

Deliberation of the French Energy Regulatory Commission (CRE) dated 18 March 2010 to decide on the terms of regasification capacity commercialisation on the Fos Cavaou LNG terminal

The following were present at the meeting: Philippe de LADOUCETTE, Chairman, Michel LAPEYRE, Vice-Chairman, Maurice MÉDA, Vice-Chairman, Jean-Paul AGHETTI, Anne DUTHILLEUL, Eric DYEUVRE, Hugues HOURDIN, Jean-Christophe LE DUIGOU and Emmanuel RODRIGUEZ, Commissioners.

1. Background

STMFC (*Société du Terminal Méthanier de Fos Cavaou*), which is 71.21% owned by Elengy, a subsidiary of GDF SUEZ, and 28.79% owned by Total Gaz Electricité Holdings France, a subsidiary of Total, is conducting the project to build the Fos Cavaou LNG terminal (Fos sur Mer). The terminal's send-out capacity is set to reach 8.25 Bcm/year.

The French Order dated 20 October 2009 approves CRE's deliberation dated 16 July 2009 on the tariff proposal for the use of French regulated LNG terminals. The tariff for the use of the Fos Cavaou terminal will apply for a three-year period "*as of the commissioning date of the terminal*".

On 29 June 2009, the Marseille administrative court declared void the Order of the Prefect authorising the operation of the new Fos Cavaou LNG terminal.

A provisional Order of the Prefect dated 6 October 2009 nevertheless authorises operations, limiting the terminal's send-out to 206 Mcm per month and unloading to an average of two cargoes per month. Over the application period of this Order, gas send-out from the Fos Cavaou LNG terminal on the network will be limited to 20% of the initially planned nominal send-out capacity.

These requirements will apply until a further administrative ruling is given following the new procedure to request authorisation to operate the Fos Cavaou LNG terminal or until the provisional Order dated 6 October 2009 is modified.

Against this backdrop, STMFC plans to commission the Fos Cavaou terminal at the end of March 2010.

After consulting subscribers of regasification capacity on the terminal, STMFC has updated the provisional schedule for unloading cargoes at the terminal, taking into consideration the limitations stipulated in the Order of the Prefect dated 6 October 2009. An unloading slot per quarter has been allocated to one of the four customers with short-term capacity who have subscribed to "banded service" over the period from the first quarter of 2010 to the first quarter of 2011 inclusive. The other unloading slots have been allocated to shippers with long-term capacity who have subscribed to "continuous service"¹.

The Fos Cavaou terminal's access contract includes a clause giving the terminal's customers the right to terminate their contract as of 15 October 2008 and before the terminal's commissioning date.

This deliberation sets out to approve, and where necessary modify, the rules proposed by STMFC (appended to this deliberation) for the commercialisation on the Fos Cavaou LNG terminal of capacity made available following execution of the withdrawal clause.

¹ "Continuous" service": for users scheduling an average of more than one ship per month throughout the year, daily emission is set by the terminal operator to be as regular as possible, based on the particular user's unloading schedule..

2. STMFC's proposal

The sale of such capacity was announced on the STMFC website on 17 February 2010.

The terms of sale proposed by STMFC are as follows:

- **The product proposed** is an unloading slot including:
 - an arrival window corresponding to the gas day on which the ship arrives, the proposed slot is set from 1st July 2010,
 - a right to unload a vessel on a “ship or pay” basis for a quantity of energy equal to 1 TWh in the window,
 - a “banded service”¹ for regasification,
 - the option for subscribers with a long-term access contract at the terminal to use this slot as part of “continuous service”.
- **The qualification process:**
 - Involves the provision by shippers of a power of attorney and a commitment to sign a contract for access to the LNG terminal at Fos Cavaou, if they are allocated capacity through this sale. No deposit guarantee is required in order to qualify for this operation.ⁱ
 - is open to all shippers with a supply authorisation in France at the start of the operation.
- **The allocation procedure** is based on the following:
 - sales are conducted via an open subscription period,
 - if several applicants qualify, the slot is allocated by drawing lots from the qualified applicants' requests under the supervision of an independent adjudicator,
 - if STMFC does not receive any requests, the product will be put on sale according to a “first come – first served” basis.
- **The timetable for the operation** is as follows:
 - the qualification period is set from 22 March to 8 April 2010,
 - the sale period lasts seven days, as of 8 April, the sales operation launch date,
 - the results of the open subscription period are published by STMFC five working days after the closing date of the sale period,
 - the access contract is signed one month after the closing date of the sale period at the latest.
- **Condition precedent:**

The effective operation of capacity on sale is dependent on the launch of the terminal's commercial activity, on 1st July 2010 at the latest.

3. CRE's analysis

3.1. Commercialisation method

The terms proposed by STMFC for the commercialisation of the unloading slot available on the Fos Cavaou terminal comply with the rules applicable to open subscription periods.

These terms are non-discriminatory and are preferable to a “first come, first served” procedure which favours players who access the information first. Moreover, they can be implemented rapidly, given the limited scope of the sale of a single unloading slot. Lastly, this procedure will enable information to be distributed rapidly to players who may be interested in the product, thus increasing the probability of its sale.

¹ “Banded” service: this service is for shippers who unload an average of no more than one cargo a month at a terminal over the year. Within the scope of this service, each cargo is discharged as a constant quantity lasting 30 days starting from the unloading end date.

3.2. Extension of the commercialisation framework

Given the contractual commitments in force for shippers with short-term capacity, other unloading slots may be made available.

Under these circumstances, these rules should apply in future to all new unloading slots made available.

4. CRE's decision

The terms under which the capacities available on the terminal of Fos Cavaou will be marketed, starting from the launch of the commercial activity of the terminal, are consistent with the principles defined in Article 7 of Law No. 2003-8 of January 3, 2003.

These terms shall be used by STMFC for the commercialisation of any new unloading slot made available for sale by one of the short-term capacity subscribers on the Fos Cavaou LNG terminal.

Executed in Paris, on 18 March 2010

On behalf of the French Energy Regulatory
Commission,

The Chairman,

Philippe de Ladoucette