

## Public consultation on the commercialisation rules proposed by GRTgaz and Elengy for long-term capacity released within the framework of GDF Suez commitments

In accordance with article 9 of Council Regulation (EC) No. 1/2003, on 21 October 2009, GDF Suez, GRTgaz and Elengy offered commitments to the European Commission in view of remedying the competition concerns identified by the Commission in its letter opening a formal procedure of 16 May 2008 and its preliminary assessment of 22 June 2009 within the framework of its investigation into case COMP/B-1/39.316.

On 3 December 2009, the European Commission adopted a decision making legally binding the commitments offered by GDF Suez to reduce its share of long-term reservations of natural gas import capacity into France. The effective date of these commitments is 7 December 2009.

Under these commitments, GDF Suez shall:

- hold less than 50% of H-gas long-term firm entry capacity (for a period of one year and over) as from 1 October 2014 at the latest and for a 10-year period:
  - in GRTgaz North zone;
  - over the entire GRTgaz South zone and TIGF zone;
  - in France;
- significantly release long-term entry capacity on the market in France as from 1 October 2010.

This public consultation aims to collect comments from market players on the commercialisation procedures proposed by GRTgaz and Elengy on 7 January 2010 to the Commission de régulation de l'énergie (CRE) as part of the initiative to release import capacity on the market from October 2010.

At the end of this consultation, the CRE will issue a deliberation on the commercialisation rules for these capacities.

All interested parties are invited to answer the questions contained in this document, **by 25 January 2010 at the latest** (date after which no contributions will be taken into account).

## I. GDF Suez commitments

The elements here below concerning GDF Suez commitments contained in the following paragraphs are given only for information purposes; in no way do they replace the official document published by the European Commission which is the only reference<sup>1</sup>.

These commitments mark a major step in the opening of the natural gas market in France. The 50% limit on GDF Suez's share of long-term entry capacities as well as making associated upstream transmission capacities available in Germany, Belgium and on the Interconnector gas pipeline are likely to facilitate access by other suppliers to the French market and foster competition in favour of the end customer.

### 1) *Transport capacities commercialised by GRTgaz*

GRTgaz will commercialise the following capacities released by GDF Suez:

- **On the H-Gas Obergailbach entry point:** 80 GWh/d as from 1 October 2010 until 30 September 2027 broken down into two categories:
  - 30 GWh/d giving shippers the right to obtain from GDF Suez<sup>2</sup> an equivalent upstream capacity on the Waidhaus entry point and on the Medelsheim exit point located on German territory.
  - 50 GWh/d giving shippers the right to obtain from GDF Suez an equivalent upstream capacity on the Medelsheim exit point from the Net Connect Germany marketplace located on German territory.

- **On the H-Gas Taisnières H entry point:** 10 GWh/d as from 1 October 2010 until 30 September 2026.

Capacities allocated to a shipper at the Taisnières H entry point will confer the right to obtain from GDF Suez<sup>2</sup> an equivalent upstream capacity, i.e.:

- on the Zeebrugge IZT entry point and on the Blaregnies exit point located on Belgian territory until 30 September 2025;
  - or on the Zeebrugge IZT entry point and on the Blaregnies exit point located on Belgian territory until 30 September 2025, and on the Interconnector gas pipeline on the "NBP exit" entry point and the Zeebrugge IZT exit point on British and Belgian territories respectively until 30 September 2018.
- **On the Dunkirk H-Gas entry point:** 32 GWh/d as from 1 October 2010 until 30 September 2026 and subject to the conclusion of an agreement by GDF Suez by 7 February 2010 at the latest.

### 2) *Regasification capacities commercialised by Elengy*

Elengy will commercialise the following capacities released by GDF Suez on the Montoir-de-Bretagne LNG terminal:

- 1 Gm<sup>3</sup> per year, i.e. the equivalent of around 12 unloading slots distributed regularly over the year, as from 1 October 2010 until 31 December 2035 (**Lot A**);

---

<sup>1</sup> [http://ec.europa.eu/competition/antitrust/cases/decisions/39316/proposed\\_commitments\\_21102009.pdf](http://ec.europa.eu/competition/antitrust/cases/decisions/39316/proposed_commitments_21102009.pdf)

<sup>2</sup> The conditions for obtaining upstream capacity from GDF Suez are specified in the Commitment document published by the European Commission. These upstream capacities will be made available by GDF Suez by transfer or subletting.

- failing the conclusion of the agreement mentioned in 1) here above enabling the commercialisation by GRTgaz of capacity on the Dunkirk H-Gas entry point, an additional 1 Gm<sup>3</sup> per year will be commercialised by Elengy as from 1 October 2011 until 31 December 2035 (**Lot B**).

In this event, lots A and B will be commercialised simultaneously.

## II. Consultation on the subscription and allocation rules proposed by GRTgaz to the CRE

The rules proposed by GRTgaz can be consulted in the annex of this document.

### 1) Commercialisation method

The rules proposed by GRTgaz set forth a single deadline for submitting offers for all capacities commercialised, taking into account the 3-week planned period set aside for commercialising capacities and enabling shippers to have a sufficient response deadline. This date is set at 26 February 2010 at 3 pm.

At the concertation meeting of 11 December 2009, some shippers expressed their interest in successive allocations on each of the entry points, which would enable them during the course of the allocation process to gradually define their subscription requests on a given entry point, depending on the previous allocation(s) result(s).

Such a mechanism was presented by the CRE at the concertation meeting of 6 January 2010 which consists of successively commercialising the capacities at the Obergailbach, Taisnières and Dunkirk entry points in that order, but with a completion date beyond 7 March 2010.

During its hearing, GRTgaz reaffirmed the need, in order to fulfil its commitments, to have completed the commercialisation of capacities by 7 March 2010 at the latest, and therefore its disagreement with the timetable presented at the meeting on 6 January 2010.

After talks with GRTgaz, the CRE plans to keep two successive commercialisation phases following the timetable below:

- ruling by the CRE early February;
- briefing meeting with shippers organised by GRTgaz on 8 February;
- open subscription period of capacities released at Obergailbach (date for submitting requests set at 15 February 2010 at the latest, and allocations communicated to shippers on 22 February 2010);
- open subscription period of capacities at Taisnières and possibly at Dunkirk based on the agreement (date for submitting requests set at 26 February 2010 at the latest and allocations communicated to shippers on 5 March 2010).

This commercialisation timetable conciliates compliance with the commitments and the visibility required by shippers. However, it imposes substantially shorter periods for request submissions.

<p><b>Q1</b> Are you in favour of the principle of successive commercialisations of transport capacities on entry points? If so, do you agree with the forecast timetable?</p>
--

## **2) Allocation rules**

### **i. Allocation rules proposed by GRTgaz**

GRTgaz's proposal defines the following rules for submitting requests and for allocation priorities:

- authorised participants:
  - all shippers (except GDF Suez and its affiliated companies) holding a supply license as at 17 February 2010;
  - affiliated companies must designate a leading subscriber.
- nature of requests:
  - shippers may submit one or several requests on each entry point;
  - requests must begin as from 1 October 2010, have a duration of a multiple of calendar years and involve a flat MWh per day capacity for the period considered;
  - requests are limited to the capacity available on each entry point considered as well as the associated upstream capacities;
  - with regard to the Obergailbach entry point, capacity requests must specify the associated upstream route.

At the end of the process, the shipper to whom entry capacity is allocated may or may not exercise with GDF Suez, their right to book the corresponding upstream capacity.

- The main prioritisation principles proposed by GRTgaz are as follows<sup>3</sup>:
  - the request(s) of the leading subscriber will be given priority where affiliated companies are concerned;
  - requests with the longest durations will be given priority in the allocation process, it being understood that requests relating to durations equal to or exceeding 10 years will have the same priority;
  - in the event of requests exceeding offered capacities on an entry point or route, a pro rata rule will be applied to last priority requests;

In addition, GRTgaz will provide for the implementation of two optional mechanisms enabling participants who have chosen these options to maximise their allocation in the event that their request has only been partially fulfilled:

- the "allocation profile" option which enables participants to book capacities which have remained available certain years after the pro rata rule has been applied;
- the "flexible route" option which enables participants whose requests have only been partially fulfilled on a route to book capacities available on another route.

### **ii. The priority criterion taking duration into account**

The commitments made by GDF Suez aim to solve a booking issue on long-term capacities on entry points in France.

The upstream capacity made available by GDF Suez together with the entry capacities proposed for booking on the GRTgaz transmission network presents a unique opportunity. In fact, according to the commitments, the entry capacities on the GRTgaz network which would remain unallocated at the end of the present operation will not be associated with rights to book upstream capacities during subsequent commercialisation periods.

In accordance with the commitments, GRTgaz has integrated into the procedure a criterion taking into account the duration of subscriptions. To facilitate the obtaining of long-term firm import capacity by shippers in compliance with the provisions set out during GRTgaz's latest open seasons, the rules proposed by GRTgaz provide that requests with the longest durations will be given priority in the allocation process, it

---

<sup>3</sup> Only the general principles are described in this paragraph, details of the subscription and allocation rules are presented in GRTgaz's proposal in the annex of this document.

being specified that requests covering a duration equal to or exceeding 10 years will be given the same priority.

Lastly, the allocation rules for existing capacities provide for, in addition to possibilities for multiannual capacity reservations dealt with on a “first come, first served” basis, regular availability of firm entry capacities: for durations equal to or below one year (short notice) and for durations between one to four years via the releasable capacity mechanism.

**Q2** Considering these elements, do you agree with the capacity allocation rule proposed by GRTgaz which takes into account the duration of requests? Do you agree with the same priority rule for requests covering a duration equal to or over ten years?

### iii. Shippers holding a substantial portion of long-term firm capacities

Some shippers hold a substantial portion of long-term firm capacities on the entry points targeted by the commitments.

To promote access by new shippers, the CRE plans to introduce a lesser priority criterion for shippers holding, as at 7 December 2009, more than 10% of long-term firm entry capacities for a period of at least five consecutive years as from 1 October 2010. The calculation of the 10% will not apply to capacity subscriptions related to investments which have not been endorsed at 7 December 2009. This lesser priority rule will only apply where requests exceed supply and only on the entry point at which the shipper verifies the criterion.

This provision will be specific to commercialisation within the framework of the capacity commitments entering into effect as from 1 October 2010, taking into account its particularity.

**Q3** Do you agree with the lesser priority rule proposed by the CRE for shippers holding a substantial portion of long-term firm capacities?

### iv. Minimum acceptance threshold

At the two concertation meetings, some shippers expressed their opinion on the risk of an excessive fragmentation of capacities allocated in the event of extensive requests, in particular on the Taisnières entry point.

Similar to what was implemented within the framework of the France/Spain open season, the CRE wishes to collect the market's opinion regarding the introduction of a minimum acceptance threshold in the procedure proposed by GRTgaz.

For each subscription request, participants will therefore determine, if they so desire, a minimum allocation threshold expressed in MWh per day under which they do not accept to be allocated.

As a result of this rule, the potentially unallocated capacities would be allocated to shippers of last priority in proportion to their requests. After this mechanism has been applied, participants of last priority will possibly have been allocated capacities exceeding the minimum acceptance threshold of certain participants of same priority.

This mechanism will reduce the risk for participants of an unacceptable fragmentation of capacities should requests exceed offered capacities, while limiting the allocation process to one round.

**Q4** Do you agree with the introduction of a minimum “acceptance” threshold proposed by the CRE in the commercialisation rules?

### 3) Commercialisation of potentially unsold capacities

In the event that a portion of the capacities commercialised within the framework of this procedure is not booked, GRTgaz proposes to offer it on the market according to the conditions set out in the general terms and conditions of its transmission contract (Article 7.2 of GRTgaz transmission contract general terms and conditions<sup>4</sup>).

These capacities would thus be available firstly with long notice, for durations exceeding or equal to one year on a "first come, first served" basis, then with short notice, mainly in the form of open subscription periods for durations below or equal to one year. These capacities will not be associated with access rights to the corresponding upstream long-term firm capacities.

The commitments do not prevent GDF Suez from booking short-term capacities (of a duration below or equal to one year) or long-term interruptible capacities. Neither do they prohibit the reservation by GDF Suez of long-term firm capacities, but the overall portion of GDF Suez H-Gas long-term firm entry capacity subscriptions must decrease gradually between 1 October 2010 and 1 October 2014, date from which the overall portion must be less than 50%.

**Q5** Do you agree with the application of the general terms and conditions of GRTgaz's transmission contract for any unsold capacities?

**Q6** Do you have any other comments on the allocation subscription rules proposed by GRTgaz?

### III. Consultation on the commercialisation procedure proposed by Elengy to the CRE

The commercialisation procedure proposed by Elengy can be consulted in the annex of this document.

#### 1) Timetable

The procedure proposed by Elengy provides for a qualification phase of subscribers before offers are made. To comply with the commitments, the proposed qualification deadline is 26 February 2010 and the proposed deadline for submitting binding requests is 3 March 2010.

**Q7** Do you agree with the timetable proposed by Elengy within the framework of the commitments?

#### 2) Allocation rules

##### i. Allocation rules proposed by Elengy

Elengy's proposal defines the following rules for request submissions and for allocation priorities:

- authorised participants:
  - all participants qualified as at 26 February 2010 (except GDF Suez and its affiliated companies); qualification implies in particular the provision of a flat-rate guarantee of one million euros (1 M€) linked to the one-off commercialisation operation;
  - affiliated companies must designate a leading subscriber.

<sup>4</sup> [http://www.grtgaz.com/fileadmin/user\\_upload/Acheminement/Documents/EN/acheminement\\_contrat-annexe1\\_en.pdf](http://www.grtgaz.com/fileadmin/user_upload/Acheminement/Documents/EN/acheminement_contrat-annexe1_en.pdf)

- nature of requests:
  - a subscription request is comprised of a maximum of one capacity profile for lot A or B;
  - each profile begins as from 1 October 2010 for lot A and 1 October 2011 for lot B;
  - each profile ends as at 31 December of a year between 2011 and 2035 for lot A (2012 and 2035 respectively for lot B);
  - each profile covers a constant volume of 11.75 TWh per year for each lot;
  - each profile specifies the emission service required: "uniform" or "continuous";
  - each profile relating to lot A may contain an indication to defer capacity to lot B in the event of non-allocation to lot A.
- allocation priority criteria in descending order:
  - for each lot, the profiles with the longest duration are given priority;
  - for requests of equal duration, a "continuous service" profile takes priority over a "band service" profile;
  - the profile relating to lot B of a shipper already allocated lot A will, for equal duration and similar service, be given less priority for lot B than the other profiles;
  - lots will be drawn under the supervision of a bailiff in the event of profiles having the same level of priority.

As a reminder, the commitments provide that the allocation procedure will integrate in particular criteria giving preference to the longest subscription offers.

#### ii. Prioritisation regarding the nature of the service requested

From Elengy's point of view, the presence of too many "uniform service" unloading will lead to operational difficulties in terms of distributing emissions and will reduce the possibility of offering additional "short-term band" or "spot" slots on the Montoir-de-Bretagne terminal.

As a result, Elengy proposes as a second prioritisation criterion, to favour "continuous service" profiles over "band service" profiles.

**Q8** Do you agree with the prioritisation criterion based on the nature of the service requested?

#### iii. Diversification criterion for the allocation of lot B

With regard to the allocation of lot B, Elengy proposes, before drawing lots, the application of a third prioritisation criterion to promote diversification of shippers on the terminal.

According to this criterion, less priority will be given to a shipper to whom lot A has been allocated compared to requests from other shippers (with equivalent subscription duration and service).

**Q9** Do you agree with the criterion aimed at promoting the diversification of shippers on the terminal?

### 3) Commercialisation of potentially unsold capacities

In the event that a portion of the capacities commercialised within the framework of this procedure would not be booked, Elengy will make the capacities available on a "first come, first served" basis in compliance with the existing rules<sup>5</sup>.

The commitments do not prohibit the reservation by GDF Suez of short-term regasification capacities (duration below or equal to one year). Neither do they prohibit the reservation by GDF Suez of long-term firm capacities, but the overall portion of GDF Suez H-Gas long-term firm entry capacity subscriptions must decrease gradually between 1 October 2010 and 1 October 2014, date from which the overall portion must be less than 50%.

<sup>5</sup> [http://www.elengy.com/fileadmin/user\\_upload/Allocation%20rule%20terminals%202012%20October%202006.pdf](http://www.elengy.com/fileadmin/user_upload/Allocation%20rule%20terminals%202012%20October%202006.pdf)



**Q10** Do you agree with the application of the current rules of capacity allocations published by Elengy to potentially unsold capacities?

**Q11** Do you have any other comments on the commercialisation procedure proposed by Elengy?

#### IV. Questions

The CRE invites all interested parties to submit their contributions, **by 25 January 2010 at the latest**:

- on the CRE web site, under “Public Consultations”, using the “Contribute” function (possibility of sending an electronic document);
- by e-mail, to the following address: webmestre@cre.fr;
- by post to: 2, rue du Quatre Septembre - 75084 Paris Cedex 02 – France.
- By meeting CRE’s services, please call : +33 1 44 50 41 24.

Interested parties are invited to answer the questions below, **specifying where applicable whether their answers are to remain confidential**:

**Without express mention by respondents on the confidential nature of their contributions, these contributions will be published in the synthesis which will be made public at the end of the consultation.**

**Q1** Do you agree with the principle of successive commercialisations of transport capacities on each entry point? If so, do you agree with the timetable forecast?

**Q2** Considering these elements, do you agree with the capacity allocation rule proposed by GRTgaz which takes into account the duration of requests? Do you agree with the same priority rule for requests covering a duration equal to or over ten years?

**Q3** Do you agree with the lesser priority rule proposed by the CRE for shippers holding a substantial portion of long-term firm capacities?

**Q4** Do you agree with the introduction of a minimum “acceptance” threshold proposed by the CRE in the commercialisation rules?

**Q5** Do you agree with the application of the general terms and conditions of GRTgaz’s transmission contract for any unsold capacities?

**Q6** Do you have any other comments on the allocation subscription rules proposed by GRTgaz?

**Q7** Do you agree with the timetable proposed by Elengy within the framework of the commitments?

**Q8** Do you agree with the prioritisation criterion based on the nature of the service requested?

**Q9** Do you agree with the criterion aimed at promoting the diversification of shippers on the terminal?

**Q10** Do you agree with the application of the current rules of capacity allocations published by Elengy to potentially unsold capacities?

**Q11** Do you have any other comments on the commercialisation procedure proposed by Elengy?



## **Useful links**

**1- GDF Suez commitments**

[http://ec.europa.eu/competition/antitrust/cases/decisions/39316/proposed\\_commitments\\_21102009.pdf](http://ec.europa.eu/competition/antitrust/cases/decisions/39316/proposed_commitments_21102009.pdf)

**2- European Commission – Directorate General for Competition**

[http://ec.europa.eu/competition/index\\_en.html](http://ec.europa.eu/competition/index_en.html)

**3- Elengy web site**

<http://www.elengy.com>

**4- GRTgaz web site**

<http://www.grtgaz.com/>