free translation]</p> <p>It should be clear what conditions apply to the user to whom capacity was withdrawn by UIOLI, relating its participation in capacity allocation procedures. We consider that an underutilization of capacity shall not be viewed as an inadequate behaviour by the user but, instead, as the result of a fluctuation in its consumer portfolio in a given year. This may happen in a small market as the Portuguese, where adding or losing a large consumer can have a big impact in the user's utilization of the transmission network.</p>	<p><b>Noted.</b> The user to whom capacity has been withdrawn can still participate in the capacity allocation auctions as any other user. Anyway, if, as a consequence of a fluctuation in his consumer portfolio, the network user needs less capacity than contracted, the user is expected to proactively try to adjust his capacity portfolio accordingly.</p> <p>No change to the procedure is necessary.</p>

## 2.6 OFFER OF WITHDRAWN CAPACITY

Respondent's feedback	NRA's evaluation
<p><b>Naturgy</b></p> <p>[free translation]</p> <p>Paragraph 12 should say that capacity withdrawn by the UIOLI mechanism shall be allocated through bundled capacity products with priority, according to the general principals of the Circular 1/2013 of CNMC.</p>	<p><b>Partially Agree.</b> When unbundled capacity is withdrawn, it shall be offered through bundled capacity products as much as possible. This results from the CAM network code, therefore it is not necessary to change the procedure.</p>

### **3 CONCLUSIONS**

The current context of the utilization of gas interconnection between Portugal and Spain is not close to congestion because of the greater role of LNG in the Iberian Peninsula. Nevertheless, having a common CMP is a stepping-stone for a more integrated market and even more relevant when almost all the interconnection capacity will soon be allocated as bundled.

The South Gas Regional Initiative works as enabler of these cross border initiatives and a focus point for promoting compliance of European regulation.

The LT UIOLI for the VIP Iberico is now applied by both TSO in a harmonized way, in compliance with Regulation EU nº 715/2009. Regulators will supervise its implementation.