

Public Consultation

01 June 2011

Public consultation of the French Energy Regulatory Commission on the project of operating extension of the Fos Tonkin liquefied natural gas terminal

This public consultation concerns the open season procedure launched by the company Elengy for the proposed extension of operating period for the LNG terminal at Fos Tonkin beyond 2014.

The Fos Tonkin terminal is subject to a regulated regime. The proposed extension of operations will, as well, fit in a regulated framework. Consequently, CRE will approve the market consultation procedure set by Elengy and will define the tariff treatment for the project.

On May 5, 2011, Elengy sent to participants enrolled in the Open Season Fos Tonkin 2011 a preliminary version of the Information Memorandum regarding the market consultation on the sale of capacity on the Fos Tonkin Terminal. The Information Memorandum dated 5 May 2011, as communicated to participants, is attached to this paper (see Appendix A).

The Information Memorandum includes in particular the qualification requirements for the Fos Tonkin market consultation, terms of capacity allocation, the main steps to be undertaken by stakeholders and the indicative timetable for the market consultation.

This public consultation aims to get market players' opinion on the Preliminary Information Memorandum issued by Elengy.

Interested parties are invited to answer questions at the end of this document, no later than **15 June 2011**.

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Located in Fos-sur-Mer along the Mediterranean coast and operated by Elengy, the Fos Tonkin LNG terminal can handle Med-max LNG tankers transporting up to 75,000 m³ of liquefied natural gas (LNG).

The terminal currently has regasification capacities of 5.5 Bcm/year. Its commercial operation is planned until October 2014. No capacity has been marketed after this date.

In addition, after 2014, two of the three tanks from Fos Tonkin LNG terminal could be dismantled and the facilities will be refurbished in order to ensure a minimum send-out capacity of 3 Bcm/year.

Against this background, Elengy invites the market to subscribe capacity of up to 7 Bcm/year at the Fos Tonkin terminal from October 2014 for a period of up to 20 years.

According to the results of this open-season procedure, Elengy will be to decide whether the investments required for maintaining the operation of Fos Tonkin LNG terminal shall be triggered or not. In case the decision to invest is taken, the results of the open-season procedure will also serve to define which project is the best suited to the market needs. For the record, a similar open-season procedure launched last year failed to validate the proposed investments. Elengy reworked the draft for the current session.

The hereby public consultation aims at collecting the views of the market players on the conditions under which the open-season procedure should be led, conditions that are laid out in the preliminary Information Memorandum published by Elengy on may 5th, 2011 (cf Annex A).

To provide maximum visibility to market players, CRE's deliberation will be issued before the publication of the final Information Memorandum by Elengy, therefore at the latest by July 15th, 2011.

I. Regulatory framework

According to the French amended law No. 2003-8 dated 3 January 2003 on the electricity and gas markets and on the energy public service, access to the Fos Tonkin is regulated and the continuation project for the Fos Tonkin LNG terminal, access to the terminal after the date of continuation is also subject to a regulated regime.

1) *Tariff for the access to LNG terminals*

The decree of October, 20th, 2009 giving approval for the tariffs for the use of methane terminals (so-called tariffs "ATM3") states that tariff, specific for each terminal, will be applied during 3 years beginning on January, 1st 2010 for the Fos Tonkin and Montoir methane terminals and on commissioning date for Fos Cavaou.

Those new tariffs introduce principles favouring the development of new regasification capacity: the explanatory statement of its tariffs proposal CRE is states that: "[...]to provide the visibility required for investment decisions and long-term commitments, CRE is proposing tariffs based on the following rules:

- *the method of calculating the rate of return is fixed for 20 years. The rate is equal to the base rate applicable to natural-gas transmission assets (which may change during the period depending on future tariff decisions relating to transportation over the gas transmission networks), plus the additional 200 basis points specific to LNG;*
- *an additional bonus of 200 basis points is awarded for the next 10 years.*

These rules apply to extensions to existing LNG terminals (as long as the increase in regasification capacity represents at least 20% of the infrastructure's initial capacity) and to new terminals that are agreed after these tariffs come into force. New created capacity must be allocated using rules previously approved by CRE. "

2) Access conditions to the transmission network for the shippers holding regasification capacity

The decree of October, 6th, 2008 giving approval for the tariffs of use of gas transmission networks (named tariffs "ATRT4"), entered into force on January, 1st, 2009, defining rules applying to interface between transmission network and methane terminals (PITTM):

- automatic allocation for entry capacities on the transmission network as a function of the regasification capacities possessed :
"The possession of regasification capacities in an LNG terminal leads to the obligation of subscribing entry capacity on the corresponding transmission network, for the same duration and at the same level";
- economic test for investments related to the connection between a methane terminal and the transmission network:
"The economic test is based on the principle that all the generated incomes by subscription of entry capacity on the transmission network from the methane terminals must enable the covering of the cost of the investments between the terminal and the core of the transmission network, on a 20 years period. If that pre-requisite is not respected, then the entry term on the transmission network from the methane terminal will be increased or the TSO shall request a contribution to the operator in order to cover the cost of its connection investments."

Connection from the terminal to GRTgaz network:

- according to the first studies of GRTgaz, no investment will be necessary for the connection of the Fos Tonkin terminal to the transmission system. The present pipe connecting the terminal the core network of GRTgaz in Saint-Martin-de-Crau is sufficient and separated from the one connecting Fos Cavaou methane terminal. Consequently, future users of Fos Tonkin methane terminal will only be subjected to tariff of interconnection point between the entry point and the methane terminals (PITTM) in force at that time. The experiment will be operational by summer 2011.

Interconnection Point between methane terminals of Fos Zone (Fos PITTM) and GRTgaz transmission network:

- located in Saint-Martin-de-Crau (Bouches-du-Rhône), this point currently present an annual firm entry capacity on the transmission network of 410 GWh/d, facing a firm emission of 8.25 bcm/year on Fos Cavaou terminal and a firm emission of 5.5 bcm/year on Fos Tonkin;
- in its deliberation of April, 19, 2011, CRE has granted validation to GRTgaz decision to realise the project ERIDAN, underlining the exceptional nature of a decision related to the context of this project, *"a network core infrastructure required for all subsequent projects to create firm entry capacities in the South zone (LNG terminal, interconnection, storage)[...] is necessary for the merger of GRTgaz's North and South zones."*

Access from the terminal to PEG North and to North-Europe markets:

- in the deliberation dated 19 April 2011, CRE requested GRTgaz to launch an "exhaustive study on the feasibility and cost of the different means conceivable to merge North and South GRTgaz' zones" by end 2011;
- before any possible merger of North and South zones, the experimentation of a market coupling mechanism between North and South zones was decided in order to make PEG South benefit from the higher liquidity of PEG North. Operational terms were finalized together with market players and approved by CRE on 19 April 2011.

II. Elengy's preliminary information memorandum

Two scenarios for operation extending are considered by Elengy:

- the so-called project "Horizon 2035 - High" aims at allowing to extend the operation of the terminal beyond September 2014 for a target capacity of 7 bcm/y;
- the so-called project "Horizon 2035 - Low" aims at allowing to extend the operation of the terminal beyond September 2014 for a target capacity of 5.5 bcm/y.

If the consultation does not allow for launching one of these two projects, Elengy considers two recourses:

- A project “Horizon 2035 – Adapted” that would allow responding to demands expressed by market players by modifying the different parameters (costs, services, etc.) of the project “Horizon 2035”;
- A project “Horizon 2020” that guarantees the operation of the terminal until 2020 up to 3 bcm/y.

1) Open Season planning

The open season process as proposed by Elengy foresees 3 main steps:

1. qualification of subscribers registered to the open season process;
2. capacity allocation
 - submission and allocation simulation of non binding subscription requests;
 - submission and allocation of binding subscription requests;
 - allocation of capacities and closing of subscription agreements;
3. decision to launch the project for extending the operation of the terminal Fos Tonkin.

So as to stick to its investment planning and to get to a final investment decision by end 2011, Elengy splits its open season in a non-binding phase and a binding phase.

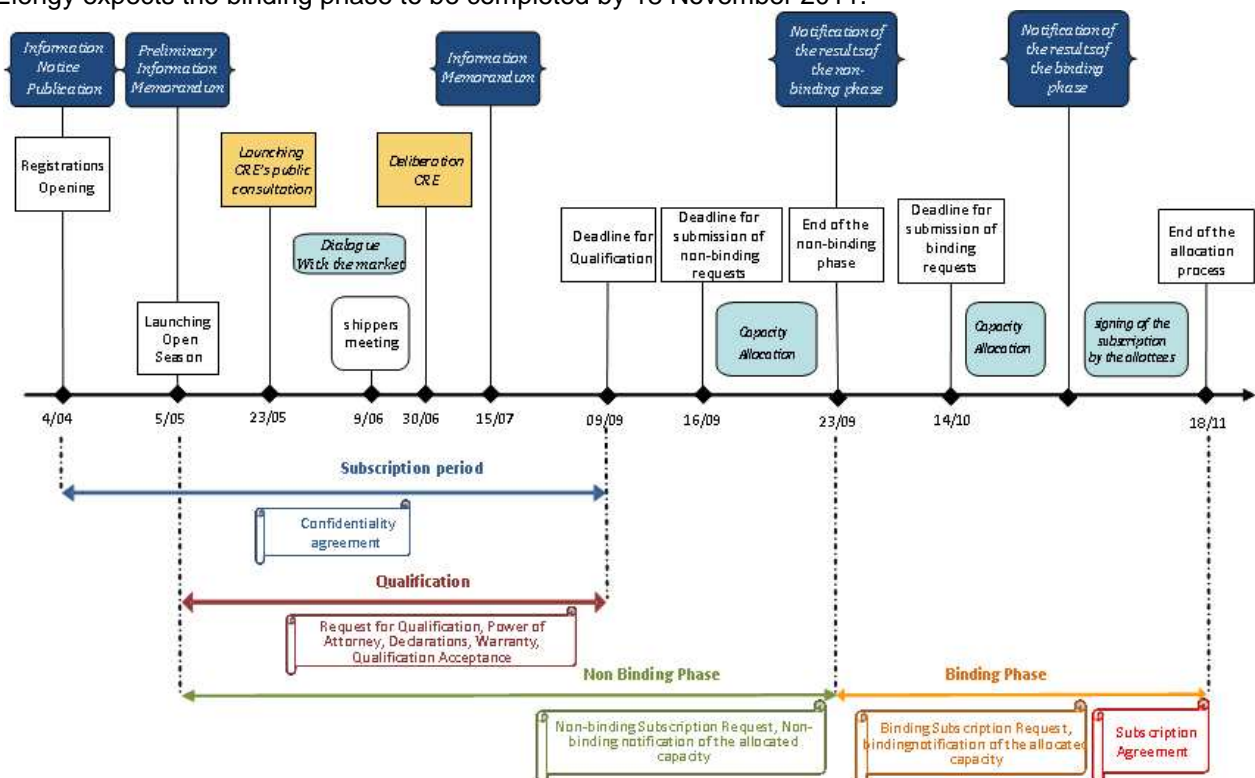
Non binding phase:

This 5-month phase started on 4 april 2011. Non-binding requests can be submitted until 16 september 2011. This phase will allow Elengy to pre-determine, based on an economic test, which project for extending the operation of the terminal is best suited to the market’s demands and adjust as needed the allocation principles for the binding phase.

Binding phase :

This one-month phase will start on 16 september 2011. Binding requests will possibly be submitted until 14 october 2011. Based on the feedback gained from the non-binding phase, if , at that point, allocation rules need improvement, new allocation rules dedicated to the binding phase will be defined and submitted to CRE for approval.

Elengy expects the binding phase to be completed by 18 November 2011.



Q1 What you think the timetable proposed by Elengy for the consultation of the market?

2) Incentive contribution

To maximize the chances of selecting the most relevant project in encouraging subscribers to submit non-binding requests as similar as possible to subsequent binding requests, Elengy will require that subscribers qualified for the non-binding phase undertake to pay an “incentive contribution” of € 50 000 if the following three conditions are met:

1. no capacity was allocated after the binding phase;
2. the gap between the volume of subscription requested at the non-binding phase and the volume requested during the binding phase is over 30%;
3. allocation rules were not significantly changed between the non-binding phase and the binding phase.

Q2 Do you consider this “incentive contribution” to be relevant?

3) Allocation rules

In its preliminary Information Memorandum Elengy defines the envisaged principles of qualification and capacity allocation.

Once qualified for the non-binding phase, subscribers are invited to submit a maximum of one subscription request. A subscription request is composed of a maximum of 10 capacity profiles.

Each capacity profile is characterized by:

- an end-of-profile date corresponding to an end-of-quarter date. The length of the profile is defined as the number of quarters between October 1, 2014 and the end-of-profile date. The profile duration is between 4 and 80 quarters;
- regasification capacity at least equal to 5 TWh / year, expressed as annual volume;
- an annual number of unloading operations, expressed in annual rate.

The methodology used for ranking the profiles foreseen by Elengy is based on 3 priority criteria :

- priority No.1: length of the profile (from 4 to 80 trimestres), priority being given to the profiles with a longer duration
- priority No.2: the profiles with a ratio [annual unloaded volume/number of unloading operations] of over 400 GWh ;
- priority No.3: the profiles above 10 TWh/yr are given the same priority. Profiles between 5 TWh/yr and 10 TWh/yr are ranked by decreasing order of volume

In the event that, once this ranking is established, multiple profiles remain equal after the priority criteria described above have been applied, Elengy will decide between these Profiles by means of an independently supervised draw.

In addition, once the ranking process described above is completed, Elengy will calculate, for each subscriber, the total sum of the capacity requested. If, for one subscriber, the sum is above 66.7% of the total capacity offered, then the profiles of this subscriber exceeding 66.7% will be associated to a priority directly inferior to the one associated with the profiles submitted by the other subscriber with the same duration.

Elengy asks that the above-mentioned rule is not applied within the framework of project Horizon 2020.

Elengy indicates that these criteria are set with the objective of:

- as for priority No.1: maximize the use of the LNG terminal and therefore the probability of a positive investment decision;
- as for priority No. 2 : optimise the use of the only landing stage of Fos Tonkin;

- as for priority No. 3 : encourage continuous subscriptions for capacities of a suitable size enabling a smooth operation of the terminal.

4) **Economic test and tariffs visibility**

i. Scope of the investments

Elengy has announced that important investments will be necessary to extend the operation of Fos Tonkin terminal. However, the amounts of investments are significantly inferior to those presented at the time of the Open Season Fos Tonkin 2009.

At this stage in the project, the projected amounts of investments communicated by Elengy are of:

- 325 M€₂₀₁₁ for the project Horizon 2035 High;
- 255 M€₂₀₁₁ for the project Horizon 2035 Low;
- 45 M€₂₀₁₁ for the project Horizon 2020.

ii. Economic test and tariffs visibility

Elengy suggests to select the project scenario (among projects "Horizon 2035 High" and "Horizon 2035 Low") with an economic test based on the principle that the average unit tariff over the operation period of the terminal should not go beyond 1,1 €₂₀₁₁/MWh.

The economic test is positive:

- When the subscriptions of capacities are on average superior to around 84% of the capacities of the project Horizon 2035 High at 7 Gm³/yr;
- When the subscriptions of capacities are on average superior to around 93% of the capacities of the projects Horizon 2035 Low at 5,5 Gm³/an.

Once the non-binding phase is completed, this test will allow Elengy to choose to launch the binding phase on the basis of the "high" or "low" project.

Q3 *What do you think of the subscription steps taken into account by Elengy for its economic test? What do you think of the criterion of a targeted maximum unit price of 1.1 €₂₀₁₁/MWh?*

Elengy will communicate regularly with players who have signed a purchase agreement on the progress of the project, particularly regarding global investment costs (Article 11.6 of the conditions to the rules of allowance applies to projects "Horizon 2035").

If the investment cost is 25% higher than the amount originally reported in the Information Memorandum, the sender can cancel the subscription agreement (clause 11.9 of the special conditions).

Q4 *What do you think of clause 1.9 concerning the termination of the subscription agreements in the event of cost overruns?*

5) **Subscription renegotiation clause prior to 2035**

By clause 11.11 called "renegotiation" of the particular conditions of the Subscription Agreement, Elengy introduced a clause to renegotiate subscriptions before 2035.

This provision opens the possibility for a shipper, "*in case of change of the LNG market with significant impact on its ability to unload cargo at the terminal*", to revise downward its sales and even terminate the agreement that binds him to the terminal.

The opening of the discussion is formalized by a "Notification of Negotiation", the sender then has six months to negotiate in good faith with Elengy and, where relevant, other shippers, necessary changes to subscription agreement(s).

The exit clause includes the following principles if the negotiation leads to the decision of an early closing of the Fos Tonkin terminal:

- 5 years notice before actual release;
- payment of an output compensation including the support of non-depreciated assets at the time of the closing as well as additional staffing for possible restructuring or dismantling.

Q5 *What do you think of the exit clause proposed by Elengy?*

III. Observations of the Energy Regulatory Commission

1) **Conduct of the market consultation and allocation rules**

The final allocation rules applying to both phases will be subject to a prior deliberation of the CRE scheduled in June 2011. If, following the analysis of the non-binding phase, it appears necessary to adapt the rules of allocation, then a new CRE deliberation will take place before the start of the binding phase.

Allocation rules proposed by Elengy and described in the Preliminary Information Memorandum are very similar to those of the Open Season held in 2009. The only difference is that the base duration for a profile this year is a quarter whereas it was a year in 2010.

This rule thus affects overriding priority to the lengthiest demands.

At this stage, CRE believes that the market consultation is consistent with the guidelines for good practice on open season as published by ERGEG (GGPOS¹, see "Useful Links").

Q6 *Do you think that the allocation rules proposed by Elengy are transparent, non discriminatory and adapted to the specificities of the Fos Tonkin LNG terminal?*

2) **Economic test and tariff visibility**

i. Application of the 2% premium

Elengy seeks the application of the additional premium of 200 basis points for 10 years as defined in the tariff in force.

In accordance with the tariff framework in force, projects « Horizon 2035 » will benefit from the premium if the capacity is allocated according to rules approved by the CRE.

The project « Horizon 2020 » will not benefit from the premium.

ii. Accelerated depreciation

Regarding the "Horizon 2020» project, Elengy is asking CRE that, "the going tariff for the period 2015-2020 covers all expenses borne by the LNG terminal, including those associated with the cessation of its activity "

According to ATTM3, "For Fos Tonkin and Montoir terminals, the lifetimes used for the main categories of industrial asset are defined in the following table":

Category of industrial asset	Useful life (years)
Regasification facilities	40
Civil engineering and construction	40
Storage facilities	40
Other plant (flares, tools, etc.)	40
Auxiliary facilities and unloading systems	20
Equipment (remote operation, gas-quality analyzer, etc.)	10
Property	30
Sundry equipment (e.g. vehicles, etc.)	10
Small items (PCs, etc.)	5

¹ Guidelines for Good Practice on Open Season Procedures

Elengy's demand implies the consideration of accelerated depreciation charges over 8 years from 2013 for assets whose economic life can reach 40 years.

At this stage CRE has no objection to the request Elengy.

For the "Horizon 2020" project, taking into account accelerated depreciation from 2013 combined with lower sales and higher allowance for decommissioning provisions, to date, Elengy anticipates a rate of at least 1,4 €₂₀₁₁/MWh in the period 2015-2020.

Q7 What do you think about Elengy's demand regarding an accelerated depreciation of assets?

iii. Tariff visibility

The amount of investment planned by Elengy decreased compared to those presented during the Open Season in 2010 (20% for the Horizon Project 2035).

These reductions are the result of a process undertaken by Elengy in order to:

- review the functional specifications of the projects ;
- optimize the initial technical choices;
- promote renovation over replacement;
- reduce indirect costs (assistance to project management etc.).

As in the previous edition of the Fos Tonkin Open Season, to induce the terminal operator not to spend more than what was taken into account in the trajectory of investment used to define a price of 1,1 €₂₀₁₁/MWh, CRE intends to clarify treatment of schedule and cost overruns compared to the trajectory of investment. Hence,

- if actual investment costs exceed the ones defined in the initial trajectory and if the overrun is not related to a case of "force majeure" costs beyond the estimated amount would not benefit from the premium of 200 basis points set in the context of tariff visibility;
- if the project is delayed, and if this delay is not related to a case of force majeure, the ongoing fixed assets will not give rise to compensation beyond the estimated year of commissioning.

Q8 *What do you think of the treatment proposed by CRE for the cost and delays overruns associated with the project?*

Q9 *Do you have any other comments ?*

IV. Questions

CRE invites all interested parties to submit their contribution, **no later than June 15, 2011**:

- Via the CRE website, in the “Public Consultations” section, by using the “Contribute” form (possibility is given to attach a file),
- By email to the following address: webmestre@cre.fr
- By post to : 15, rue Pasquier - 75379 Paris Cedex 08 – France ;
- By meeting the Commission’s departments, contacting the Division of Gas Infrastructures and Networks (telephone: +33 (0)1 44 50 89 23),
- Or by requesting a hearing with the Commission.

The interested parties are asked to answer the following questions, **stating, where necessary, when their answers are confidential**:

Q1 *What do you think the timetable proposed by Elengy for the consultation of the market? page 6*

Q2 *Do you consider this “incentive contribution” to be relevant? page 6*

Q3 *What do you think of the subscription steps taken into account by Elengy for its economic test? What do you think of the criterion of a targeted maximum unit price of 1,1 €2011/MWh? page 7*

Q4 *What do you think of clause 1.9 concerning the termination of the subscription agreements in the event of cost overruns? page 7*

Q5 *What do you think of the exit clause proposed by Elengy? page 8*

Q6 *Do you think that the allocation rules proposed by Elengy are transparent, non discriminatory and adapted to the specificities of the Fos Tonkin LNG terminal? page 8*

Q7 *What do you think about Elengy’s demand regarding an accelerated depreciation of assets? page 9*

Q8 *What do you think of the treatment proposed by CRE for the cost and delays overruns associated with the project? page 9*

Q9 *Do you have any other comments? page 9*

Annexes

Annexe A :

- *Open Season Fos Tonkin 2011- Preliminary Information Memorandum (5 may 2011);*



Prelim-MI_En.pdf

- « *Open Season Fos Tonkin 2011 – Allocation rules (preliminary version)*» (5 may 2011).



Prelim-AllocationRules_En.pdf

- «*Subscription Agreement – Annexe C : Specific conditions (Project Horizon 2035)*»



Prelim-SpecificConditions_En.pdf

Useful links

1- EREG Guidelines for Good Practice on Open Season Procedures (GGPOS), C06-GWG-29-05c, May 21, 2007

http://www.energy-regulators.eu/portal/page/portal/EER_HOME/EER_CONSULT/CLOSED%20PUBLIC%20CONSULTATION/S/GAS/GGP%20Open%20Season/CD/E06-PC-16-17_C06-GWG-29-05c_GGPOS.pdf

2- 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 gas and repealing Directive 2003/55/EC

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:211:0094:0136:EN:PDF>

3- Website of the working group chaired by Collette Lewiner

<http://gttm.cre.fr/>

4- Deliberation of the Commission of Energy Regulation of 16 July 2009 on the tariff proposal for the use of LNG terminals

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

5- Elengy Website

<http://www.elengy.com>

<http://www.elengy.com/fr/nos-projets/open-season-fos-tonkin.html>