

Deliberation of the French Energy Regulation Commission of 23 May 2013 deciding on the commercialisation of a transshipment service at the Montoir-de-Bretagne LNG terminal operated by Elengy

Present at the session: Philippe de Ladoucette, Chairman, Olivier Challan Belval, H  l  ne Gassin, Jean-Pierre Sotura and Michel Thioll  re, commissioners.

Having regard to the French Energy Code, and in particular Articles L. 134-2 and L. 111-89,

The purpose of this deliberation is to define the conditions governing the commercialisation of a transshipment service at the Montoir-de-Bretagne terminal operated by the Elengy company.

1. Background

Elengy, a wholly-owned subsidiary of GDF Suez, operates the regulated LNG terminals of Montoir-de-Bretagne and Fos Tonkin. It has approached the French Energy Regulation Commission (CRE) in view of proposing a transshipment service at the Montoir-de-Bretagne terminal, consisting of transferring liquefied natural gas (LNG) between two vessels docked simultaneously at two different berths. Elengy considers that this transshipment service does not fall within the scope of Directive 2009/73/EC of 13 July 2009¹ defining regulated facilities and in that context, has requested CRE to allow it to propose this service within a non-regulated framework.

2. Description of the transshipment service proposed by Elengy at the Montoir-de-Bretagne LNG terminal

The transshipment service aims to transfer quantities of LNG between two LNG vessels simultaneously docked at the LNG terminal's two existing jetties. This transfer would be carried out using direct connections between the two vessels. Therefore, the LNG transferred would neither be mixed nor stored with the LNG already present in the terminal's tanks.

Elengy intends to commercialise, during the upcoming months, at the Montoir-de-Bretagne terminal up to 79 transshipment slots per year as from 2017 for time lengths exceeding 10 years. It plans to propose this new service without reducing the terminal's regasification capacity, which would remain at 123 TWh/year.

The implementation of this service requires investments related to the revamp of one of the terminal's two berths. Elengy has specified that the availability of the existing regasification and loading services would in no way be affected during this renovation work.

3. Summary of responses in the public consultation carried out by CRE

From 3 to 22 April 2013, CRE carried out a public consultation in order to gather the opinions of market players/stakeholders on the conditions governing the commercialisation of this service and received 15 responses.

A great majority of contributors are in favour of Elengy's proposal and agree with CRE's analysis regarding the opportunity to provide this transshipment service within a non-regulated framework.

¹ Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC

Most contributors support the principles of cost allocation and the creation of a subsidiary for this activity as proposed by CRE in the public consultation notice. A great majority also requests that the operational management arrangements be specified by CRE in order to guarantee the neutrality of the transshipment service regarding access conditions to regulated services.

4. Regulatory treatment

4.1. Elengy's proposal

Elengy has stated that according to the provisions of Directive 2009/73/EC of 13 July 2009, an LNG facility is defined as *"a terminal which is used for the [...] importation, offloading, and regasification of LNG and includes ancillary services and temporary storage necessary for the re-gasification process and subsequent delivery to the transmission system [...]"*.

Elengy specifies that the transshipment service is not intended to supply the internal market in natural gas and that:

- the facilities would not be used either for the liquefaction of LNG, or for a chain of operations including importation, offloading and regasification of LNG;
- it is not a service necessary for, nor complementary to access to LNG facilities but a separate service.

Therefore, Elengy considers that this service does not fall within the scope of application of Directive 2009/73/EC of 13 July 2009 defining the activities that fall under a regulatory framework, and thus requests that it be allowed to commercialise this transshipment service within a non-regulated framework.

4.2. Results of the public consultation

A great majority of contributors agree with the principle of not regulating the transshipment service. They request the implementation of a framework that can guarantee the transparency of cost allocation between regulated and non-regulated services, as well as the conditions governing access to each of these services.

Most contributors support the principle of creating a subsidiary for the transshipment activity as proposed by CRE and state that the creation of an ad-hoc company will enable a clearer separation of costs and income.

4.3. CRE's analysis

CRE considers that the transshipment service proposed by Elengy does not fall within the scope of the definition of activities regulated by the aforementioned Directive. This service is not necessary for access to the LNG facility or for its operation and would not use facilities to import, offload and regasify gas for delivery to the transmission network and thus accessing the internal market in natural gas.

CRE therefore considers, given the provisions of the aforementioned Directive, that the transshipment service proposed by Elengy may be commercialised within a non-regulated framework.

However, the regulated LNG regasification and reloading services and the transshipment service require the common use of the terminal's wharves. Therefore, the co-existence of these different services requires the implementation of operational rules governing access to the berths guaranteeing that the new transshipment service does not deteriorate the conditions for access to the regulated services proposed by Elengy.

In addition, the provisions of Article L. 111-89 of the French Energy Code state that it is CRE's responsibility to approve the *"allocation rules, reporting entities and the principles determining the financial relations between the different activities [carried out by the operators]"*.

Therefore, CRE considers that the provision of a transshipment service within a non-regulated framework must depend on the implementation of:

- organisational and accounting measures to guarantee the transparency of the allocation of the respective costs of the different services and in particular to ensure allocation of costs generated by the transshipment service to its own users. In that context, CRE believes that creating a subsidiary for this activity is necessary for the provision of the transshipment service within a non-regulated

framework. The creation of a subsidiary will provide guarantees in terms of traceability and accountability, particularly because of the legal and fiscal obligations for the future entity (certification of accounts) and because each activity will bear its own economic and industrial risks;

- operational rules to guarantee that the transshipment service does not degrade the access conditions to the regulated services proposed by Elengy.

5. Allocating costs related to the provision of the transshipment service

5.1. Elengy's proposal

Elengy proposes to allocate to the transshipment service:

- 100% of new investment and operating costs necessary for this service;
- the portion of capital and operating costs, in due proportion, resulting from the shared use of assets and operating costs currently covered by the tariff for the use of regulated activities.

Elengy proposes that the shared capital and operating costs be allocated to the transshipment service by application of cost allocation keys.

5.2. Results of the public consultation

Most contributors support the principles of recharging capital and operating costs presented in the public consultation notice take account of the effective contribution of the LNG terminal to the provision of the transshipment service. In particular, contributors highlight that the transshipment service must necessarily bear all the costs that it incurs.

Some contributors have stated that this new service will expose the regulated activity to an operational risk, in particular the risk of damage to the industrial facilities during transshipment operations. They request that this entire risk be borne by the clients of the transshipment service.

5.3. CRE's analysis

CRE considers that the provision of the transshipment service within a non-regulated framework must necessarily be accompanied by the implementation of a framework that will guarantee that that service will bear all of the costs necessary for its provision. Therefore, CRE considers:

- that the additional costs resulting from the provision of the transshipment service must be fully borne by that service;
- that shared costs must be allocated, in due proportion to their effective contribution, to each service.

The shared costs must be allocated to the transshipment service through objective allocation keys which can be audited. In order to not pass the commercial risks of each service onto all users of the terminal, CRE considers that the allocation of shared costs must be based on the relative subscription levels of each service and not on the effective level of use. The application of these allocation keys will be verified by the auditor in charge of approving the subsidiary's accounts.

During each tariff period, these principles will be applied by CRE to determine the capital and operating cost trajectories applied to the regulated services. Moreover, CRE will have a right of access to the data of the subsidiary dedicated to the transshipment service, and should be able, if necessary, to carry out *a posteriori* complementary checks to ensure the correct application of these principles, continuity of methods and absence of cross subsidies.

With regard to each activity bearing the risks inherent to the provision of the different services, CRE has stated that creating a subsidiary for the transshipment service will guarantee allocation to each company of the economic and industrial risks related to its activity. CRE requests Elengy to ensure that users of the regulated service will contractually enjoy the same level of guarantee in the event of the unavailability of the terminal, regardless of the service that is responsible for this unavailability.

6. Operational management

6.1. Scheduling

6.1.1. Elengy's proposal

The transshipment service requires the simultaneous use of the terminal's two berths, and therefore reduces the number of possible slots for offloading and reloading operations, without modifying the effectively commercialised capacity. The revamping of the second jetty will however optimise availability.

The establishment of the annual schedule for the use of the terminal must take into account both the requests of users of regulated regasification services and users of the transshipment service. The same applies for the establishment of monthly schedules as well as the processing of intra-monthly rescheduling requests. Elengy proposes that the scheduling rules must in no way favour the users of the transshipment service compared to users of the regasification and reloading services.

Elengy has stated that the main objective of these operational rules must be to ensure neutral access to both services with the same level of firmness for capacity held by their respective users. It specifies that any priority given to a service over another would substantially affect the appeal of its offer.

Elengy therefore proposes:

- that the establishment of the annual schedule be governed by the management of stocks and regasification capacity. As a result, special attention would be paid to the offloading dates which are the mainstay of the annual schedule. Conversely, transshipment operations would only occasionally use the wharves and their scheduling is therefore less constraining for the terminal. At the end of the annual scheduling process, clients of both services will have capacity of equal firmness;
- that the transshipment or offloading dates resulting from the annual schedule not be challenged by the monthly schedule, except in case of an agreement between the parties. If a same date, not initially attributed, is requested by clients of both services, Elengy's response will be guided by the principles of optimum management of stocks and regasification facilities;
- that intra-monthly rescheduling requests be taken into account in the order in which they submitted (first come = first served) independently of the service concerned. In all instances, clients of the transshipment and offloading services have a guarantee defined contractually for each of the dates resulting from the monthly scheduling process.

6.1.2. Results of the public consultation

Most contributors would like the arrangements for operational co-existence between the regulated and non-regulated services to be sufficiently detailed. Contributors would like for these arrangements to guarantee neutrality in the provision of the transshipment service compared to the current offer of regulated services, and security of the slots scheduled by users of each of the two types of services. Many contributors stated that the introduction of a priority rule for one of the services would inevitably make the other service interruptible and considerably reduce its appeal.

Some contributors request that the conditions governing the provision of the transshipment service not degrade the upstream flexibility offered to users of the regulated services as well as the stability of the terminal's send-out profiles.

6.1.3. CRE's analysis

The selling of up to 79 transshipment slots does not challenge the commercial capacity of the Montoir-de-Bretagne terminal (123 TWh/year). The terminal's send-out profile depends on the one hand on the level of the stored gas and on the other hand the availability of regasification capacity and injection capacity towards the transmission network. As Elengy has stated, the transshipment service would not introduce any additional constraint on the management of stocks and send-out since it would not use the industrial facilities concerned.

With regard to the consequences of the provision of the new service on upstream flexibility offered to users of the regasification service, CRE notes that the greater availability of the second wharf will limit the deterioration of the global upstream flexibility level related to the increased frequency of vessel arrivals.

CRE agrees with the operational scheduling arrangements proposed by Elengy which have been approved by most contributors to the public consultation.

It considers that any slot scheduled following annual or monthly scheduling or requests for intra-monthly rescheduling cannot be challenged without the agreement of the client concerned. Therefore, following annual and monthly scheduling, securing the slots allocated to clients of transshipment and regulated services provides them with an equal level of firmness.

In addition, the annual schedule will take into account the technical constraints of the re-gaseification services. The transshipment and offloading slots will be positioned in a quincunx pattern.

6.2. Management of boil-off gas

6.2.1. Elengy's proposal

Elengy has indicated that transshipment operations generate marginal boil-off. This energy cannot be physically transhipped and is intended to be sold.

6.2.2. Results of the public consultation

Most contributors are in favour of the sale of marginal boil-off by the client(s) of the transshipment service to another user of the terminal. Some contributors raised questions about the volume of boil-off and the consequences of its reintegration on the send-out profile of clients of the regasification service.

6.2.3. CRE's analysis

The management of boil-off must favour the sale of these quantities of gas to users of the terminal. The promotion of boil-off is optimum from an environmental and economic point of view given that if the boil-off is not sold, it may be flared and would increase the terminal's green-house gas emissions.

Lastly, the costs generated by the management of boil-off resulting from the transshipment process will be allocated, similarly to all the operating costs concerned, in due proportion, to the transshipment service.

7. CRE's decision

CRE authorises Elengy to propose, in compliance with the arrangements defined in this decisions, at the Montoir-de-Bretagne terminal, an LNG transshipment service between two vessels docked simultaneously.

The provision of this service within a non-regulated framework is conditioned by the implementation of the following principles:

With regard to organisational management:

- creation of a subsidiary dedicated to the transshipment activity

With regard to cost recharging:

- full allocation to the transshipment service of any additional costs generated by the provision of that service;
- allocation in due proportion, of costs resulting from the shared use of assets and operating costs currently covered by the tariff for the use of regulated activities through the application of objective allocation keys which can be audited.

With regard to operational management:

- principle of securing scheduled slots;
- implementation of the scheduling arrangements defined in this decision.

This deliberation will be published in the *Journal officiel de la République française*.

Paris, 23 May 2013

For the French Energy Regulation Commission,
The Chairman,

Philippe de Ladoucette