

## Deliberation of the French Energy Regulatory Commission (CRE) dated 20 June 2013 deciding on the information published on the use of the LNG terminals

The following were in attendance: Olivier CHALLAN BELVAL, H el ene GASSIN, Jean-Pierre SOTURA and Michel THIOLLIERE, Commissioners.

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

This deliberation sets out the transparency obligations with regard to the use of LNG terminals. It is part of an approach to gradually improve the information published by the LNG terminal operators. Transparency with regard to the use of LNG terminals has been gradually improved, in particular on the basis of work conducted within the "Concertation GNL" working group, to prepare the various tariff changes. Within a context of tension over natural gas supply in the South of France, the additional requests hereafter made by the French Energy Regulatory Commission (CRE) are mainly intended to improve the quality of publication made available for the market players to reinforce their confidence in the price settlement mechanisms. These evolutions will be implemented without modifying the current requirement to publish aggregated and anonymous data in compliance with confidentiality requirements for commercially sensitive information (hereafter "CSI"). No changes will be made to the flexibility currently enjoyed by shippers for the use of subscribed capacity, in that the rules on the use of capacity remain unchanged.

### 1. Background

#### 1.1. Market background

The supply of gas for the South of France is ensured by the Fos Tonkin and Fos Cavaou LNG terminals, as well as by the North-South link forming part of the GRTgaz network. The firm capacity of this interconnection is limited to 230 GWh/d. It is supplemented by 220 GWh/d of interruptible capacity, the availability of which, in summer, mainly depends on the send-out level of the Montoir-de-Bretagne terminal.

The send-out levels from the three French LNG terminals on the transmission networks constitute a determining factor for the balance between the gas supply and demand and, therefore, for the prices in the South of France. These send-out levels directly depend on the programmes for any unloading or reloading planned by the users of these facilities.

The utilization rate for French and European LNG terminals has dropped sharply since 2011 in light of market conditions which are leading their users to reroute numerous shipments of LNG to Asia, where they are sold at higher prices than on the European market. Over the period from 1 April to 31 October 2012, send-out levels for the Fos and Montoir terminals dropped by 18% and 55% respectively year on year.

For the same reasons as those mentioned above, the interconnections between France and Spain are currently being used at high levels in the direction of exports to Spain. These flows enable the Spanish market to replace part of its LNG supplies with imports of gas via gas pipelines.

As a result, the North to South link on the GRTgaz network is congested, due to the combined effect of low usage rates of the French terminals and high export levels to Spain. This congestion has led to a substantial increase in market prices in the South of France. Since 2012, the price spread between the North and South Gas Exchange Points (*Points d'Echange de Gaz* - PEG) has increased sharply, exceeding the level of  6/MWh for the day-ahead product on several occasions.

Given the decisive role of LNG terminal send-out on price formation conditions in the South of France, CRE believes that it is necessary to strengthen the transparency provided on the market with regard to terminals' projections for use.

## **1.2. Regulatory framework**

### **1.2.1. Transparency requirements set by Regulation 715/2009**

Regulation (EC) No. 715/2009 dated 13 July 2009 on conditions for access to the natural gas transmission networks imposes various transparency requirements directly applicable to LNG terminal operators.

- Article 15, section 1 c) of the Regulation stipulates that operators of LNG facilities “*make relevant information public, in particular data on the use and availability of services, in a time-frame compatible with the LNG [...] facility users' reasonable commercial needs, subject to the monitoring of such publication by the national regulatory authority*”.
- Furthermore, Article 19, section 2 of this Regulation states that “*For the services provided, LNG [...] system operators shall make public information on [...] LNG facility capacities on a numerical basis [...] and in a user-friendly standardised manner.*”
- Lastly, Article 19, section 4 adds that: “*LNG [...] system operators shall make public the amount of gas in each [...] LNG facility, [...], inflows and outflows, and the available [...] LNG facility capacities. That information shall also be communicated to the transmission system operator, which shall make it public on an aggregated level per system or subsystem defined by the relevant points. The information shall be updated at least daily.*”

LNG terminal operators are therefore bound by transparency obligations that imply regular publication of the information defined above.

In order to enable LNG terminal operators to meet their transparency obligations as best they can, CRE has in particular requested that users of the LNG terminals, as part of the ATTM 4 tariff in force since 1 April 2013, provide the LNG terminal operators with their best projection of unloading operations for months M, M+1 and M+2 by the 20<sup>th</sup> day of month M-1 at the latest. The programme supplied by the users for month M is binding, while the programmes for months M+1 and M+2 are provided for information purposes only.

### **1.2.2. Requirements set by Regulation on wholesale energy market integrity and transparency**

In addition, European Regulation (EU) No. 1227/2011 dated 25 October 2011 on wholesale energy market integrity and transparency (known as “REMIT”), which came into force on 28 December 2011, requires market participants to publish any inside information that they possess.

Market participants are defined under REMIT in article 2, paragraph 7 as being “*any person [...] who enters into transactions, including the placing of orders to trade, in one or more wholesale energy markets*”.

Under this definition, LNG terminal users are market participants within the scope of REMIT and as a result are specifically subject to the obligation to publish insider information.

This publication obligation is set out in article 4 of REMIT, which states: “*market participants shall publicly disclose in an effective and timely manner inside information which they possess in respect of [a] business or facilities which the market participant concerned, or its parent undertaking or related undertaking, owns or controls or for whose operational matters that market participant or undertaking is responsible, either in whole or in part*”.

The obligation to publish therefore covers insider information as defined in article 2 of REMIT: “*information of a precise nature which has not been made public, which relates, directly or indirectly, to one or more wholesale energy products and which, if it were made public, would be likely to significantly affect the prices of those wholesale energy products*”.

REMIT also clarifies the meaning of information, in particular that “*is required to be made public in accordance with Regulation [...] (EC) No. 715/2009*” and “*relating to the capacity and use of LNG facilities, including planned or unplanned unavailability of these facilities*” and in a general sense, “*information that a reasonable market participant would be likely to use as part of the basis of its decision to enter into a transaction relating to, or to issue an order to trade in, a wholesale energy product*”.

For market participants, this obligation to publish requires a case-by-case analysis of the information in question, in order to determine whether or not it is insider information.

### **1.3. Public consultation**

CRE launched a public consultation regarding information published on the use of French LNG terminals from 12 April to 13 May 2013. As part of this consultation, CRE submitted the following proposals to the market participants:

- Daily rather than twice monthly updates of data regarding actual and projected use of the terminals for unloading and reloading operations and for send-out,
- Clear differentiation of unloading and reloading operations in the programmes published by the operators,
- Notification by LNG terminal users to operators, as soon as possible, of any information regarding a change to their unloading or reloading programmes concerning quantities in excess of 50,000 m<sup>3</sup> of LNG,
- Creation of a platform by LNG terminal operators to publish insider information for the terminals' users.

## **2. Summary of contributions received during the public consultation**

Sixteen contributions were received: eight from shippers, four from LNG terminal operators, three from associations and one from a consultancy firm.

A large majority of shippers acknowledge the need to improve transparency on the LNG terminals, in particular given the current market conditions in the South of France.

However, many contributors, including the LNG terminal operators, express their concern with regard to the possible consequences of CRE's proposals on the attractiveness of French terminals, in view of the European competition between terminals and the competition between regulated and exempted terminals.

## **3. Information published by terminal operators**

### **3.1. Contributions to the public consultation**

Most shippers are in favour of introducing daily updates of the data published by the terminal operators. Several shippers believe that the increase in transparency obligations should apply to all gas infrastructures and in particular to storage facilities.

Moreover, many contributors state that this increase in transparency obligations must not adversely affect the attractiveness of French LNG terminals with regard to their regulated or exempted European competitors. Concerning this point, most shippers believe that the transparency obligations on LNG terminals must not endanger the confidentiality of commercially sensitive information (hereafter CSI) or the value of regasification capacity.

The terminal operators believe that the current publications comply with the transparency obligations required under Regulation (EC) No.715/2009. Furthermore, they state that this level of transparency is in line with the guidelines of the GLE European association representing LNG terminal operators which standardizes information published on a European level.

### **3.2. CRE's analysis**

CRE believes that daily updates of projected data on unloading and reloading operations and send-out, already published by terminal operators, would meet the expectations of many participants. These daily updates would enable all market participants to have objective information on the supply/demand balance in the South of France. Any LNG trans-shipment operations are not concerned in that they do not affect stock levels or terminal send-out.

CRE agrees with many contributors on the need to maintain the attractiveness of French LNG terminals. As such, it notes that the changes requested in no way change the contractual access conditions for the users of French terminals.

The users of LNG terminals must immediately notify operators if they decide to change their unloading or reloading programmes, while this information is currently only passed on twice a month. This change does not at all affect the rights and obligations of shippers with regard to the use of their capacity or their unloading slots. The use-it-or-lose-it rules set out in the current tariff (ATTM4) remain unchanged: only capacity unused after the 25<sup>th</sup> day of month M-1 is put up for sale again.

With regard to the protection of CSI, CRE reminds that its proposals would only increase the publication frequency of some information already published by operators as aggregated and anonymous data. As a result, these changes will not adversely affect the terminal operators' obligation to protect CSI.

## **4. Implementation of a transparency threshold**

### **4.1. Public consultation**

The proposal of introducing a threshold of 50, 000 m<sup>3</sup> above which terminal users have to notify to the operator all information relating to a modification of their unloading or reloading program, has obtained a mixed reaction in the contributions. Contributors stated that the planned threshold of 50,000 m<sup>3</sup> of LNG practically covers all current LNG shipments. Some contributors believe that a standardized definition of this level is not desirable and request that the threshold be calculated following an objective assessment.

Several contributors, including terminal operators would like such a transparency threshold to apply to all gas infrastructures and gas send-out on the transmission network, and not on the quantities of LNG unloaded or reloaded.

### **4.2. CRE's analysis**

In its guidelines<sup>1</sup>, ACER states that national regulators may define a transparency threshold, similarly to the threshold introduced on the electricity network pursuant to Regulation (EC) No.714/2009. ACER states that given the heterogeneous nature of natural gas markets, each regulator may define, following consultation with market participants, an appropriate level based on the characteristics of the national market.

In accordance with ACER's recommendations, this threshold could be considered, for indicative purposes, by LNG terminal users to assess whether their decisions on the use of the terminals constitute "insider information". However, the REMIT Regulation does not define a threshold to qualify insider information, which must be assessed on a case-by-case basis according to the criteria noted in point 1.2.2 of this deliberation.

Several contributors requested that such a threshold be applied to all gas infrastructures. Based on this, CRE is assessing the possibility and relevance of defining a transparency threshold which would apply to all gas infrastructures. CRE believes that further work on this matter could be organised in consultation with all the market players. Pending findings further to these discussions, CRE considers that a transparency threshold set at 50,000 m<sup>3</sup> for LNG terminals is necessary.

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<sup>1</sup> Guidance on the application of Regulation (EU) No 1227/2011 of the European Parliament and the Council of 25 October 2011 on wholesale energy market integrity and transparency. 2<sup>nd</sup> edition. (updated) 22 April 2013

## **5. Implementation of a publication platform for insider information**

CRE proposed to set up a publication platform for insider information that the users of French LNG terminals are likely to possess.

### **5.1. Public consultation**

Contributors are not opposed to the implementation of a publication platform but most would prefer the creation of a single platform, at least at a national level, aimed at users of all gas infrastructures.

Moreover, some contributors state that the information which must be published under REMIT only concerns data on the availability of regasification capacity and its use. They state that this information, which is necessarily aggregated, must be published by the LNG terminal operators and not terminal users.

### **5.2. CRE's analysis**

CRE reminds that the obligation to publish insider information concerns any information that a reasonable market participant would be likely to use as part of the basis of its decision to enter into a transaction relating to, or to issue an order to trade in, a wholesale energy product, and may not, as a result, be limited to information on the capacity and use of LNG facilities.

CRE believes that the implementation of a national platform would facilitate market participants' compliance with their obligations to publish insider information under REMIT. This type of platform has already been put in place by other European operators, for example in the United Kingdom, in accordance with ACER's recommendations.

As a result, CRE believes that it would be a first positive step for terminal operators to put in place a dedicated platform for the publication of insider information held by their users, pending the implementation of a national platform. Any information published on such a platform is done on the LNG terminal users' initiative and they are fully accountable for the information.

## **6. CRE's decisions**

CRE requests that terminal operators publish and update on a daily basis aggregated and anonymous information on unloading and loading operations and send-out on the transmission network, on the basis of the most recent data provided by their users. Publications regarding unloading and reloading operations must be separate.

LNG terminal users must without delay notify the operators when they decide or become aware of their best projections for the use of the terminals and in particular of any modification of their projections of use concerning a quantity of LNG greater than 50,000 m<sup>3</sup>.

CRE requests that LNG terminal operators set up a platform for the publication of insider information that their users are likely to possess.

Lastly, CRE requests that all natural gas infrastructure operators in France study the opportunity and conditions of implementing the following measures, as part of the specific working group within "Concertation Gaz":

- A publication platform for insider information for users of all gas infrastructures,
- A transparency threshold applicable to all natural gas infrastructures in France, based on ACER's recommendations.

Executed in Paris, 20 June 2013

On behalf of the French Energy Regulatory Commission (CRE),  
A commissioner,

Olivier CHALLAN BELVAL