

Public consultation on the regulation principles of LNG terminals

Technical specification for consultation

Two LNG terminals are currently in service in France and are managed by the Direction des Grandes Infrastructures de Gaz de France (Management of the major infrastructures, hereafter referred to as DGI). One terminal is located in Fos-sur-Mer in the autonomous port of Marseille (hereafter referred to as Fos Tonkin) and the other in Montoir-de-Bretagne in the autonomous port of Saint-Nazaire (hereafter referred to as Montoir).

A third LNG terminal is being built in Fos-sur-Mer in the autonomous port of Marseille (hereafter referred to as Fos Cavaou). It is managed by Société du Terminal Méthanier de Fos Cavaou (hereafter referred to as STMFC), which is owned by Gaz de France and Total. The commercial start-up of this facility is currently forecast for the first half of 2009.

The January 3 2003 law regarding the gas and electricity markets and public energy supply guarantees transparent and non-discriminatory access to LNG terminals for all users. Article 7 (amended) of this law foresees, in particular, that *"the substantiated tariff proposals [...] for the liquefied natural gas facilities are conveyed to the Ministers of Economy and Energy by the Energy Regulation Commission, [...]. Ministerial approval is considered to be obtained within two months of reception of the commission's proposals, unless they have been opposed by any of the Ministers."*

The current tariffs for use of the LNG terminals of Fos Tonkin and Montoir, proposed by CRE on October 26 2005, came into force on January 1 2006. They were designed to apply until the commissioning of the LNG terminal at Fos Cavaou.

In July 2007, CRE consulted the market on the tariff principles for the use of LNG terminals with a view to proposing new tariffs in October 2007. A summary of the public consultation is available on the CRE site (<http://www.cre.fr/>). A delay in the commissioning of the Fos Cavaou terminal has meant that CRE has pushed back its tariff proposal. On the basis of the Fos Cavaou terminal's current commercial operating schedule, it intends to propose new tariffs for the use of LNG terminals in October 2008 for implementation during the first half of 2009.

In addition, in 2007, Gaz de France DGI organised a call for subscriptions to extend the Montoir terminal as of 2011. Gaz de France has analysed the responses from the market and has validated the temporal extension of Montoir leading to maintain the capacity of 10 bcm/year until 2035.

To date, the future of the Fos Tonkin terminal after 2014 has not been decided.

On top of that, to date there are four projects for LNG terminals in France. These terminals are scheduled to be commissioned between 2013 and 2015. Public debate procedures have been initiated for three of these projects. The summary reports by the special public debate commissions (CPDP - Commissions particulières

du débat public) were submitted on February 14 2008. The CNDP (national public debate commission) results were published on April 18 2008. The investors have published their decision to proceed their projects, after taking into account the recommendations from the CNDP. The next step will be to apply for the administration authorizations.

Pursuant to Article 22 of European Directive 2003/55/EC, article 7-1 of the law of January 3 2003 allows new large-scale gas infrastructures (interconnections between Member States, LNG or storage facilities) to obtain exemption from third party access according to pre-defined conditions. This exemption is granted for construction or modification of the infrastructures at the condition that these infrastructures are going to improve the security of supply and the level of competition in the considered market. By virtue of these legal provisions, the owners of new LNG terminal projects can request exemption from third party access for their infrastructure.

CRE therefore considered it worthwhile to hold a general debate on the importance of LNG terminals in gas infrastructures in France and on how to regulate them. It has entrusted a working group chaired by Colette Lewiner with a study¹. A report reflecting the discussions and considerations of this group was made public on April 14 2008 (<http://gttm.cre.fr>).

With a view to preparing the next timeframes regarding the LNG terminals, CRE wishes to consult all market players on:

- the tariff principles for the use of LNG terminals in France in the short term (2009-2011);
- the need for tariff visibility for subscribers and investors in the case of investments to create new capacity in the LNG terminals ;
- the method used by CRE to make a statement concerning the applications for third party access exemption in application of article 22 of Directive 2003/55/EC.

Interested parties are invited to answer the questions which appear at the end of this document, by September 12 at the latest.

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I - Pricing principles for the use of regulated LNG terminals in France

A- The next tariffs for the Fos Cavaou, Fos Tonkin and Montoir terminals

1 Pricing principles

Article 7 of the Law of 3rd January 2003 stipulates that tariffs for access to gas infrastructures “*are set on the basis of public, objective and non-discriminatory criteria taking into account the characteristics of the service provided and related costs. In particular, such costs include operation costs and spending on research and development necessary to network security and to quality control of extracted and injected natural gas, as well as [...] costs entailed in the carrying out of public service missions.*”

For the next LNG terminal tariffs, it is planned that the following pricing principles will be retained:

- the tariff is based on the operating and capital costs borne by the operators;
- the tariff structure, whether for the services offered or the tariff terms, is identical for each of the three LNG terminals.

However, while the level of the applicable tariff terms is identical for the Fos Tonkin and Montoir terminals, it is planned that the level of tariff terms should, from now on, be made specific to each LNG terminal.

2 Date of entry into force and application period of the next tariffs

CRE is considering proposing tariffs which apply for a period of three years. More specifically:

- for the Fos Cavaou terminal, the tariff would apply for a period of three years as from its commercial commissioning date (currently foreseen for the first half of 2009), which would be in line with the duration of short-term contracts proposed at this terminal;
- for the Fos Tonkin terminal, the tariff would apply from January 1 2009 to December 31 2011;
- for the Montoir terminal, the tariff would apply from January 1 2009 to December 31 2011, or until the commissioning of the Montoir terminal's first extension phase if this one occurred before the date of end of tariff.

3 Operating costs

The operating costs to be covered are determined on the basis of all the operational costs necessary for the operating of LNG terminals.

The level of operating costs is determined based on analysis of:

- previous fiscal years, data from the operator's accounts;
- hypotheses regarding the evolution of expenditure from 2008 to 2012 communicated by the operators.

CRE is currently undertaking detailed analyses and audits to make sure of the coherency and relevance of charges forecasts presented by the operators for 2009-2012.

4 Capital costs

a) The Regulated Asset Base (RAB)

Capital costs include depreciation and financial return on fixed capital. The calculation of these two components is made, for the existing terminals of Fos Tonkin and Montoir, on the basis of a valuation of the Regulated Assets Base (RAB).

For recently commissioned facilities, their gross value is included in the RAB. This principle, recalled particularly in the explanatory statement on current tariffs for LNG terminals, applies to all gas infrastructures commissioned since 2003.

For the Fos Tonkin and the Montoir terminals, the normative commissioning of assets is July 1 in the year of commissioning.

For the new terminals and investments resulting in a significant and sustained increase in re-gasification capacities, CRE considers retaining the actual commissioning date, as an exception to the normative date of July 1, and plans to cover the financial costs of investments in their pre-operational phase, based on the method generally used for calculating interest during construction, taking into account an interest rate comparable with the cost of debt, in line with usual practices observed in the funding of projects of this kind.

For new investments which do not create any additional capacity, CRE is considering the possibility of covering the investments which have been made but have not been put into service during the year (current assets), by applying the normative date of July 1. The remuneration of the current assets would be based on the method generally used for calculating interest during construction, taking into account an interest rate comparable with the cost of debt. The amount of this remuneration would be covered each year by the tariff.

With regard to depreciation, CRE could consider to keep the straight-line method and the depreciation period currently in place.

b) The asset rate of return

The rate of return currently in force for LNG terminals comprises the base rate applied to gas transmission infrastructures, namely, 7.25% before tax, to which an additional bonus of 200 base points is added to consider the risks specific to the LNG sector. For assets commissioned after 1st January 2004, a 125 base-point bonus is applied.

For its next tariff proposal, CRE envisage to maintain the current rate of return, namely 9.25%.

To target investment incentives better, CRE is considering modifying for existing terminals the incentives according the following principles:

- suppression of the 125 base-point bonus, previously applied to investments commissioned after the 1st January 2014;
- attribution of a 200 to 300 base-point increase to the operator over a ten-year period in the case of investments which lead to a significant and sustainable rise in re-gasification capacities and after examination of the files presented by the operators (see § B.- Tariff visibility).

For the specific case of the new LNG terminals, in the deliberation of 24 July 2003, CRE wrote that the rate of return applied to the new terminals would be decided on the case by case basis. To be consistent, CRE envisage applying the incentive system foreseen for existing terminals.

5 Re-gasification capacity subscription hypotheses

The tariff currently in force at the Fos Tonkin and Montoir terminals is lower by around 15% than the previous tariff. This is linked to the rise in capacity subscriptions.

It is likely that the forthcoming commissioning of the Fos Cavaou LNG terminal will lead to a drop in subscriptions at the Fos Tonkin and Montoir terminals in comparison to the level recorded in 2006 and 2007.

	2006		2007	
	Fos Tonkin	Montoir	Fos Tonkin	Montoir
Subscriptions considered for the tariff in force in TWh (excluding "ship or pay")	83	107	83	103
Actual subscriptions in TWh	83	111	83	117

	2008		2009	
	Fos Tonkin	Montoir	Fos Tonkin	Montoir
Technical capacity TWh	83	123	74	123*
Known subscriptions TWh	80	114	59	82

	2010		2011	
	Fos Tonkin	Montoir	Fos Tonkin	Montoir
Technical capacity TWh	57	123*	61	123*
Known subscriptions TWh	48	98	48	119

*: DGI is evaluating the impact of the exceptional works foreseen at that time

To calculate the next tariffs, it is planned to consider subscriptions, to take into account the tense LNG market on a short term view.

The level of subscription would be completed with an incentive mechanism to encourage operators to optimise the use of their terminal, based on an expenses and revenues clawback account (CRCP) permitting:

- to refund integrally the shippers with the incomes linked to the additional capacities and until a threshold defined each year for each terminal;
- to share equally between the shippers and the operators the additional incomes over the defined threshold.

The thresholds envisaged at this stage are the following:

Threshold	2009	2010	2011
Fos Tonkin	1 unloading/year	1 unloading/year	1 unloading/year
Montoir	6 unloading/year	6 unloading/year	1 unloading/year

On the other hand, the Fos Cavaou subscription level is known with certainty, as the terminal is subscribed to the full extent of its technical capacity for the next three years.

6 The Expenses and revenues clawback account (CRCP)

The CRCP is a non-accounting fiduciary account, which is provisioned at regular intervals by all or part of the variances of cost or revenue identified for pre-defined items.

The following items eligible for the expenses and revenues clawback account would be:

- costs linked to electricity purchases (the only operational costs included in the CRCP): partial coverage of 90%;
- incomes linked to additional subscriptions over the subscriptions considered to set the tariff:
 - coverage of 100% of this item up to the threshold defined above ;
 - coverage of 50% of this item over this threshold.
- capital costs: coverage of 100%. In the specific case of Fos Cavaou, the considered amount could be adjusted with the eventual penalties or compensation negotiated with the EPC contractor.

7 Tariff structure

a) Maintaining re-gasification services currently in operation

LNG terminals must operate in optimal fashion, with numbers of users having different ways of making use of it: regular long-term users, occasional users (fewer than 12 unloadings a year), and one-off users (unloading scheduled after the 20th day of month m for month $m+1$).

With this in mind, three different services are currently in operation, with division of output capacities dependent on user profile:

- Continuous output service

For users scheduling a yearly average of more than one ship per month, daily output is currently fixed by the terminal operator so as to be as regular as possible, in line with the same user's unloading schedule. With this service, users enjoy a degree of flexibility, within the limits of the terminal's possibilities.

- 30-day band delivery service

For users scheduling an average of less than one ship a year, regasification of a cargo is carried out over 30 days of constant output, a service that enables isolated cargoes access to constant output over a relatively long period, enabling regular deliveries adapted to the needs of the downstream market. The 30-day band is not flexible, but output is guaranteed during it.

- 30-day band spot service

This service is restricted to unloading operations subscribed after the 20th day of the month $m-1$ for the month m . The corresponding cargoes benefit from a reduced price so as to encourage shippers to benefit from terminal capacity which is still available up until the last minute and thereby optimise the use of the terminal's capacity.

It is foreseen to retain the "continuous" and the "band" services and to also apply it to the Fos Cavaou terminal.

In addition, offering a choice between the "band" service and the "continuous" service to users who reserve an average of between 10 and 12 unloading operations per year is being considered.

It is considered, for all terminals, to make more flexible the "band" service, offering, for example, shippers the possibility to delay by one or two days the start of a cargo's output, without modification of the 30 days output.

b) Maintaining the majority of the current tariff terms

- Reminder of the current tariff

The current tariff, which applies to the terminals of Montoir and Fos Tonkin, comprises the following terms:

- *fees for the number of cargoes unloaded*, representing between 3 and 10% of a user's total invoice;
- *fees for quantities unloaded*, which represents 70 to 95% of an average invoice. These fees are reduced in the case of reservations made after the monthly unloading schedule has been drawn up ('spot' service), with a view to encouraging shippers to use the terminal's still available capacities up until the last minute;
- *fees for use of gasification capacities*, depending on the average length of time between the arrival of two ships;
- *fees for reception capacity*, depending on the average size of a cargo, which is indicative of the storage volume used over the contractual period;
- *fees for irregular use*, depending on the difference, in absolute value, between quantities of LNG unloaded in winter and quantities of LNG unloaded in summer, thus encouraging shippers to schedule their cargoes as regularly as possible over the year;
- *fees in kind*: deduction by the operator of 0.5% of quantities of natural gas unloaded.

- Simplification of the tariff structure

To simplify the tariff and reduce the difference in the unit price paid by users, whatever capacity volumes they have subscribed, the suppression of the reception capacity term, currently €0.03/MWh, is planned.

8 Optimising the use of re-gasification capacities

LNG terminals are rare and costly infrastructures which are complex to manage when used by several shippers. It is therefore essential to implement mechanisms which facilitate the marketing of the capacities and which optimise their effective use.

a) Obligation to pay for subscribed capacities ("ship or pay")

This obligation currently bears upon 90% of subscribed capacities at the Fos Tonkin and Montoir terminals, and upon 95% of subscribed capacities at the Fos Cavaou terminal.

It is envisaged that the rate should be set at 95% for all three terminals, in order to ensure improved security of revenue for operators and encourage users to subscribe to capacities that correspond exactly to their needs. Ceteris paribus, this would lead to a 5% drop in the unit prices of the Fos and Montoir terminals.

b) Penalty for non-compliance with scheduling

This penalty is applicable in cases of late cancellation of a reserved unloading included in the monthly schedule. Any late changes in scheduling are likely to have an effect on other users' outputs and to desoptimise output flows for terminal operators.

In the tariff currently in force, a penalty of 10,000 € is imposed on any user cancelling an unloading scheduled for month m :

- if notice is less than or equal to 5 days; and
- if the unloading is not rescheduled in month m or in the first 5 days of month $m+1$; and

- if the slot could not be used by another shipper.

For the next tariffs, 2 alternative mechanisms are foreseen:

- the terminal operator implements a system to make responsible the subscribers to the same terminal, consisting in, for the shippers which alter lately their schedule, compensate either in gas or financially the shipper or shippers whose outputs have been reduced as a consequence of the alteration;
- the terminal operator does not implement a measure to make responsible the subscribers. In this case, CRE proposes to reinforce the existing mechanism relative to the late cancellation, by fixing the penalty at 50% of the cost for the re-gasification of the cancelled unloading operation if the notice period is less than three days and by cancelling the two last conditions described above. Nevertheless, the penalty will not be applied if the shipper can prove that he is not responsible for the cancellation.

c) "Use it or lose it" mechanism

With a view to optimising the use of LNG terminal re-gasification capacities and to avoiding any risk of capacity retention, the improvement of the "Use it or lose it" existing mechanism is planned.

The working group on regulation of LNG Terminals in France highlighted the essential and sensitive nature of this mechanism and recommended the implementation of an "ex ante" mechanism with a notice period of between 15 days and one month.

In light of this analysis, the following mechanism could be retained: LNG terminal re-gasification capacity subscribers must indicate to operators at the latest the 20th day of month m , their requested unloading schedule for the month $m+1$ and their indicative unloading schedule for the months $m+2$ to $m+3$.

The terminal operator would publish the 25th day of month m , the available capacity by taking into account the booked capacities but not confirmed by the shippers for the month $m+1$. The operator will update this information the second week of month $m+1$ for month $m+1$.

If the month $m+1$ schedule does not reveal any available unloading slot, any cancellation of an unloading operation without prior warning, excluding an Act of God, is recorded and the regulator is informed.

When all of the terminal's capacity is subscribed to, the capacity subscribed to by the shipper concerned by the non-notified cancellation may then have to be returned by CRE's decision.

In addition, in case of congestion and at CRE's request, the terminal operator would communicate to CRE all elements relative to reservation requested during the period concerned by the congestion. On this basis, CRE would assess the shippers' behaviour and apply the appropriate measures.

9 Tariff level

In this situation and on the base of the regulated asset base rate of return in place for gas transmission networks, namely, 7.25%, the average unit rate between 2009 and 2011 in euros constant, could be:

- for Fos Tonkin: about €1.2 /MWh (while considering a "ship or pay" of 95% and the level of subscriptions mentioned in §5);
- for Montoir: about €1.1/MWh (while considering a "ship or pay" of 95% and the level of subscriptions mentioned in §5²);
- for Fos Cavaou: between €1.4 and €1.5/MWh (while considering 100% of capacities subscribed to and a "ship or pay" of 95%). The increase of the average unit rate, compared to the one indicated in the deliberation of May 16 2007, is linked to the delay of about a year in the commissioning of the terminal.

² On the basis of Montoir's extension in 2011 not going ahead and a marketable capacity at this terminal in 2011 of 123 TWh/year.

10 The interface with the transmission network

CRE will make sure that the transmission network operators concerned deal with the various projects transparently and fairly when it comes to connecting the LNG terminals to the transmission network.

As a general rule, it is planned that assigned re-gasification capacities, whatever their level and duration, gives the right and the obligation to subscribe to the corresponding entry capacities on the corresponding transmission network. This rule:

- guarantees shippers that access to the transmission network will not be a problem if they have subscribed to re-gasification capacities;
- ensures that investment costs on the transmission network which are linked to LNG terminals are at least partially covered by the shippers' subscription to capacities.

It is also the responsibility of LNG terminal operators and TSOs to coordinate their investments so as to offer shippers coherent capacities on the LNG terminals and the transmission networks.

For the Montoir, Fos-Tonkin and Fos-Cavaou terminals where the operators' offers are expressed in terms of annual re-gasification capacity, it is intended to maintain the automatic allocation principle while adapting the way daily capacity is invoiced to shippers subscribing a "continuous" service so that it is proportional to their re-gasification capacity and their total firm network entry capacity. (See CRE's public consultation on pricing principles for transportation of natural gas on transmission networks on the site www.cre.fr).

For all shippers subscribing to a "band" or "spot" service with the LNG terminal operators, the current principles are maintained. The shippers will be invoiced a firm daily capacity monthly subscription equivalent to 1/30th of the re-gasification capacity booked with the LNG terminal operators. The rate applicable is equal to 1/12th the firm annual subscription.

For projected new LNG terminals, the principles are the same but the rules will be adapted depending on the offer of these terminals' operators which could be different from the current offer.

B- Pricing visibility

At the time of the public consultation organised by CRE in July 2007 on pricing principles for use of LNG terminals in France, shippers as well as potential investors expressed their desire to dispose of sufficient pricing visibility to guide their investment decisions.

In December 2006, Gaz de France DGI launched an "open season" procedure regarding its plans to extend the Montoir LNG terminal:

- maintaining the terminal at 10 bcm/year beyond 2021 (known as "extension 0");
- extension of the terminal to 12.5 bcm/year as from 2011 (known as "extension 1");
- extension of the terminal to 16.5 bcm/year as from 2014 (known as "extension 2").

Interested shippers have had until September 2007 to make their bidding bids. At the end of this procedure, the bids added to existing subscriptions, represented 78% of the Montoir terminal's capacity between 2011 and 2020 in the case of extension 1 (12.5 bcm/year). These bids were binding.

Gaz de France validated the extension 0. Up to now, none information has been published by Gaz de France concerning the extensions 1 and 2. Gaz de France DGI has allocated the capacities of Montoir in the framework of the extension 0. This allocation leads to a level of subscription of 97% of the technical capacities (123 TWh/year, i.e. 10 bcm/year) between 2011 and 2019.

Alongside this project, on March 26 2008, the working group on the regulation of LNG terminals in France concluded in its report that good price visibility was essential to favour investment by operators and the subscription of shippers. The group recommends:

- a **long term view of the tariff**, over a period of between 15 and 20 years depending on the period for which subscribers can commit themselves, and similar to that of long-term contracts with LNG producers. This period will also allow for operators' payback (debt repayment);
- a **method** to calculate the tariff over the long-term, which will determine how the risks are shared between the operator and the subscribers;
- a tariff review clause every 4 to 5 years with a precise definition of the points taken into account. Within the stated period, this clause makes possible to adjust the tariff, taking into account elements known after the event (such as the final level of subscriptions);
- productivity incentives via the procedure for regulating operating costs.

The group recommends that risk sharing between investors and subscribers is clearly defined, as well as how each risk will be dealt with. In particular, with regard to the regulated asset base rate of return, it recommends setting this over the entire period considered, with the operator taking on the risk of interest rate changes and taking on financial hedge. Nonetheless, this rate could however be reviewed at regular intervals (every 4 or 5 years) to take key economic changes into account.

CRE wishes to respond to the need for visibility which has been expressed by the market while fulfilling its tariff setting role as well as possible in line with operator costs and the economic situation for the periods considered.

On this basis and so as to give the players concerned the visibility required for their decisions, CRE plans to define, for a long period, certain pricing principles which apply to the extension of existing LNG terminals and new terminals which were decided after these principles came into force.

1 Principles applied to the asset rate of return

a) A rate which is set for the period in question

CRE plans, for regulated LNG terminal extensions resulting in a significant and sustained increase in re-gasification capacities and for new LNG terminals, to **set the basic rate of return over a period of 20 years**. This rate will be the same as that applied to the transmission assets at the time when the final investment decision for these new infrastructures is made, and to which the 200 base point bonus specific to LNG will be added.

b) A system based on incentives

In the case of investments resulting in a significant and sustained increase in re-gasification capacities, a **200 to 300 base point increase over a period of 10 years**, could be allocated to the operator on CRE decision, after examination of the files presented by the operators, in accordance with the capacity allocation procedure and with the level of risk taken by the operator with regard to the amount invested.

2 Tariff revision clauses

For the extensions of existing terminals and for the new terminals concerned by a pluri-annual tariff, it is envisaged to review the tariffs every 4 years, in order to take into account:

- the balance of the CRCP. For the capital costs, if the difference between the projected amount and the real amount is over 30%, CRE would carry out an audit, which permits to analyse on a case-by-case basis the treatment of these costs;
- the best information on the level of subscriptions.

II - Exemption from third party access in application of Article 22 of the Directive 2003/55/EC

1 The new LNG terminal projects in France

To date there are four projects for new LNG terminals in France:

- Dunkirk: this project is supported by Dunkerque LNG, a subsidiary of EDF, for a capacity of 6-12 bcm/yr, and a commissioning planned in 2013;
- Antifer: this project is backed by Gaz de Normandie, whose stakeholders are Poweo (34%), E.ON Ruhrgas (24.5%), Verbund (24.5%) and CIM (17%), for a capacity of 9 bcm/yr, with opening planned for 2014;
- Verdon: this project is sponsored by 4Gas, a Dutch company, for a capacity of 6 to 9 bcm/yr, with opening planned for the end of 2013;
- Fos: this project, called Fos Faster, is managed by Shell, for a capacity of 8 bcm/yr, with opening planned for 2015.

The project sponsors could, in the coming months, request an exemption to the third party access.

2 The criteria for the granting of an exemption

Pursuant to European directive 2003/55/EC article 22, new large-scale gas infrastructures, i.e. **the interconnections between Member States, LNG or storage facilities** can, on request, benefit from a waiver on third party access, based on five criteria:

- the investment must **foster competition** for gas supplies and **improve security of supply**;
- the **level of risk associated with the investment** must be such that the investment will not be carried out if exemption is not granted;
- the infrastructure must be owned by an **individual or a legal entity separate**, at least with regard to legal status, from the system operators within which it will be built;
- **tariff is paid** by the users of the infrastructures;
- **the exemption does not adversely affect competition or the proper functioning of the domestic gas market**, or the efficiency of the regulated network to which the infrastructure is connected.

The European Commission has a right to request from the concerned regulation authority or member state, to modify or to cancel the decision to grant the exemption; the EC is competent to make its own decision.

3 Transposition of the directive into French law

This directive was transposed into the French law of August 9 2004. Article 44 of this law states that "*the Energy Minister may authorise [...] to derogate, for all or part of this installation or construction [...].*

*This derogation is granted at the time of the building or modification of this installation [...] as long as **this construction or modification contributes to fostering competition [...]** and **improving the security of supply** and that it is not achievable under **acceptable economic conditions** without this exemption.*

The decision to grant derogation is taken with the Energy Regulation Commission [...]

The Energy Regulation Commission's opinion is published with the minister's decision.

This decision stipulates [...] the conditions in which the beneficiary is authorised to refuse to enter into a contract to access the installation or construction concerned. "

The application decree of July 29 2005 specifies that:

- the minister submits the application to the Energy Regulation Commission, which **has one month to make a statement**;
- the minister for energy notifies the European Commission within a period of three months as from the dossier's reception, of his draft decision on the request for derogation;
- **when a part of an installation**, except for a storage installation, or a construction **which is concerned by the derogation is opened to third party access, its tariffs of use are determined jointly by the ministers for the economy and energy**, after a statement from the Energy Regulation Commission.

4 The recommendations of the working group on the regulation of LNG terminals

The working group believes that exemption is a key measure for encouraging new investors.

Most of the group recommends conducting a case-by-case analysis of the scope of exemption. This analysis should study the worthwhile nature of limiting this scope for the market with respect to the technical difficulty of adding a new shipper to the terminal, and to potentially increasing the cost of the investment.

Subject to this analysis, the group recommends:

- the terminal operator must not be systematically obliged to keep capacity dedicated to short-term contracts;
- not systematically limiting the scope of the exemption (tariff and capacity) to allow the investor to have complete control over the risk;
- leaving the investor to assess demand without making an open season procedure obligatory.

In any case, the group recommends that:

- the LNG terminal tariff must be published;
- the investors must have priority access to the capacity of the facility that they developed so as to promote the construction of new LNG terminals;
- no supplier (including any related companies) shall be able to reserve over the long term more than 2/3 of the capacity of a new LNG terminal in France, so as to encourage the diversity of players on the market;
- the rules of transparency for publications and the "*Use It Or Lose It*" mechanisms must apply in the same way to exempted terminals as to regulated terminals, with the possibility of monitoring by the regulator after the event;
- a secondary market mechanism for capacity is proposed and implemented. An ex-post review of the performance of this mechanism could be carried out by the regulator;
- a review of exemption conditions if capital links were formed, either between subscribers or between subscribers and the terminal operator.

5 The public consultation of ERGEG regarding the guidelines on good practices in application of article 22 of the European directive

ERGEG has undertaken public consultation, which ended on May 2 2008, regarding the guidelines on good practices in application of article 22.

On April 28 2008, CRE posted on its website its response to this consultation and highlighted:

- that with respect to the five criteria laid down in the directive, exemption is not, a priori, a measure to be applied to incumbents, unless the infrastructure in question resulted in a significant drop in the incumbent's market share;
- the need to consider the specific nature of LNG terminals and to analyse on a case-by-case basis the conditions in which capacity is allocated, without making an open season procedure mandatory;
- that it is favourable towards the principle of exemption for re-gasification infrastructures as long as such an exemption constitutes an effective way to encourage newcomers to make new investments with positive effects on competition and the security of the supply.

CRE will consider in its analysis the guidelines on good practices in application of article 22 once finalised by ERGEG.

6 The treatment planned by CRE for exemption requests

a) The procedure planned

In addition to the current consultation on the general principles in application of article 22, CRE wishes to conduct a public consultation for each project. In light of the time period in which CRE has to give its opinion to the minister (one month), CRE plans to consult the market on the basis of an exemption request pre-dossier which will have to be sent by the operator to CRE and DIDEME at least one month before filing the final dossier and which must include the items developed below.

Furthermore, it will have to be proven that the positive effects on competition are not attainable on the basis of a partial exemption.

b) Defining the relevant market

To date, the European market is not truly integrated and it is not likely to be so by 2012, which is the date announced for the commissioning of the first new terminal projects. Therefore, it appears reasonable to consider the study's relevant market as, at most, the national market.

Nevertheless, it is worth adapting the geographical area considered in the study in line with the congestion noted in the transmission of gas from the northern zone to the southern zone and the state of progress of interconnection projects currently taking place in the north-east of the country (Taisnières, Obergailbach) and on the border with Spain.

Each project sponsor will have to specify the market on which its analysis is based.

c) Fostering competition

CRE does not consider it necessary to systematically organise an "open season" procedure to allocate the capacities of a new exempted terminal. It may not be possible to adapt this procedure, despite being transparent and non-discriminatory, in certain cases to the project's operational constraints, as the optimal number of users of a terminal is likely to be reduced.

However, CRE plans to limit a single company's subscription share, including related companies, to 66% of the terminal's total technical capacity.

All of the projects will be studied according to the same criteria but they will be analysed on a case-by-case basis in accordance with the specificities of each project. For example, CRE will analyse on a case-by-case basis the need to oblige a project sponsor to set aside a share of its capacities (around 10% to 15%) for short-term contracts with a maximum duration of three years.

The investor will have to analyse the investment's effects on the wholesale and retail markets while explaining the hypotheses that it takes into consideration. This analysis will have to allow the various suppliers' market share before and after the project is fulfilled to be compared while paying attention to any related companies so as not to harm them.

This analysis will have to be supplemented with a study on the possible effects on the electricity market in the event of, for example, a supply meant for a gas-powered plant.

The exemption review conditions will be set *ex ante* at the time the decision regarding the exemption is taken and they could be tied to, for example, a change in the links between the various subscribers among themselves or with the operator.

Furthermore, CRE will make sure that no unused capacities are retained through, for example, a "Use it or lose it" mechanism which will be offered either by the operator or imposed by CRE on the basis of the mechanism which will be in place at that time on French regulated LNG terminals.

Specific attention will be given to the transparency of information which will be given to potential shippers and, consequently, to the regular publication of this data (available capacities, available unloading dates, etc.). The same level of transparency required from regulated terminals will be required from exempted terminals.

d) Strengthening the security of supply

The impact of the new infrastructure on existing or planned gas import capacities in the relevant market will have to be analysed.

Furthermore, so as to be able to give an opinion on what extent the project in question permits the diversification of supply sources, CRE plans to ask project sponsors to specify the various scenarios foreseen for the subscribers and the LNG sources.

e) The level of investment-related risk

CRE plans to carry out a financial analysis of the project on the basis of, on the one hand, the granting of an exemption, and, on the other, the application of a regulated system to the infrastructure in question.

This analysis will be based on the financial information supplied by the project sponsor, such as:

- an estimation of the capital costs and the operating costs;
- the depreciation period foreseen;
- the rate of return applied or the targeted profitability rate;
- an estimation of the investment-related risks by a financial body which is independent from the project sponsors and how the exemption reduces these risks;
- the expected revenue and the reasons for which this level of revenue would not be attainable in the case of a regulated system.

This study will have to define, if appropriate, the scope of the exemption and the exemption's review conditions.

f) The independence of the terminal operator in relation to the operators of the networks in which the terminal is located

The regulator's analysis will be concerned with the objective verification of the ownership and managerial links between the investor(s) in the terminal project and the operators of the gas transmission networks to which the terminal will be connected.

Such independence will have to be satisfied alongside the validity of the exemption.

g) Terminal access fees

The investor will have to explain to the regulator how the tariff which will be applied to the infrastructure users is calculated.

Furthermore, CRE plans that a single tariff for the same service is applied to all of the terminal users.

h) The treatment of an exemption request for a regulated LNG terminal

CRE is not favourable to the principle of an exemption which is applied to the extension of a regulated LNG terminal.

In fact, CRE believes that this exemption could be used by the operator to strengthen its market power.

Furthermore, the regulation system planned is a strong encouragement (bonus of 200 to 300 base points over ten years) which allows the investment to be made in safe and stable conditions.

CRE invites interested parties to send their contributions, by **September 12 2008 at the latest**:

- either through the CRE internet site, under the section "Public consultations" and by using the "Contribute" function (an electronic document may be sent);
- or by email to the following address: webmestre@cre.fr;
- or by post to: 2, rue du Quatre Septembre - 75084 Paris Cedex 02 – France ;
- by meeting the Commission's departments, by contacting the Department for gas networks and infrastructures (tel: 0033 (0)1 44 50 41 43),
- or by requesting a hearing by the Commission.

The Commission will publish a summary of contributions to this consultation except when these fall under the Official Secrets Act. Contributors' confidentiality and/or anonymity of information is guaranteed if requested.

Interested parties are asked to answer the following questions:

Tariffs for the use of the existing LNG terminals

- Q1** *What do you think of the proposals made in the technical specification with regards to capacity subscription hypotheses to be taken into account for Montoir and Fos Tonkin for tariff definition?*
- Q2** *What do you think of the method foreseen for the calculation of the current assets?*
- Q3** *Do you agree with the proposal to maintain "continuous output" and "30-day band" services? What do you think about the option offered to "band" shippers to postpone the start of their "30 days" output by one or two days as from the end-of-unloading date? What do you think of the proposal to leave the choice between the "continuous output" service and the "band" service to the shippers who have subscribed to between 10 and 12 unloading operations per year?*
- Q4** *Does the penalty envisaged for non-compliance with scheduling seem justified?*
- Q5** *What do you think about the proposed "Use it or Lose it" mechanism?*
- Q6** *What do you think of the evolution envisaged for the tariff terms?*

Long-term pricing visibility for the extensions and for the new terminals

- Q7** *Do you think that the rules for calculating capital costs and the methods for periodic tariff reviews every 4 years should be fixed for long period of time? Do you think a 20-year period is suited to the LNG market?*
- Q8** *With regards to long-term pricing visibility, do you think it is legitimate to cover the risk of higher investment costs foreseen by the operator, and to analyse on a case-by-case basis the situation when the final amount is greater than the estimated amount increased by 30%?*
- Q9** *Do you think that the principles behind such tariff visibility defined for the extensions and for the new terminals, must be extended to existing LNG terminals?*

Third party access exemption

- Q10** *What do you think about third party access exemption for the new terminal projects?*
- Q11** *Do you think that total exemption (third party access exemption and tariff exemption) is justifiable?*
- Q12** *Are you favourable towards partial exemption for LNG terminals? Are you favourable towards an exemption for regulated terminal extensions? Do you think a regulated system and an exempted system could co-exist on the same terminal?*

- Q13** *Are you favourable towards the publication of a tariff negotiated between the operator and users in the case of an exempted terminal?*
- Q14** *Do you think that an open season procedure must be obligatory to allocate capacities in the case of a terminal exempted from third party access?*
- Q15** *Do you think that it would be useful for the LNG market in France and in Europe to reserve a share of re-gasification capacities for short-term contracts (a period of around three years)? If so, what proportion would be suitable?*
- Q16** *In your opinion, what is the relevant criterion to assess the level of investment-related risk which could justify an exemption?*
- Q17** *In your opinion, which relevant market should be considered to assess the effects on competition by the projects announced in France?*
- Q18** *In your opinion, which criteria could lead to revising the allocation of an exemption?*
- Q19** *In your opinion, which data must be published to allow the "Use it or lose it" mechanism and the secondary capacities market to function effectively?*
- Q20** *What do you think about letting the terminal operator offer its own 'Use it or lose it' mechanism without, therefore, there being the same mechanisms in place at all French terminals?*
- Q21** *What do you think about the consultation procedure specific to each project envisaged by CRE?*

General issues

- Q22** *Do you have any other remarks or comments on the current tariff in force or the proposed changes for the new tariffs?*

Useful links to find out the current tariffs and the terms and conditions for the use of LNG terminals

CRE tariff recommendation of October 26 2005:

<http://www.cre.fr/fr/documents/deliberations>

Available capacities:

http://www.grandesinfrastructures.gazdefrance.com/sicsFront/fr/offre_terminaux/telechargements/telechargements.html

Capacity allocation:

http://www.grandesinfrastructures.gazdefrance.com/sicsFront/fr/offre_terminaux/terminaux/allocations.html

General terms and conditions:

[http://www.cavaou-](http://www.cavaou-gnl.com/sicsFront/FosCavaou/fr/OFFRES_COMMERCIALES/TELECHARGEMENTS/telechargements.html)

[gnl.com/sicsFront/FosCavaou/fr/OFFRES_COMMERCIALES/TELECHARGEMENTS/telechargements.html](http://www.cavaou-gnl.com/sicsFront/FosCavaou/fr/OFFRES_COMMERCIALES/TELECHARGEMENTS/telechargements.html)

http://www.grandesinfrastructures.gazdefrance.com/sicsFront/fr/offre_terminaux/telechargements/telechargements.html

Site of the Working Group chaired by Collette Lewiner: <http://gttm.cre.fr/>

Site of the Special public debate commission in Antifer:

<http://www.debatpublic-antifer.org/>

Site of the Special public debate commission in Dunkirk:

<http://www.debatpublic-dunkerquegaz.org/>

Site of the Special public debate commission in Verdon:

<http://www.debatpublic-terminal-leverdon.org/index.html>