

DELIBERATION NO 2022-302

Deliberation by the Energy Regulatory Commission of 24 November 2022 giving an opinion on the exemption request by the company TotalEnergies LNG Services France for the floating LNG terminal in Le Havre

Present: Emmanuelle WARGON, president, Anthony CELLIER, Catherine EDWIGE, Ivan FAUCHEUX and Valérie PLAGNOL, commissioners.

Translated from the French: only the original in French is authentic

Whereas the Russian gas deliveries to Europe dropped sharply following the invasion of Ukraine by Russia, *TotalEnergies LNG Services France*, a subsidiary of TotalEnergies (hereinafter "TELSF") plans to commission a floating LNG storage and regasification unit in Le Havre. This LNG terminal, with a regasification capacity of 5 Gm³ per year, should be commissioned in September 2023 for an operating period of five years.

Article 36 of Directive 2009/73/EC concerning common rules for the internal market in natural gas¹ specifies that new major gas infrastructure may, upon request, be exempted from the provisions regarding third-party access and tariff regulation.

In order to implement the project, TELSFF thus wishes to obtain partial exemption from the provisions concerning third-party access to infrastructure and tariff regulation, for five years from the date of commissioning of the LNG terminal.

All exemption requests must be submitted to the Energy Minister who must seek the opinion of the Energy regulatory commission (CRE), which must deliver its opinion within one month of being consulted.

TELSFF submitted its exemption application to the Minister of the Energy Transition on 20 October 2022. CRE was sought for its opinion by the Minister of the Energy Transition 27 October 2022.

CRE held a public consultation from 3 to 17 November 2022² in order to gather the opinion of stakeholders on TELSFF's exemption request and on CRE's preliminary analysis.

CRE received fourteen³ answers: two from shippers, three from gas infrastructure operators, two from gas industry associations, two from environmental associations and five from other actors (including four individuals).

The responses to this public consultation are published, if necessary in their non-confidential version, on CRE's website.

The present deliberation gives CRE's opinion on TELSFF' exemption request from the provisions concerning third-party access to infrastructure and tariff regulation for the floating LNG terminal in Le Havre.

¹ [Directive 2009/73/CE of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas, as amended by the Directive 2019/962/CE of the European Parliament and of the Council of 17 April 2019 amending Directive 2009/73/EC concerning common rules for the internal market in natural gas](#)

² [Public consultation No 2022-12 of 3 November 2022 regarding the exemption request by the company TotalEnergies LNG Services France for the floating LNG Terminal in Le Havre](#)

³ An additional answer was received by CRE but could not be analysed

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1. BACKGROUND AND PRESENTATION OF THE PROJECT

1.1 Legal framework

The provisions of article 36 of 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 gas⁴ specifies that major new gas infrastructure⁵ may, upon request, obtain a derogation from the provisions regarding third-party access⁶ and tariff regulation⁷, provided that the following cumulative criteria are met:

- a) the investment must enhance competition in gas supply and enhance security of supply;
- b) the level of risk attached to the investment must be such that the investment would not take place unless an exemption was granted;
- c) the infrastructure must be owned by a natural or legal person which is separate at least in terms of its legal form from the system operators in whose systems that infrastructure will be built;
- d) charges must be levied on users of that infrastructure; and
- e) the exemption must not be detrimental to competition in the relevant markets which are likely to be affected by the investment, to the effective functioning of the internal market in natural gas, the efficient functioning of the regulated systems concerned, or to security of supply of natural gas in the Union.

In accordance with the provisions of this same article, the derogation decision must be adopted either by the regulatory authority of the Member State concerned or by a competent authority designated, for the purposes of the formal decision, by this State.

The provisions of this article have been transposed into national law currently set out in articles L. 111-109, L. 452-6, R. 452-1 and R. 111-43 to R. 111-51 of the French energy code.

Article R. 111-45 of the energy code states, in particular, that all derogation requests must be submitted to the Energy Minister who must seek CRE's opinion, which the latter must deliver within one month of being consulted.

The Energy Minister must notify the European Commission, within a period of three months as from the date of receipt of the complete application, its draft decision concerning the derogation request, as well as any useful information relating to it.

In accordance with the provisions of Article 36 of the abovementioned directive, the European Commission, within two months from the day following the receipt of this notification, may take a decision requiring the decision to grant an exemption to be amended or withdrawn⁸.

Moreover, article 29 of law no. 2022-1158 of 16 August 2022 on emergency measures to protect purchasing power (hereinafter "purchasing power" law) provides a regime for the operation of a floating liquefied natural gas storage and regasification terminal. In particular, this article states that the mechanisms applicable to the management and allocation of the capacity of the facility having an exemption, provided for in article L. 111-109 of the energy code, must be defined by the Energy regulatory commission.

1.2 Project characteristics

Whereas the Russian gas deliveries to Europe dropped sharply following the invasion of Ukraine by Russia, TELS F plans to commission a floating liquefied natural gas storage and regasification unit (hereinafter "FSRU") in the harbour of Le Havre in September 2023. This rapidly deployable solution could indeed increase French natural gas import capacity in the short term. This FSRU has a regasification capacity of around 5 Gm³/year (and a peak capacity of around 7,5 Gm³/year) and around 140 000 m³ of liquefied natural gas (LNG) storage capacity⁹. TELS F intends to operate the FSRU for a period of five years as from the date of its commissioning.

The target schedule presented by TELS F plans for the commercial launch of the project in September 2023.

Operating costs (OPEX) represent roughly 90% of the project's fixed costs (for about 10% investment costs). Furthermore, the project's variable costs include, in particular, the costs for heating the LNG: unlike some onshore LNG terminals, the FSRU functions with a closed-loop regasification system thanks to heaters supplied with natural gas (and not a heating system using sea water, for instance). In a similar way to other LNG terminals, the FSRU's variable

⁴ Directive 2009/73/CE of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas, as amended by the Directive 2019/962/CE of the European Parliament and of the Council of 17 April 2019 amending Directive 2009/73/EC concerning common rules for the internal market in natural gas

⁵ i.e. interconnectors between Member States, LNG and storage facilities.

⁶ set out in articles 32 to 34 of the abovementioned Directive.

⁷ set out in article 41, paragraphs 6, 8 and 10 of the abovementioned Directive.

⁸ This two-month period may be extended by an additional period of two months where further information is sought by the Commission. This additional period shall begin on the day following the receipt of the complete information. The initial two-month period may also be extended with the consent of both the Commission and the regulatory authority.

⁹ One cubic metre of LNG, once regasified, is equivalent to 600-650 m³ of natural gas under normal temperature and pressure conditions.

costs are higher if the operator has to operate the infrastructure outside of steady-state mode (it has to maintain a minimum level of LNG in the tanks in order to keep them cold).

1.3 Interface with the transmission network

The FSRU operated by TELS F will be connected to GRTgaz's gas transmission network. As stated in CRE's deliberation of 21 July 2022 on GRTgaz's investment programme¹⁰, the transmission network is already relatively well-sized to accommodate such infrastructure given that there was an LNG terminal at that site until 1990. The installation of the FSRU will therefore not require major network reinforcement work.

Investments required for connection involve building a 1,400 m² platform to combine the connection for the FSRU, heating, odourisation and pressure regulation functions, as well a DN500 pipeline of approximately 4 km in length leading to the existing network. Operation of the FSRU involves the subscription of entry capacity to the transmission network by terminal users: the corresponding revenue will cover connection costs for GRTgaz.

Moreover, granting an exemption must not give to the concerned infrastructure an unfair competitive advantage compared to the existing terminals, regulated or not. In this regard, and as it is already the case for Dunkerque LNG, TELS F will have to respect the specifications applicable to the interfaces between the transmission network and the other French LNG terminals.

The acceptable entry capacity from the FSRU to the transmission network is being determined by GRTgaz, and will depend, in particular, on the natural gas consumption level in the zone. Major efforts to reduce natural gas consumption by customers (particularly industrial) in the Le Havre region to contribute to European security of supply could result in the reduction of the network's evacuation capacity. The entry capacity on the transmission network for the users of the FSRU would therefore be mechanically reduced.

1.4 TELS F's request

TELS F wishes to obtain an exemption from the provisions concerning third-party access to infrastructure and tariff regulation, for a period of five years as from the start of commercial operation of the FSRU. TotalEnergies, through its subsidiary TotalEnergies Gas & Power Ltd (hereinafter "TEGPL"), thus wishes to book 50% of the terminal's capacity.

2. COMPLIANCE WITH THE CRITERIA OF ARTICLE 36 OF DIRECTIVE 2009/73/EC

Article 36 of Directive 2009/73/EC states that five cumulative criteria must be met in order for an exemption to be granted (see part 1.1). Among them, criterion a) concerns both the impact of the project on competition and security of supply, while criterion e) concerns the impact of the project on competition, the effective functioning of the internal market in natural gas, the efficient functioning of the concerned regulated networks and security of supply.

The impact of the project on competition and the effective functioning of the internal market in natural gas (criteria a) and e)) is analysed below in part 2.1.

The impact of the project on security of supply (criteria a) and e)) is analysed in part 2.2.

The level of risk attached to the project (criterion b)), independence of the infrastructure owner with regard to the system operator (criterion c)), the levy of charges on infrastructure users (criterion d)) and the impact on the efficient functioning of the concerned regulated systems (criterion e)) are analysed in parts 2.3, 2.4, 2.5 and 2.6 respectively.

2.1 Impact of the project on competition and the effective functioning of the internal market in natural gas

To meet the criteria a) and e) of Article 36 of Directive 2009/73/EC, the investment must enhance competition in gas supply and the exemption must not be detrimental to competition in the markets concerned or to the effective functioning of the internal market in natural gas. In order to analyse the competitive effect of the FSRU and the exemption, it must be determined whether it is likely to lead to the creation or reinforcement of a dominant position in the concerned markets.

Concerning the upstream wholesale market:

The upstream wholesale market is defined as the market on which gas suppliers purchase gas wholesale from producers in order to then resale on the trading market (downstream wholesale market).

In its competitive analysis, TELS F defined the relevant market as the upstream wholesale natural gas market, including LNG gas supplies. From a geographical point of view, the market selected includes countries whose gas systems are interconnected directly or indirectly with the French gas transmission network, i.e. Belgium, the Netherlands, Germany, Italy (through Switzerland) and Spain. A participant's market share in the upstream wholesale market corresponds to their relative weight in the gas supply of the countries concerned. The operator used three

¹⁰ Délibération de la CRE du 21 juillet 2022 portant sur le bilan d'exécution du programme d'investissements 2021 et approbation du programme d'investissements 2022 révisé de GRTgaz et de Teréga (transport)

scenarios to assess the market share of the TotalEnergies group in the upstream wholesale market over the 2023-2028 period, with and without the new LNG terminal projects. TELSf's estimate shows with the Le Havre FSRU TotalEnergies's market share in the relevant upstream wholesale market should remain inferior to 15% in all of the scenarios.

From a wholesale market concentration point of view, TELSf estimates that the booking by TEGPL of 50% of capacity must be considered as a substitute for existing Russian gas imports until 2022. Therefore, it would be associated with a corresponding drop in Gazprom's market share, and would lead to a reduction ranging between 20 and 25 points of the HHI¹¹ market index. According to TELSf, this therefore demonstrates the positive effect of the Le Havre's FSRU which would reduce upstream wholesale market concentration.

Concerning the downstream wholesale market:

The downstream wholesale market is defined as the market in which suppliers (who purchase gas wholesale from the upstream wholesale market) sell gas wholesale to other traders or retailers.

TELSf considered that the trading market (including all types of trade, on the exchanges and on the OTC markets) constitute the relevant markets, with an assumption maximising the market share of TotalEnergies according to which, once regasified within the Le Havre FSRU, the gas will be injected into the network and sold by TEGPL on the French and European hubs. From a geographical point of view, the West-European market comprising the different hubs in which gas supply/demand balance is formed (PEG, TTF, THE, ZTP, PSV and PVB) was deemed relevant. The competitive analysis undertaken by the operator in this market segment indicates that the project would improve the competitive situation in the downstream wholesale market. In order to analyse the impact of the Le Havre FSRU on the concentration of the downstream wholesale market, TEGPL quantified the variation of the HHI index induced by the use of 50% of the FSRU capacity and the sale by TEGPL of the corresponding quantities of gas in the West-European downstream wholesale market. The results show that with the Le Havre FSRU, TotalEnergies's market share¹² would be lower than 6% leading to an insignificant change of the HHI index.

Concerning other markets:

TELSf also evaluated the project's impact on indirectly related markets, in particular downstream retail gas supply markets and upstream world markets. With regard to the retail gas market, TELSf states that it cannot foreclose the market to new entrants because it does not have substantial power in the upstream market.

As for upstream world markets, the impact of the project on LNG production and transmission markets would be notably similar whether the FSRU is deployed in Le Havre or elsewhere, since it is leased on a long-term basis by TotalEnergies.

Summary of responses to the public consultation

One shipper considers that the FSRU project does not have a comparative advantage over existing LNG terminals. This same shipper nevertheless questions the definition of the relevant market. According to it, the relevant market should be limited to the French market because the FSRU is only physically connected to the French transmission network and because its impact on the West European market would be marginal. This shipper also doubts the assessment made by TESFL showing the decrease of about 20 points in the HHI of the wholesale market. However, this shipper agrees with CRE's preliminary analysis and recognizes that the change in the HHI index induced by TotalEnergies' subscriptions on the FSRU would be marginal.

The gas industry associations agree with CRE's preliminary analysis and consider that the reservation of FSRU re-gasification capacity by TotalEnergies would not be detrimental to competition and the effective functioning of the West European market.

Half of the individuals consider that the project meets the criteria related to competition and the effective functioning of the market.

CRE's analysis

CRE maintains its analysis concerning the impact of the project on competition and the efficient functioning of the gas market. Investments making it possible to increase the gas supply using new sources generally tend to improve competition in the wholesale market, and subsequently, in the retail gas market, except if these sources are controlled by companies having a dominant position in the relevant markets. CRE considers, based on elements submitted by TELSf and its own analysis, that TotalEnergies would not be in dominant position in the concerned wholesale markets, would it be upstream or downstream.

In addition, the European Commission defines the relevant market as a market comprising the area in which the undertakings concerned are engaged in supplying products or services and in which the conditions of competition

¹¹ The HHI index is a criterion for assessing market concentration. It is the sum of squared market shares of all participants in the market in question. The higher the index, the more the market is concentrated. The lower the index, the more fragmented the market. This index is between 0 and 10,000: a variation of 20 points is therefore not very significant.

¹² This is defined as the share of volumes traded by TotalEnergies among the total volumes traded in the hubs in question.

are sufficiently similar¹³. TotalEnergies is active as a gas shipper in France, Italy, Spain, Belgium, the Netherlands and Germany. Moreover, these countries have well interconnected transmission networks (since October 2022, the interconnection between France and Germany can be used in the direction from France to Germany) and LNG terminals that compete with each other. On this point, CRE notes that the reduction in Russian gas supplies via pipelines will increase the role of access to the global LNG market and therefore of LNG terminals in the integration of the European markets. The conditions of competition between suppliers are also very similar in these countries, as the European gas market is integrated, with harmonized operating rules at the European Union level. CRE therefore considers that the current definition of the relevant market can be maintained.

CRE also considers, that this project would not have any negative effects on competition in the retail market. The project, which aims to replace former Russian gas imports with LNG, only partially compensates the reduction of the Gazprom's market share.

In addition, as stated in part 1.3, the Le Havre FSRU will have to comply with the same operational rules related to interfaces with the transport network as the other French LNG terminals. It is important to note that because of the level of gas fuel consumption necessary for its operation (see part 1.2), the cost for clients to use the terminal will, a priori, be higher than the cost of existing terminals. Therefore, the FSRU will not have a competitive advantage over these infrastructures.

CRE considers that the criteria related to competition and the effective functioning of the internal market (criteria a) and e)) are met.

2.2 Impact of the project on security of supply

To meet the criteria a) and e) of Article 36 of Directive 2009/73/EC, the investment must enhance security of supply and the exemption must not be detrimental to the natural gas supply of the European Union.

TELSF considers that the project can respond to security of supply and energy sovereignty challenges. According to TELSf, the project to install a floating regasification terminal in the Le Havre harbour would increase LNG import capacity by approximately 5 Gm³ per year in the French and West-European gas markets as from September 2023 for a period of five years.

TELSF notes that prior to the invasion of Ukraine by Russia, the gas and LNG import capacity available¹⁴ in France were reaching 2,060 GWh/d. After 24 February 2022, available import capacity in France was reduced by 16%, dropping to 1,735 GWh/d (i.e. a difference of 325 GWh/d).

TELSF states that the Le Havre FSRU will improve security of supply in this deteriorated context. The additional import capacity represented by the project is 150 GWh/d, which would reduce the difference compared to the pre-crisis situation by about 50%, i.e. 325 GWh/d to 175 GWh/d. TELSf states that it is confident regarding TEGPL's capacity to deliver LNG through the FSRU.

Summary of responses to the public consultation

One shipper as well as gas industry associations and half of the individuals consider that the project would have a positive impact on security of supply.

Some individual consumers and an environmental association question the existence of a menace on security of gas supply, noting that the FSRU will not be sufficient to fully compensate for the loss of supply from Russia and will not be able to contribute to the security of supply as of the winter of 2022/2023.

CRE's analysis

Russia has significantly reduced its gas supply to the European Union. This has led to a significant reduction in the supply of gas to Europe, which is only likely to be partially offset in the short term.

CRE maintains its analysis concerning this criterion and considers that the installation of the FSRU in Le Havre would contribute considerably to the improvement of security of supply in France and Europe. The additional LNG import capacity available in the short term would indeed facilitate gas supply as from the winter of 2022/2023 for France and for Europe. Moreover, the FSRU would strengthen the resilience of the French gas system in the event of a loss of supply infrastructure.

CRE therefore considers that the criteria related to security of supply are met.

2.3 Level of risk attached to the project

TELSF considers that the operational characteristics of the FSRU are not adapted to the implementation of a regulatory regime. One of the reasons for this position has to do with the fact that the terminal's storage capacities are limited compared to the LNG volumes usually shipped by LNG carriers, which generates constraints related to the

¹³ [https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:31997Y1209\(01\)&from=FR](https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:31997Y1209(01)&from=FR)

¹⁴ This corresponds, in TELSf's exemption request, to the sum of the technical capacities of the PITTM and PIR Dunkerque and the effective flows at the PIR Virtualys, Obergaillbach, Oltingue and Pirineos.

upstream and downstream flexibility provided by the FSRU. Indeed, the FSRU's LNG storage capacity, which is lower than that of a conventional LNG terminal¹⁵, does not enable TELSf to take into account contingencies associated with the LNG carrier offloading programme (risk of saturation of storage capacity if the timeframe between two offloading operations is not sufficient for injecting all of the gas into the network). Since the difficulties related with this constraint increase with the number of terminal users, TELSf states that the structure of its commercial and operational offer would be facilitated by a guarantee of 50% subscription of the terminal's capacity by TEGPL.

Furthermore, TELSf indicates that the guarantee of the 50% capacity subscription, exemption would make the Le Havre FSRU more economically attractive. TEGPL's 50% capacity subscription would enable the terminal to ensure not only more attractive operational conditions, but also a stable and predictable tariff. This last point is particularly important given the cost of regasification and uncertainty surrounding the level of the FSRU's variable costs if the use rate is not sufficient. Indeed, as stated in part 1.2, the regasification service proposed by the FSRU requires natural gas consumption. This self-consumption makes the cost to use the FSRU higher than that of conventional LNG terminals. Moreover, this cost would tend to increase in the event of under-utilisation (an under-utilisation generating costs of continued cooling, in particular), which would further reduce the attractiveness of the FSRU. In addition, TELSf notes that if prices on the French wholesale market are lower than on other Western European markets, as has been the case for several months, the capacity available on French LNG terminals would be less attractive to LNG market players. Under these conditions, it appears critical for the operator to be able to guarantee a competitive tariff, and a sufficient level of stability and visibility for its clients.

TELSf also states that given the uncertainty related on one hand to subscriptions and the future use of the terminal's capacity and on the other hand to the structure of FSRU charges (the predominant share of OPEX), the tariff level that could be set for the FSRU by CRE, if it were regulated, would not allow to cover the risks attached to the project. Indeed, with regard to the structure of FSRU's expenses, and contrary to a conventional terminal, FSRU's operating expenses represent the largest share of its costs (see part 1.2). In the case of existing regulated terminals, operating expenses are only covered by the regulated tariff and are not subject to remuneration. TELSf estimates that the remuneration rate applied to its investments will be only between 3% and 5 % and that this rate, applied only to the value of the regulated assets, would be insufficient for a project such as that of the FSRU given its limited operating duration and therefore its amortisation period (5 years). TELSf also highlights its exposure to the risk of the exchange rate between the Euro and the Dollar, since FSRU charter, which represents a major portion of costs, is payable in American dollars. TELSf therefore considers that if the FSRU managed to sell all of its regasification capacity within the framework of a regulatory scheme, its revenues would be significantly lower than the revenue it would likely receive by making the FSRU available to a third party at market price in another geographical zone.

As a result, TELSf is waiting for its application for exemption to be investigated, in particular to find out under what conditions TotalEnergies or companies controlled by TotalEnergies will be able to access the FSRU's capacities, before making the final decision to proceed with the project.

Summary of responses to the public consultation

One shipper considers that the project respects the criterion related to the level of risk. The shipper indicated that a market test should be conducted to determine the actual level of risk associated with the project. This shipper recognizes that the level of risk associated with the FSRU project is higher than the risk borne by onshore terminals but considers that this level of risk would be better covered by a regulated regime.

The gas industry associations consider that this criterion is met. One environmental association gave an unfavourable opinion, questioning the consistency between the arguments presented by TELSf regarding security of supply and the level of risk. According to the association, if the FSRU really contributes to security of supply, it should be fully subscribed, which would limit the risk of the project within the terms of Article 36.

An environmental association considers that, since TotalEnergies rents the FSRU, the cost of this rental is an operational expense and not an investment expense and deduces that this is incompatible with the provisions of Article 36 of Directive 2009/73/EC. Half of the individuals consider that the project meets the criterion relating to the level of risk.

Finally, all stakeholders have no opinion on the 50% share of capacity that can be reserved by TEGPL.

CRE's analysis

Due to the technical and operational characteristics of the project, CRE considers that the Le Havre FSRU is exposed to greater risks than the other LNG terminals. The terminal's limited storage capacity, combined with relatively low investment costs compared to operating costs (which, moreover, may vary heavily based on the level of use of the FSRU), lead to significant uncertainties for the project.

In addition, CRE shares TotalEnergies's analysis that the regulatory regime would increase the level of risk attached to the project by not guaranteeing a sufficient level of use to ensure a stable and competitive tariff. On the contrary, a guaranteed reservation of 50% of capacity, corresponding to an average of two unloading per month, is likely to

¹⁵ In comparison, French onshore LNG terminals have regasification capacity between 2 to 4 times higher than those of the FSRU.

make the FSRU more attractive to third parties. Such a level of FSRU deployment would allow for better operational conditions, with more stable and lower gas-in-kind withdrawals and the tariff. This economic attractiveness of the FSRU is important in order for security of supply to be effectively improved (see section 2.2).

CRE therefore considers that guaranteeing a minimum level of subscription and use of the FSRU is desirable for the operational and economic reasons.

In addition, CRE recalls that an infrastructure can contribute to the security of supply and the resilience of the gas system even when it is not used in full.

At this stage, CRE considers the criterion b) of Article 36 is met.

2.4 Independence of the owner with regard to the system operator

As indicated in part 1.3, the FSRU will be connected to GRTgaz's transmission network. GRTgaz is 60.9% owned by Engie, a vertically integrated company in the energy sector, 39% by the *Société d'Infrastructures Gazière* (SIG) (company held by the *Caisse des Dépôts* and CNP, which itself is part of the *Caisse des Dépôts* group), and 0.5% by the Alto employee fund. GRTgaz is therefore considered separate from TotalEnergies LNG Services France SAS. Equally, GRTgaz does not hold an interest in TELSf or TotalEnergies.

Summary of responses to the public consultation

One shipper considers that TELSf and TotalEnergies are independent of the transmission system operator. The gas industry associations as well as the individuals who expressed their opinion share this view.

CRE's analysis

Because of the absence of a corporate link between TELSf and GRTgaz, the operator of the gas transmission system to which the FSRU would be connected, CRE considers that criterion c) is met.

2.5 Levy of charges from infrastructure users

In its exemption request, TELSf outlined the tariff modalities that will be established once the FSRU is operational. According to the operator, this tariff will cover the terminal's costs (see part 1.2) and reach the profitability rate expected by the company for this type of project. The gas fuel necessary for LNG regasification will be withdrawn from the LNG volumes offloaded by clients. The company states that the tariff paid by users, including TEGPL, will be subject to a "ship or pay" commitment, and will be billed and paid monthly on a 1/12th basis.

Summary of responses to the public consultation

One shipper considers that TotalEnergies complies with criterion d) concerning the collection of access fees from users of the infrastructure. He welcomes the tariff scheme proposed by TELSf as well as CRE's proposal on the communication of signed contracts. The gas industry associations as well as half of the individuals also responded favourably.

CRE's preliminary analysis

CRE maintains its opinion and considers that the tariff proposed by TELSf would cover the terminal's construction and operating costs and would generate a reasonable return on the capital employed.

CRE recommends that TELSf must forward to CRE the signed capacity subscription contracts and the FSRU's user tariff.

CRE considers that criterion d) is met, provided that this condition is satisfied.

2.6 Impact on the efficient functioning of the regulated system concerned

TELSf considers that the project would have a positive impact on the French system, particularly within the context of the current interruption in Russian pipeline gas supply. The operator illustrates its position using analyses conducted by GRTgaz. More specifically, it considers that the Le Havre FSRU will constitute a new gas injection point on the national and European transmission network, contributing to improving the reliability of the entire system and that the volumes of gas emitted under strong pressure by the FSRU in Le Havre will have a positive impact on peak balance coverage in a cold day scenario without Russian gas.

Moreover, TELSf is in regular contact with GRTgaz in order to examine the modalities for connecting the FSRU to the gas transmission network. As stated in point 1.3, GRTgaz's network is already relatively well-sized to accommodate such infrastructure without putting any pressure on the network.

The company intends to enter into an inter-operator agreement with GRTgaz, which will allow for the establishment of the modalities for flow management and the proper management of the interface between infrastructure. Within the framework of this agreement, TELSf will supply GRTgaz with data useful for the control and balancing of the network.

Summary of responses to the public consultation

One shipper considers that the project presented by TELSIF meets the criterion relating to the efficient operation of the regulated network. In addition, the transmission system operators indicate that they are currently studying the impact of the terminal connection on the functioning of the network in the Trading Region France (TRF).

The gas industry associations and half of the individuals agree with the CRE on this criterion. However, one environmental association considers TotalEnergies' arguments to be unconvincing.

CRE's analysis

CRE considers that not only would the Le Havre FSRU not have any negative impact, but that it would in fact have a positive impact on GRTgaz's network, and therefore criterion e) is met.

3. COMMERCIAL FRAMEWORK PLANNED BY TELSIF

3.1 Commercialisation of capacity not booked by TEGPL

Within the framework of its exemption application, TELSIF wishes for 50% of the FSRU's capacity to be booked by TEGPL, another subsidiary of TotalEnergies. TELSIF plans to sell the remaining capacity in several stages.

First, six months prior to the commercial launch of the project (a priori in March 2023), TELSIF intends to sell the entire 50% of the available capacity for the five years of the commercial operation of the FSRU. Candidates will have to book at least 1 Gm³/year over the entire period of commercial operation of the FSRU. Candidates will be able to propose a premium added to the reserve price of the first year: bids will be classed based on the revenue generated for the project.

If all of the capacity is not sold during the first stage, and as long as capacity remains available, TELSIF will set up for sell every year, at the latest three months before the start of operating year N, the capacity available as from operating year N until the end of the terminal's operating period, according to the same rules as the first stage.

Lastly, if capacity for operating year N is still available at the end of this second stage, it will be proposed to the existing subscribers, then to the market through an open and non-discriminatory call for tenders. The terms and conditions of this stage will be defined later.

TELSIF specifies that TotalEnergies or the companies controlled by it will not be able to take part in the first stage of this process. They will be able to participate in the following stages but will not be able to propose a premium when they participate in auctions.

As indicated in section 2.5, TELSIF plans to set the reserve price for the selling of capacity at a level enabling it to cover its costs and reach the profitability rate projected by the company for this type of project. This reserve price will be the tariff paid by TEGPL for the 50% of capacity that will be reserved for it. The gas fuel necessary for regasification of the LNG will be withdrawn from the LNG volumes offloaded by clients, under the same conditions for all the clients.

Summary of responses to the public consultation

Almost all the stakeholders who expressed an opinion are in favour of limiting the participation of TotalEnergies or companies controlled by it in the capacity commercialisation process to short-term capacity. One of the suppliers wants the exemption to be conditional on the modification of the allotment rules for the first commercialisation stage.

Two gas industry associations recall the objective of maximising the use of the terminal. For this reason, one of them is in favour of TotalEnergies' participation in the commercialisation from the second stage of the process.

CRE's analysis

As already mentioned in section 2.3 on the level of risk, CRE considers that a guaranteed reservation of 50% of the FSRU capacity is economically and operationally desirable.

With regard to the rest of the capacity, the exemption application contains a description of the main principles of the commercialisation mechanism planned by TELSIF, without specifying all of the details. CRE considers that these main principles are relevant, and that the mechanism envisaged meets the objectives of transparency and non-discrimination. TELSIF will have to specify the operational rules of this mechanism before its launch. In compliance with the provisions of Article 29 of the purchasing power law¹⁶, CRE will define, based on a proposal by TELSIF, the rules and mechanisms applicable to the management and allocation of the facility's capacities.

CRE is not in favour of the possibility for TotalEnergies or the companies controlled by it to take part in auctions as from the second stage of the process for the booking of multiannual capacity. Indeed, in the event that capacity remains available after the first stage, and no subscriber requests it with a premium in the second stage,

¹⁶ Loi n° 2022-1158 du 16 août 2022 portant mesures d'urgence pour la protection du pouvoir d'achat

TotalEnergies could therefore book, over several years, capacity higher than the 50% that will be allocated to it within the framework of the exemption.

In order to guarantee other market participants' a better access to the FSRU, it would be relevant that TotalEnergies should only be able to book additional capacity for the short term (i.e. for a period of one year maximum). CRE therefore recommends that the exemption be conditional upon the participation of TotalEnergies or the companies controlled by it to the capacity commercialisation being limited short term bookings, for a period of one year maximum.

TELSF plans to set an identical reserve price which will be known by all market participants: CRE considers that this will allow for transparent and non-discriminatory commercialisation of capacity.

Lastly, Article 36 of Directive 2009/73/EC states that a market test is organised by the operator wishing to obtain an exemption before this exemption is granted. TELSf plans to organise this market test in January 2023.

3.2 Mechanism for unused capacity release

In order to avoid capacity withholding, TELSf plans to set up a mechanism for putting back on the market capacity booked but not used by their subscribers, similar to the use-it-or-lose-it (UIOLI) mechanism. TELSf intends to give subscribers the choice between two capacity release mechanisms (selling of an offloading slot, or a swap). Both mechanisms would function based on a call for tenders, for which the reserve price will be set by the holder of the unused capacity.

Summary of responses to the public consultation

All the stakeholders who expressed an opinion were in favour of setting up a mechanism for reselling unused capacity that would make it possible to exclude any risk of capacity withholding. In particular, one shipper considers that the mechanism should be specified and is opposed to primary capacity holders being able to set the price for the transfer of their capacities themselves.

The two gas industry associations recall the objective of maximising the use of the terminal. One of the gas infrastructure managers would like the FSRU to be subject to an obligation of transparency on the availability of capacity.

CRE's analysis

TELSf's proposal includes a description of the main principles of the mechanism envisaged by the operator, without specifying all the details. For example, the terms and conditions for the call for tenders and the timeframe for reselling capacity before the date of an unused slot have not been defined by TELSf, which intends to submit it at a later stage for CRE's examination.

CRE considers that the establishment of a mechanism for unused capacity release is essential, to avoid capacity withholding and maximise the LNG volumes offloaded. The mechanism envisaged by TELSf is not completely satisfactory. The fact that subscribers themselves could set the reserve price for their unused capacity at a level potentially lower than the exempted tariff is a positive aspect of the proposed mechanism. However, the mechanism does not completely rule out the possibility of capacity withholding, in the absence of a fixed maximum price. In addition, important parameters such as the time limit for resale, as well as the penalty for non-compliance, are not specified by TELSf.

Therefore, CRE recommends that the exemption be conditional upon the establishment by TELSf, before the commissioning of the FSRU, of a UIOLI mechanism that would rule out the risk of capacity withholding.

The rules and mechanisms applicable to the management and allocation of the facility's capacities will be defined by CRE, based on a proposal by TELSf.

4. STAKEHOLDERS' OPINION ON TELSf'S EXEMPTION REQUEST

The two shippers and the two gas industry associations are in favour of granting an exemption from the principle of third-party access and tariff regulation for a period of five years to the Le Havre floating LNG terminal. However, these players indicate that they are not in a position to comment on the relevance of the share of capacity that will be reserved by TEGPL.

The gas infrastructure operators do not comment on the granting of this exemption.

Both of the environmental associations and three of the individuals are against granting an exemption to TELSf for the Le Havre terminal.

One individual and one other actor are in favour of granting this exemption.

CRE's analysis

CRE considers that TELSf's request meets the five criteria specified by Article 36 of Directive 2009/73/EC.

The commercialisation process envisaged by TELSIF at this stage respects the principles of transparency and non-discrimination. However, CRE considers that the participation of TotalEnergies or companies controlled by it in the commercialisation process should be limited to short term subscriptions (maximum duration of one year), and that TELSIF will have to set up a UIOLI mechanism to exclude any risk of capacity withholding. The rules and mechanisms applicable to the management and allocation of the installation's capacity will be defined by CRE, on the proposal of TELSIF.

In view of these elements, CRE is in favour of granting an exemption from the principle of third-party access and tariff regulation for a period of five years to the Le Havre floating LNG terminal, together with the booking of a maximum of 50% of the marketable capacities by TEGPL.

5. OTHER TOPICS DISCUSSED BY THE STAKEHOLDERS

Several individuals and an environmental association consider that the project is not compatible with the objectives of energy transition.

One shipper indicated that achieving the decarbonisation objectives implies a significant reduction in the use of fossil gas: it therefore recommends avoiding any investment that would lead to the long-term preservation of gas demand and considers that the five-year operating period of the FSRU is compatible with this objective. Another stakeholder states that the FSRU should remain a temporary solution to meet the Russian gas supply deficit.

An environmental association considers that the project is not compatible with the objective of energy sovereignty.

The two gas industry associations want the exemption application process to be optimised in order to speed up the operational start-up of the terminal.

CRE considers that these elements, some of which do not fall within the scope of CRE's competence in the context of this opinion, do not call into question its favourable opinion on the exemption request.

CRE'S OPINION

By letter dated 20 October 2022, the company TotalEnergies LNG Services France (hereinafter « TELSIF ») has referred to the Energy Minister for review of an exemption request from the provisions concerning third-party access to infrastructure and tariff regulation, for the Le Havre floating LNG terminal. TotalEnergies, through its subsidiary TotalEnergies Gas & Power Ltd (hereinafter « TEGPL »), wishes to book 50% of the terminal capacity.

This request has been forwarded to CRE, which was sought for its opinion by the Minister of the Energy Transition on 27 October 2022 pursuant to the provisions of article R. 111-45 of the energy code.

CRE issues a favourable opinion to TELSIF's exemption request from the principle of third-party access and tariff regulation for a period of five years for Le Havre floating LNG terminal, together with the booking of a maximum of 50% of the marketable capacities by TEGPL.

CRE recommends to the Energy Minister that the exemption draft, that will be communicated to the European Commission, be subject to the following conditions:

- 1) TELSIF makes available to market players half of the capacities through a transparent and non-discriminatory commercialisation procedure, the terms of which are set by the Energy Regulatory Commission, on the proposal of TELSIF;
- 2) The participation of TotalEnergies or other companies controlled by TotalEnergies in this commercialisation process is limited to the commercialisation of short-term capacity (i.e. maximum one year);
- 3) TELSIF sets up and publishes the conditions for the release to the market of subscribed and unused capacities. Subscribed but unscheduled capacities shall be released to the market sufficiently in advance to allow their use by other market players. The mechanisms envisaged to avoid the withholding of capacities are fixed by the Energy Regulatory Commission on the proposal of the TELSIF company;
- 4) TotalEnergies or other companies controlled by TotalEnergies may only acquire re-gasification capacity from other users of the terminal under the mechanism set out in point (3);
- 5) TELSIF communicates to the Energy Regulatory Commission its tariff for access to terminal capacities and the signed capacity subscription contracts;
- 6) TELSIF publishes, as a minimum, the same information that is required of regulated meteorological terminal operators with regard to unloading slots, available capacity and any information necessary for the proper functioning of the transmission network to which it is connected;
- 7) TELSIF respects the specifications applicable to interfaces between other infrastructures and other French LNG terminals.

This deliberation will be published on CRE's website and notified to TELSIF. It will be sent to the Minister of the Energy Transition and to the European Commission.

Paris, 24 November 2022.

For the Energy Regulatory Commission,

The president,

Emmanuelle WARGON