

**Decision of the Commission de Régulation de l'Énergie of 16 May 2007 regarding allocation of short-term capacities from the Fos Cavaou LNG terminal**

Given the provisions of Law No. 2000-108 of 10 February bearing on modernisation and development of the public electricity service, in particular Article 37-1 thereof;

Given the provisions of Law No. 2003-8 of 3 January 2003 bearing on gas and electricity markets and the public energy service, in particular Articles 2, 6, 7 and 16 thereof;

Given Decree No. 2004-251 of 19 March 2004 bearing on public service obligations in the gas sector, in particular Heading V thereof;

Given CRE deliberation of 15 December 2003 on the protocol between Gaz de France and TOTAL, bearing on the conclusion of their joint participation in CFM and GSO;

The Commission de Régulation de l'Énergie has decided as follows:

**1. Object**

The Fos Cavaou LNG terminal, with a capacity of 8.25 Bcm/year, shall start operation in the first half of 2008.

In accordance with CRE deliberation of 15 December 2003, the Société du Terminal Méthanier de Fos Cavaou (STMFC) shall allocate 10% of its new terminal's capacity to all interested of suppliers for short-term contracts.

The purpose of this present decision, taken in application of Article 37-1 of the law of 10 February 2000, modified by the law of 7 December 2006, is to define rules for allocation of available capacities at the Fos Cavaou terminal.

During May 2007, and before adopting its decision, CRE heard shippers who had shown interest in capacities available at the Fos Cavaou terminal.

## **2. Competitive situation in the South of France**

In its communication of 21 March 2007, regarding the delivery via gas transmission networks in the South of France, CRE observed that present levels of competition in the South of France were unsatisfactory, a situation largely arising from the region's lack of sources of supply.

Access to the GRTgaz South zone and to the TIGF zone remains uncertain for new suppliers entering the market during the 2008-2011 period, for the following reasons:

- The present '*gas release*' programme will be gradually brought to an end during 2008;
- Due to upcoming merging of North, West and East balancing zones into a single North zone on 1 January 2009, link capacities between the future North zone and the South zone are yet to be allocated;
- Final investment decisions concerning projects for development of interconnections with Spain have not yet been made by the transmission network operators (TSO) concerned.

Furthermore, start-up of the Fos Cavaou terminal should rebalance gas flow between Northern and Southern France. Therefore, as regards upcoming transmission tariffs, and subject to the results of public consultation, CRE is considering proposing that the link capacities tariff from the GRTgaz South zone to the GRTgaz North zone is similar to that from the GRTgaz North zone to the GRTgaz South zone.

In such conditions, it is to be hoped that all capacities available at the Fos Cavaou terminal will be allocated under conditions encouraging development of competition for end users in the South of France.

## **3. Principles for allocation of capacities available at the Fos Cavaou terminal**

### **3.1 STMFC proposals**

The STMFC has proposed principles for allocation of capacities available at the Fos Cavaou terminal, which appear in the appendix to the present decision.

The proposed procedure states that capacities will be marketed over a three-year period and that, if demand exceeds supply, priority will be given to applications for the largest numbers of slots. Where applications are for equally large number of slots, a winner will be selected by lottery.

### **3.2 CRE observations**

The principles proposed by the STMFC take into account constraints connected with the upstream logistics chain for liquefied natural gas (LNG) as well as suppliers' needs for development of an end-user portfolio:

- on the one hand, it is easier for shippers to sign LNG supply contracts if unloading is scheduled at regular intervals;
- on the other hand, an LNG terminal can only operate efficiently with a limited number of simultaneous users.

These principles support the objective of allocation of all short-term capacities from the Fos Cavaou terminal.

However, this operation must, as a priority, give new shippers the opportunity of direct access to a gas supply source in the South of France, in order to help open up the end users market for natural gas. In consequence, the procedure put forward by the STMFC requires amendment with a view to giving priority to shippers who have no access to capacity from the Fos Cavaou terminal over the period.

In order to maximise effective delivery in France of quantities of gas corresponding to reserved capacities, where an *ex-aequo* situation exists, priority must be given to shippers already authorised to supply gas in France when allocating these capacities.

If a repeated *ex-aequo* situation occurs despite application of these rules, shippers concerned will have to be given the opportunity to reach agreement over sharing of requested capacities before selection by lottery.

#### **4. Working hypotheses regarding the tariff for use of the Fos Cavaou terminal**

##### ***4.1 Context***

In accordance with Article 7 of the law of 3 January 2003, tariffs for use of natural gas networks and LNG facilities are approved by the ministers responsible for the economy and energy, following their proposal by CRE.

In this context, CRE intends to propose the tariff for use of the Fos Cavaou terminal in the second half of 2007, after obtaining detailed financial data relating to the future terminal.

Subject to the results of subsequent public consultation, CRE is considering proposing that the tariff structure currently in force for existing terminals be applied to the Fos Cavaou terminal.

##### ***4.2 Estimated tariff***

With a view to improving market visibility, CRE has decided to communicate an estimate of the tariff for use of the Fos Cavaou LNG terminal, basing itself on the analysis factors below.

Sums mentioned are based on estimates supplied by the Fos Cavaou LNG terminal operator, and may be subject to modification by the time the terminal goes into operation. These figures will also be audited by CRE.

###### ***a- Operating costs***

The operator has sent CRE an annual budget for operating costs of roughly 38 M€ on average per full year over the 2008-2011 period. Operating costs up until terminal start-up are estimated by the operator at around 11 M€.

###### ***b- Capital costs and provision for dismantlement***

The total of investments up to start-up of the LNG terminal is presently assessed at 588 M€. The operator's spending over the period is as follows:

in M€	2004	2005	2006	2007 *	2008*	Total
CAPEX	35.2	103.2	205.4	208.5	35.6	588

\*: values for 2007 and 2008 are estimates sent by the STMFC.

According to the operator's present estimates, 91% of the fixed assets in question have depreciation periods of 40 years, with 20-year periods for the remainder.

The operator is presently considering recording provision for dismantlement of assets as standing between 60 and 70 M€ , 2008 value. Implementation of this provision will be smoothed over time.

### ***c- Estimate of average unit tariff***

Taking into account the requests made by the operator – as yet to undergo expert assessment by CRE, and supposing that available capacities will be subscribed, the average unit tariff proposed by CRE should be around 1.3 €/MWh over the 2008-2011 period.

This estimate does not pre-empt the final result, which will appear in the formal tariff proposal to be drawn up by CRE in October 2007.

## **5. CRE decision**

### ***5.1 CRE decision***

CRE approves the principles for allocation of capacities from the Fos Cavaou NLG terminal proposed by the STMFC, provided that they are complemented by the following principles, to be applied in cases where demand exceeds supply:

- Companies having capacities from the terminal for the period under consideration, as well as their affiliated companies, shall be given the lowest priority;
- In a case where applications are for equal capacities in terms of numbers of windows, and before proceeding to drawing of lots:
  1. Priority shall be given to suppliers authorised to supply gas in France at the time of their application for capacity;
  2. If the situation is still equal, the candidates concerned shall be given one week to form a group, withdraw, or maintain their application. If only a single candidate remains at the end of this period, capacities applied for shall be allocated to that candidate.

### ***5.2 General principles for allocation of short-term capacities***

Consequent to the proposal made by the STMFC and the decision made by CRE, the general principles for allocation of short-term capacities from the Fos Cavaou terminal are as follows:

- Companies having capacities from the terminal for the period under consideration, as well as their affiliated companies, shall be given the lowest priority;
- Bidders shall be classed in decreasing order of numbers of slots applied for;

- The first bidder, if he is the only one, shall be allocated the entirety of his application, then the allocation process will continue with the next bidder;
- Where there are equal applications for numbers of slots:
  - 1) Priority shall be given to suppliers authorised to supply gas in France at the time of their application for capacity;
  - 2) If the situation is still equal, the candidates concerned will be given one week to form a group, withdraw, or maintain their candidature. If only a single candidate remains at the end of this period, capacities applied for will be allocated to that candidate. If not, a winner will be selected by lottery.

Paris, 16 May 2007

For the Commission de Régulation de l'Energie,  
The President,

Philippe de LADOUCETTE

## APPENDIX

# Allocation of unsubscribed capacities

## Presentation of rules proposed by the STMFC

11 May 2007

### **1. OBJECT**

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This note presents the rules for allocating currently unsubscribed capacities from the Fos Cavaou LNG terminal, proposed by the STMFC.

### **2. ASSESSMENT OF CAPACITIES AND REGULATORY FRAMEWORK**

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The Fos Cavaou LNG terminal provides an overall access capacity of 8.25 Bcm/year.

The Société du Terminal Méthanier de Fos Cavaou (the STMFC) informs all companies active in the market that 10% of Fos Cavaou terminal capacities have been left open, so that all suppliers have the opportunity to subscribe these capacities.

This 10% of the terminal's overall capacity constitutes those capacities currently unsubscribed, and represents 0.825 Bcm/year – i.e. approximately 10 TWh/year.

### **3. THE PRODUCT AND ALLOCATION RULES PROPOSED BY THE STMFC**

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#### **3.1 The product on offer**

Capacities are offered for sale in the form of 'bundles' (connected capacity features) comprising:

- an unloading 'window';
- a 'ship or pay' right to unload one or more ships for a quantity of energy equal to 1 TWh in the slot;
- a temporary storage service and a regasification service.

The following slots are on offer to the market:

Window No.8.4	: 1 April to 15 May	2008
Window No.8.5	: 16 May to 30 June	2008
Window No.8.6	: 1 July to 15 August	2008
Window No.8.7	: 16 August to 30 September	2008
Window No.8.8	: 1 to 31 October	2008
Window No.8.9	: 1 to 30 November	2008
Window No.8.10	: 1 to 31 December	2008

Window No.9.1	:	1 to 31 January	2009
Window No.9.2	:	1 to 28 February	2009
Window No.9.3	:	1 to 31 March	2009
Window No.9.4	:	1 April to 15 May	2009
Window No.9.5	:	16 May to 30 June	2009
Window No.9.6	:	1 July to 15 August	2009
Window No.9.7	:	16 August to 30 September	2009
Window No.9.8	:	1 to 31 October	2009
Window No.9.9	:	1to 30 November	2009
Window No.9.10	:	1 to 31 December	2009
Window No.10.1	:	1 to 31 January	2010
Window No.10.2	:	1 to 28 February	2010
Window No.10.3	:	1 to 31 March	2010
Window No.10.4	:	1 April to 15 May	2010
Window No.10.5	:	16 May to 30 June	2010
Window No.10.6	:	1 July to 15 August	2010
Window No.10.7	:	16 August to 30 September	2010
Window No.10.8	:	1 to 31 October	2010
Window No.10.9	:	1 to 30 November	2010
Window No.10.10	:	1 to 31 December	2010
Window No.11.1	:	1 to 31 January	2011
Window No.11.2	:	1 to 28 February	2011
Window No.11.3	:	1 to 31 March	2011

Regasification will be a flat output service as from the date of completion of unloading.

If a bidder obtains more than 10 consecutive slots, he will have the option of adopting a continuous service in conformity with contractual rules in force.

### **3.2 The application made by the bidder**

The bidder shall make his application by listing the slot he wishes to acquire.

### **3.3 Allocation principles**

#### Principle No.1

Bidders are classed in decreasing order of number of slots in the Initial Application and, when necessary, in the Modified Application;

#### Principle No.2

The first bidder, if he is the only one, will be allocated the entirety of his application, then the allocation process will continue with the next bidder;

#### Principle No.3

Where an *ex-aequo* situation exists, the STMFC will select a single winner by lottery supervised by a bailiff, then continue allocation in accordance with the same principle, starting with the next bidder on the list. Taking into account this possible resort to lottery, affiliated companies must get together in order to designate one of their number as their representative for the purposes of the lottery;

#### Principle No.4

After the first allocation, the following bidder (or bidders, in an *ex-aequo* situation) may have his Initial Application reduced by windows allocated to those preceding him, in which case the STMFC will suggest that he draw up a modified application from among slots remaining available. He will also have the option to cancel his application;

Principle No.5

Following notification by the STMFC of slots still available, the bidder has 2 hours to make a Modified Application;

Principle No.6

If bidders apply for the same number of slots in their Initial Application, and no slot in common in their Modified Application, their Modified Applications will be allocated to them in their entirety;

Principle No.7

Two or more bidders with the same number of slots in their Initial Applications and, if it arises, in their Modified Applications, will be considered as *ex aequo*.