CONSULTATION RESPONSE

Response to the ACER peak-shaving products under normal market circumstances consultation

Brussels, 17 April 2025

Key messages

While we support the objective of promoting flexible demand, we believe that consumption should chiefly respond to market-wide signals, rather than TSO-driven products like peak-shaving products (PSP) which fundamentally interfere with other markets.

Overall, we see little value in introducing PSP during normal circumstances and we request a public impact assessment for PSP use in emergency conditions, demonstrating no negative impacts on market functioning.

Market drivers, including electricity prices on the market, are the primary drivers for demand response, in the short term but also months to years before delivery. Short-term TSO products will not stimulate demand response in a manner that is sustainable and sufficiently long-term but rather distort the effectiveness of market-driven solutions.

Detailed comments

1.1.1 The first policy objective of a peak-shaving product is to lower wholesale electricity prices. The decrease of the wholesale electricity price would reduce potential

"excessive" windfall profits of producers and reduce costs for consumers.

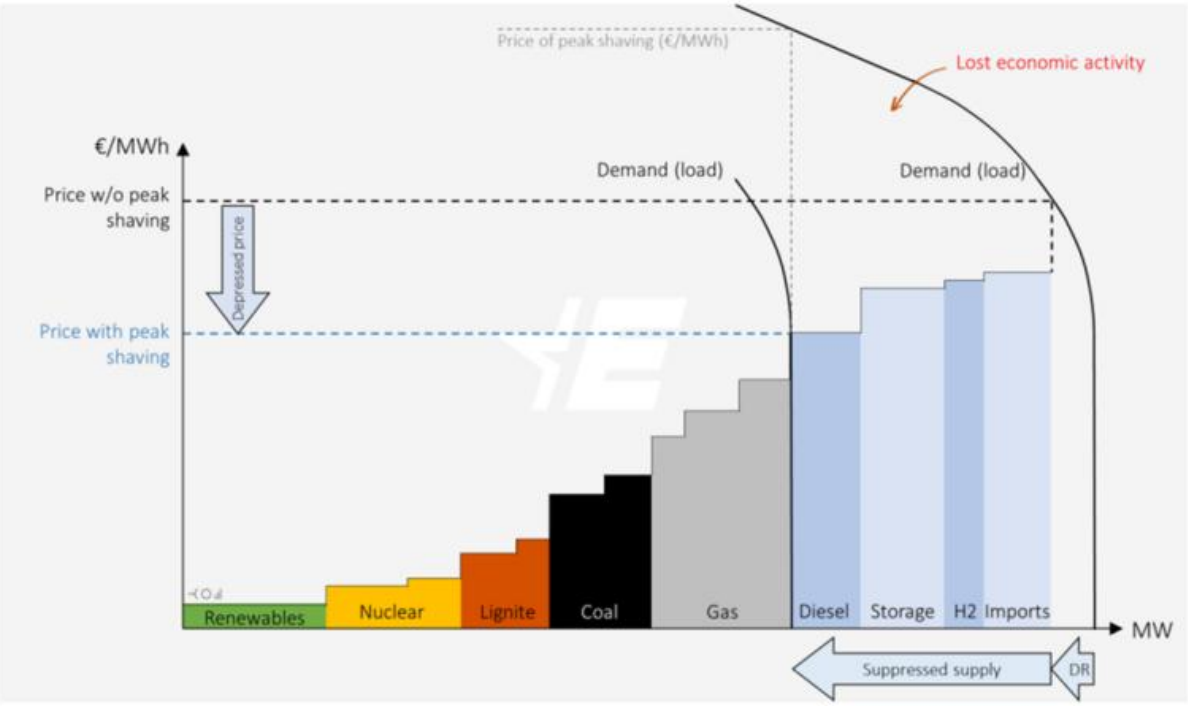

Figure 1: Illustration of the functioning of a peak-shaving product. (Source: Euractiv (2023))

This concept is illustrated in Figure 1. The idea behind a peak-shaving product is to activate demand response based on another price signal than the day-ahead price, thereby reducing the volume of demand participating in the market as buy orders (shift from the right demand curve to the left demand curve*). This reduction in market-participating demand would, in turn, lead to a decrease in wholesale electricity prices compared to a scenario without a peak-shaving product.

Do you agree that the introduction of a peak-shaving product would lead to a reduction of the wholesale electricity prices?

☐Fully agree

☐Partially agree

☐Partially disagree

☒Fully disagree

☐No opinion

Feel free to justify your answer above. 1000 character(s) maximum

Peak-Shaving Products (PSP) might lead to an artificial decrease in wholesale electricity prices, but the consequences would lead to higher costs overall such as loss of economic surplus/social welfare and higher consumer costs. A peak-shaving product would distort the free price formation based on supply and demand fundamentals and contrast with one of the main principles of the EU Electricity Regulation mandating no price limits.

The consultation assumes that introducing peak-shaving products will sustainably lower wholesale electricity prices. We respectfully disagree. **While peak shaving might temporarily reduce extreme price spikes, it does not eliminate the underlying costs of supply – it merely shifts them to other periods or mechanisms.** Suppressing prices during peak hours can **distort normal market signals and force cost recovery elsewhere**, leading to higher prices at other hours or new charges to make up the difference.
More details to be found in PDF.

PSP leads to disruption impacting all timeframes:

- Forward markets (hedging activities of producers/consumers/retailers by futures and PPAs) will face challenges to consider diverse national peak-shaving activations.
- Day-ahead and intraday products competing with TSO-lead activations, the forecast made by TSO/NEMO impossible to audit and standardize comprehensively and impacting the whole market coupling, risk of mimicking behaviour of market participants impacting optimal economic dispatch.
- Lack of DSR resources participating in balancing and local markets due to previous activation in day-ahead markets.

All of this will impact investment decisions and the economics of existing assets, especially for flexible assets.

1.1.2 In an integrated electricity market, the price in a bidding zone depends on supply and demand across all Member States, as well as the available cross-zonal

capacities. For a small, well-connected Member State, the price may be largely influenced by demand in larger neighbouring Member States. As a result, due to the different size of the System Operator (SO) and national systems, the ability of individual SOs to influence their national price might be different (due to national demand, level of cross-zonal capacities and national characteristics) compared to neighbouring Member States.

Do you agree that the SO of a small Member State may have a limited impact on market prices when using a peak-shaving product?

☐Fully agree

☐Partially agree

☐Partially disagree

☒Fully disagree

☐No opinion

Feel free to justify your answer above. 1000 character(s) maximum

EU market integration and EU market design is contrary to this kind of reflections about influencing wholesale electricity markets. We can imagine three different situations negatively impacting market integrity:

1. A small bidding zone with a low level of interconnection and lack of adequacy resources should let the price signal attract new investments (including new interconnections) and, if necessary, implement capacity mechanisms or strategic reserves, open to cross-border participation.
2. A small bidding zone with a high level of interconnection implementing peak shaving products is socializing the benefit of the national product (but not the direct cost) and unduly impacting the EU wholesale electricity price formation.
3. A bigger bidding zone could attempt to use peak shaving as an arbitrage tool against market coupling, especially when it has low interconnection levels.

1.1.3 ACER understands that while the introduction of a peak-shaving product could reduce wholesale electricity prices, it may not guarantee lower costs for consumers. This is because a peak-shaving product also entails additional costs for SOs. First, there is the cost of procuring the peak-shaving product in order to ensure it is available (i.e. reservation costs). Second, there is the cost of activating it. As

illustrated in Figure 1, the price at which demand reduction is compensated through the peak-shaving product is higher than the day-ahead market price. This is because the reduced demand would have otherwise been cleared in the day-ahead market.

What is your view on the potential impact of a peak-shaving product on consumer costs, considering both its potential to lower wholesale electricity prices and the associated costs for SOs? 1000 character(s) maximum

PSP are designed like call options, so the cost described is right and will be passed to consumers. However, more important is the fact of having relevant indirect effects and costs, according to our answers to the previous questions. Although we are aware that a proper quantitative assessment would be very challenging, it would be advisable to publish any quantitative assessment presented by any respondent to this consultation trying to demonstrate an overall positive effect of peak shaving products.

This quantitative analysis should account for realistic hypotheses, a robust mathematical model and reliable input data.

1.1.4 For assets receiving state support, such as renewable energy subsidies, capacity mechanisms, or Contracts for Difference (CfDs), ACER considers it more efficient to address potential "excessive" windfall profits through these support mechanisms rather than by introducing a peak-shaving product to lower wholesale electricity prices.

For example, the use of a two-sided Contract for Difference or the implementation of a reliability option within a capacity mechanism could ensure that producer revenues exceeding a certain threshold are recovered.

Do you agree with ACER's view?

☐Fully agree
☒Partially agree
☐Partially disagree
☐Fully disagree

☐No opinion

Feel free to justify your answer above. 1000 character(s) maximum

If designed correctly, market interventions such as CRMs and CfDs do not create windfall profits and clawback mechanisms are, therefore, not needed. We focus on avoiding paying flexibility twice for the security of supply.

Security of supply should not be mixed up with indirect price caps. With reliability options, the strike price should not restrict price formation. This hinders the efficiency of the overall market design.

CfD and any other direct price supports must follow the principles of State Aid guidelines, to ensure no overcompensation occurs. However, most CfD schemes drain liquidity in forward markets (in particular, futures).

Other interactions with State Aid to consider – if PSP would be authorised under State Aid rules and if not, it could be a risk for rule circumvention.

1.1.5 For assets that are not under state support schemes, ACER understands that limiting the infra-marginal rents of producers in normal market circumstances might prevent producers to recover their investment costs.

Do you agree with ACER's understanding?

☒Fully agree

☐Partially agree

☐Partially disagree

☐Fully disagree

☐No opinion

Feel free to justify your answer above. 1000 character(s) maximum

Merchant assets are not enjoying "potential excessive windfall profits". They are competing in the market in all timeframes.

1.1.6 ACER considers that lowering wholesale electricity prices through subsidised demand response such as peak shaving is not an efficient approach to supporting consumers, as the subsidy provides the same level of support to all consumers, regardless of their actual needs. Instead, ACER recommends targeted measures for vulnerable consumers rather than broad mechanisms that benefit all consumers equally (see 2023 CEER/ACER retail report).

Do you agree with ACER's assessment?

☒Fully agree

☐Partially agree

☐Partially disagree

☐Fully disagree

☐No opinion

Feel free to justify your answer above. 1000 character(s) maximum

Our answer above should be understood as agreeing that PSP are not an efficient approach rather than a full agreement with the 2023 CEER/ACER Retail Report and all the measures identified. We also recognize that vulnerable consumers are an identified area to address following the energy crisis.

1.2.1 The second policy objective of a peak-shaving product is to ensure security of supply. The premise is that demand reduction from the activation of the peak-shaving product could help avoid situations where there is a loss of load (when production and imports cannot meet demand).

Capacity mechanisms and strategic reserves are introduced and sized to address adequacy concerns (Article 21.1 and 22.1(c) of Regulation 2019/943). For this reason, ACER is of the opinion that in Member States that already have a capacity mechanism or a strategic reserve in place, there is less need to introduce an additional peak-shaving product for ensuring security of supply, as these mechanisms already ensure the necessary level of security of supply.

Do you agree with ACER's understanding? Do you see any advantages in the design of a peak-shaving product compared to a strategic reserve or a capacity mechanism?

☒Fully agree

☐Partially agree

☐Partially disagree

☐Fully disagree

☐No opinion

Feel free to justify your answer above. 1000 character(s) maximum

Section 1.2.1 mixes two questions, to which the answers are different. We fully agree with ACERs understanding that there is no need to introduce additional PSP to ensure security of supply. On the flip side, however, we do not see any advantages in the design of PSP compared to a strategic reserve or a capacity market.

Impacts on CRMs include in general, that missing money expectations of CRM participants are distorted. There is a risk of paying security of supply twice. If a CRM is in the form of a reliability option, CRM bidders could have difficulties assessing the price of reliability options (because they are polluted by the activation of the PSPs).

1.2.2 For countries without capacity mechanisms or strategic reserves, ACER is concerned that by lowering wholesale electricity prices, the peak-shaving product could weaken investment incentives in new capacities, potentially affecting long-term security of supply.

Do you agree with ACER's concerns?

☒Fully agree

☐Partially agree

☐Partially disagree

☐Fully disagree

☐No opinion

Feel free to justify your answer above. 1000 character(s) maximum

We also observe an impact on the investment signal and the economic viability of existing assets. Optimal dispatch (maximization of social welfare) is not ensured, and side effects can provoke windfall missing money problems in other assets.

1.3.1 The third policy objective of a peak-shaving product is to enable the participation of additional demand response that cannot currently participate in existing wholesale electricity markets.
Do you consider that, even after the implementation of the demand response network code, some demand response will still be unable to participate in the market? If so, what barriers prevents their participation? 1000 character(s) maximum

Demand response should only be deployed to the extent that price signals make it economically viable. An overly complex regulatory framework and administrative hurdles as well as competing mechanisms (such as PSP vs Demand Response NC), may be additional reasons for demand response being unable to participate in the market. Another consideration is the implementation of the network code for demand response will likely be in 2029, which limits the identification of immediate interactions of the network code with peak-shaving products.

1.3.2 ACER understands that the technical requirements for participating in a peak-shaving product would not be lower than those for participating in day-ahead and intraday markets. This is because mechanisms like peak-shaving products, which provide remuneration for capacity (e.g., balancing capacity, capacity mechanisms), typically involve more stringent control processes (such as prequalification) than wholesale market participation.
Do you agree with ACER's understanding?
☒Fully agree
☐Partially agree
☐Partially disagree

☐Fully disagree

☐No opinion

Feel free to justify your answer above. 1000 character(s) maximum

1.3.3 ACER understands that by providing remuneration for capacity, a peak-shaving product could enhance the business case for demand response developers and, in turn, support the development of additional demand response.

Do you agree with ACER's understanding?

☐Fully agree

☐Partially agree

☐Partially disagree

☒Fully disagree

☐No opinion

Do you see any modifications to the characteristics (e.g., time of procurement, time of activation) of the peak-shaving product that would make it more attractive for demand response? 1000 character(s) maximum

Despite the theoretical incentives of PSP, their negative impacts are expected to outweigh these benefits, resulting in a net zero or negative outcome for demand response developers. The focus should be on implementing the already advanced regulatory frameworks for demand response participation in electricity markets, rather than complicating their development with further market interventions. Technologically neutral competitive markets provide the best indication for the business case of demand response, making any additional incentives beyond these market signals likely inefficient.

1.3.4 When demand response is activated through the peak-shaving product, its remuneration is higher than if it had been activated through the market. This is because a demand response asset participating in the peak-shaving product receives both a capacity payment and an activation price, which exceeds the wholesale market price (see Figure 1). As a result, there is a risk that the

introduction of a peak-shaving product could lead to a shift of demand response away from wholesale markets toward the peak-shaving product.

Do you agree with this?

☒Fully agree

☐Partially agree

☐Partially disagree

☐Fully disagree

☐No opinion

Feel free to justify your answer above. 1000 character(s) maximum

DSR would also be away from balancing and local market because DSR is naturally an energy-limited resource. Therefore, we could pay an undue extra cost of the reservation of peak shaving actions of a specific demand resource which could participate in normal conditions in all market segments.

See answers to questions 1.3.1 and 1.3.3.

1.3.5 As a peak-shaving product reduces wholesale electricity prices, this might reduce the business case for the development of demand response projects to participate in wholesale electricity markets.

Do you agree with this?

☒Fully agree

☐Partially agree

☐Partially disagree

☐Fully disagree

☐No opinion

Feel free to justify your answer above. 1000 character(s) maximum

Yes, especially for prime movers in DSR in other EU jurisdictions and for the rest of flexible assets. We face a distortion at the EU level because peak shaving resources are not integrated with the current standard balancing products.

See answers to the questions above.

2.1 ACER understands that by remunerating demand reduction at a price different from the wholesale electricity price, the introduction of a peak-shaving product could result in an inefficient dispatch and therefore a loss of socio-economic surplus. Specifically, demand response participating in the peak-shaving product may be activated and therefore not consumed, even though its valuation is higher than the day-ahead price (see Figure 1). As a result, the economic surplus would have been increased if this demand had been allowed to consume instead.
Do you agree with ACER's understanding?
☒Fully agree
☐Partially agree
☐Partially disagree
☐Fully disagree
☐No opinion
Feel free to justify your answer above. 1000 character(s) maximum

The distortion occurs both for lower and higher prices, as explained in our previous answers. Moreover, the competitive process to award peak shaving products does not demonstrate the real value of additional demand response because the most flexible resources (due to hedging strategies, previous investments in energy efficiency and other flexibility measures) compete with the less flexible ones.

2.2 In an integrated market, ACER understands that by reducing national demand, a System Operator would also lower electricity prices in other Member States. This price reduction could, in turn, impact the incentives for demand response development in those markets or affect their security of supply.
Do you agree with ACER's understanding regarding the cross-border impact of activating a peak-shaving product?
☒Fully agree

☐Partially agree

☐Partially disagree

☐Fully disagree

☐No opinion

Feel free to justify your answer above. 1000 character(s) maximum

We can observe rebound effects in prices, or even distortions in D+1, etc. This can be unpredictable, because the forecast of TSO/NEMO about peak hours is not made with perfect foresight, naturally. Moreover, peak shaving products, as described in the Electricity Regulation, lead to uncoordinated national measures.

2.3 *Do you have any other comments on the interaction between a peak shaving product and existing mechanisms and markets (capacity mechanism, balancing products, wholesale markets)? 1000-character(s) maximum*

Peak-shaving products, especially when implemented by TSOs, would lead to a patchwork of national initiatives and thus heavily impact the orderly functioning of the EU internal energy market. On day-ahead market coupling:

- NEMOs and TSOs are not market participants. The task of forecasting prices creates legal problems for both NEMOs and TSOs in terms of REMIT compliance and accountability. The Electricity Regulation mandates no price limits (except for technical ones). PSPs go against this principle. It could be possible to contract the obligation of bidding by using some products offered in day-ahead market coupling at pre-defined prices. However, this must be published according to REMIT and it represents a major disturbance to market functioning.
- Impacts on forward markets:
    - Appetite to hedge from consumers in peak periods.
    - Misalignments of the valuation of tariffs offered to consumers with a peak/off-peak component, as defined in Electricity Directive (recast by the EMD)(15a).

3. *You are kindly invited to share your general view on the topic of peak-shaving products. Feel free to provide any other benefit or disadvantage of the introduction*

of peak-shaving products under normal market circumstances, as well as any other comments. 1000 character(s) maximum

ACER should continue to advocate for Member States to remove barriers to demand response that currently hinder DR from reacting to wholesale price signals instead of introducing PSPs. The recent reports from ACER are a good start, such as the DSR Recommendations.

Market drivers, including electricity prices on the market, are the primary drivers for demand response, in the short term and months to years before delivery. Short-term TSO products will not stimulate demand response in a manner that is sustainable and sufficiently long-term but rather distort the effectiveness of market-driven solutions.

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