

19 July 2012

Public consultation on the next tariffs for the use of the Fos Cavaou, Fos Tonkin and Montoir-de-Bretagne LNG terminals as from 1 April 2013

The French Energy Code, which entered into effect on 1 June 2011, introduced a new legal framework modifying the powers of the French Energy Regulation Commission (CRE) in terms of setting the tariff for the use of gas infrastructures.

Article L.452-2 sets forth that CRE defines the methodology used to establish the tariffs for the use of natural gas regasification installations. In addition, Article L.452-3 provides that “*the French Energy Regulatory Commission debates and decides on tariff developments as well as developments of associated services carried out exclusively by the operators of these [...] installations with, where appropriate, modifications to tariff levels and structures which it deems justified following, notably, an analysis of the operators’ accounts and any expected changes in operating costs or investment levels. [...]*”.

After consulting the *Conseil supérieur de l’énergie*, CRE sends its deliberations and decisions to the Energy and Economy Ministers, who have a period of two months to request CRE to revise its decisions if they consider that those decisions have not taken into account energy policy objectives. These deliberations are published in the *Journal officiel de la République française*.

Three regulated LNG terminals are currently in operation in France. The Montoir-de-Bretagne terminal (located near to Saint-Nazaire) and the Fos Tonkin terminal (near Fos-sur-Mer) are managed by Elengy, a GDF Suez subsidiary. The Fos Cavaou terminal (near Fos-sur-Mer) is managed by Fosmax LNG (formerly STMFC), a subsidiary of Elengy and Total Gaz Electricité Holding France (TGEHF).

Under the French legal decision of 20 October 2009, the current tariffs for the use of the two LNG terminals managed by Elengy entered into effect on 1 January 2010; the tariff for the use of the Fos Cavaou terminal entered into effect on 1 April 2010, the date at which it was put into commercial operation. These three tariffs were designed to be applicable for a period of three years.

In its deliberation of 28 June 2012, CRE decided to modify the tariffs periods as from 1 April 2013 for the three regulated terminals, in the objective to synchronise new tariffs as the transmission network tariff.

The changes under discussion for the next tariffs for the use of the LNG terminals aim to:

- set the tariff levels for the use of the LNG terminals based on the operating expenses and capital cost trajectories provided by the operators and CRE’s analysis of this data;
- develop the tariff structure and services currently proposed taking into account the work conducted within the framework of Concertation GNL;
- introduce an incentive regulation for investments.

CRE wishes to consult all market players in order to prepare its deliberation to set the next tariffs for the LNG terminals scheduled for autumn 2012. Interested parties are invited to answer the questions at the end of this document by 14 September at the latest.

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1. *Tariff framework*

1.1. *Tariff principles*

For the next tariffs for the use of LNG terminals, maintaining the tariff principles implemented within the framework of the ATTM3 tariffs is being considered. This means:

- a tariff set individually for each regulated terminal;
- an identical structure for tariff terms for the three terminals, in particular for the basic regasification services.

Certain associated services or operational conditions could however be implemented specifically at each terminal.

1.2. *Date of entry into effect and duration of the next tariffs*

Within the framework of the current tariff period, the tariffs for the use of the LNG terminals were defined for a period of three years based on average projected expenses set for the 2010-2012 period without any intermediate update.

At this stage, CRE intends to set the tariffs for the three regulated terminals for a period of approximately four years starting from 1 April 2013, in line with the tariff periods envisaged for the next tariffs for the use of the transmission networks. Indeed, since the liquefied natural gas (LNG) unloaded at the LNG terminals is injected into the transmission networks, the different regasification services as well as capacity products and associated services at LNG transmission terminal interface points (PITTM) must be consistent.

Moreover, it is considered that the tariff levels of each terminal will be updated after the first two years according to the arrangements specified hereafter.

1.3. *Arrangements for the mid-term updating of tariffs*

After the first two years of the ATTM4 tariff, i.e. 1 April 2015, CRE plans to revise the tariff terms applicable for each of the three LNG terminals taking into account the following elements:

- updating of capacity subscription estimates, as well as the energy charges (electricity and CO₂) given market conditions;
- updating of the rate of withholding of gas in kind taking into account actual figures;
- reconciliation of the income and expenses clawback account (CRCP) as described in section 1.6 of this consultation;
- review, if necessary, of the operating expenses trajectory, within the framework of the revision clause in section 1.7 of this consultation.

Question 1: Do you agree with a tariff duration of approximately four years with a mid-term update?

1.4. *Capital costs*

1.4.1. *Regulatory asset base (RAB)*

Within the framework of the current tariff, capital costs include depreciation and a return on fixed capital. The calculation of these two components is established based on the valuation of the regulatory asset base (RAB). CRE's deliberation of 16 July 2009 provides that:

For the Fos Tonkin and Montoir terminals CRE revalued the operator's historical assets as at 31 December 2002. It used a method comparable to the method for transmission assets used by the special Commission set up under Article 81 of the amending Finance Law of 28 December 2001 to determine the transfer price for the State's natural gas transmission networks.

Newly commissioned installations are included in the RAB at their gross value. This principle applies to all gas infrastructure commissioned since 2003. For the three regulated terminals, the standard start-of-use date for assets is 1 July of the year during which the assets begin to be used.

Once assets are included in the RAB, their value is adjusted according to the following method:

- assets are revalued on 1 January each year based on inflation from July to July. The revaluation index used is the consumer price index excluding tobacco products, as calculated by INSEE for previous years;
- assets are depreciated using the straight-line method over their economic lifetime. The lifetimes used for asset depreciation after 31 December 2002 are the same as those used to revalue assets commissioned before that date. The economic lifetime used is 40 years and applies to most assets that make up the RAB.

For new investments, CRE remunerates the investments made but which are not commissioned during the year (assets in progress). The conventional date for annual investment spending for the calculation of this remuneration is 1 July. The rate of return on fixed assets in progress is determined based on the method generally used for interim interest, taking into account an interest rate comparable to the cost of debt. The sum of this remuneration is covered by the tariff each year.

LNG terminal operators have requested that the standard depreciation period of 40 years be analysed in the through a specific project of development, in order to be shortened, where appropriate, taking into account uncertainties regarding the LNG regasification activity in Europe and more widely, the importance of gas in European and national energy policies.

At this stage, CRE intends to maintain the depreciation period currently used for existing assets since this period represents the economic lifetime of the different assets. Exceptionally, an adjustment of the depreciation period may be envisaged based on a well-argued request by operators to address a specific case. In that regard, accelerated depreciation arrangements have been decided for the Fos Tonkin terminal (CRE deliberation of 13 December 2011).

Question 2: Do you agree with maintaining the RAB calculation method and the depreciation period used?

1.4.2. The rate of return on assets

The current rate of return for LNG terminals comprises a base rate applied to gas transmission infrastructure¹ to which is added a bonus of 200 basis points to take into account any specific risks related to the LNG activity.

CRE currently plans to maintain the principle of a RAB rate of return based on that which applies to the transmission networks.

1.4.2.1. The bonus specific to the LNG activity

Operators have expressed their wish for this bonus to be increased to 300 basis points for the next tariff period. In their opinion, this increase would reflect in particular, the growing divergence compared to the transmission activity. Indeed, this would reflect growing uncertainties regarding regasification capacity needs in Europe, in connection with arbitrage that is currently favourable to Asia, the commercial dependence to a limited market or the increasing legal pressure and the absence of mitigation of the industrial risks (no abundance, as in transmission activity).

At this stage of its analysis, CRE considers it appropriate to maintain the bonus specific to the LNG activity at its current level, as the industrial and commercial risks have not changed compared to the preceding tariff period.

Question 3: Do you agree with maintaining the bonus specific to LNG activity at its current level?

¹ Set at 7.25% before tax under ATRT4, in effect until 31 March 2013

1.4.2.2. Incentive to the development of regasification capacities

In order to give long-term visibility and promote capacity booking and investment decisions, the current tariff set up an incentive to the development of new regasification capacities as follows:

“For extensions of existing LNG terminals and new terminals, provided that the increase in regasification capacities represents at least 20% of the infrastructure’s initial capacities and that the new capacities created are allocated according to conditions previously approved by CRE:

- [...]
- *an additional bonus of 200 basis points is granted for 10 years.”*

Operators have requested that this principle be extended, within the framework of the next tariffs, to any storage capacity development projects contributing to securing networks and making them more fluid.

At this stage, CRE is favourable to maintaining the current mechanism and level of incentive for the development of regasification capacities. This incentive will be granted on a case-by-case basis according to a specific analysis of the value of each project for the market.

However, CRE currently does not agree with extending the incentive to the development of only storage capacities. This type of investment does not contribute directly to increasing the regasification capacities proposed for sale and are therefore not likely to contribute to opening LNG terminals to third parties.

Question 4: Do you agree with maintaining the current incentive mechanism for regasification capacities?

1.4.3. Rate of return on fixed assets in progress

The current tariff introduced a return on sums spent by operators on investments that have not yet been commissioned (fixed assets in progress). The rate of return on these assets is currently based on the cost of debt² to which is added the 2% bonus specific to the LNG activity.

Operators have requested that the rate of return on fixed assets in progress be based on the rate applicable to the RAB. They consider that the profitability of a project takes into account the financial flows over the entire life of the project and not from the date at which it enters into service.

At this stage, CRE does not agree with a return on fixed assets in progress based on the rate applied to assets in operation included in the RAB. CRE intends to maintain the return on fixed assets in progress at its current rate, in line with the project financing process that consists in capitalising interest at the cost of debt. This would also provide financial incentive to terminal operators to commission infrastructure under development earlier.

Question 5: Do you agree with maintaining the current rate of return on fixed assets in progress based on the cost of debt?

1.4.4. Incentive regulation for investments

The current tariff does not include incentive regulation for investments. However, the project to extend the operation of the Fos Tonkin terminal led to the implementation of a specific incentive regulation mechanism for investments within the framework of market tenders carried out in 2010 and 2011. The principles are as follows:

- an application of the capacity development incentive bonus of 2% for 10 years limited to the forecast budget for capacity creation;
- a rate of return that depends on differences between projected and actual investment sums;
- discontinuation of the return on fixed assets in progress, beyond the forecast commissioning date;

² Set at 4.6% within the framework of current tariffs

- an exit clause for subscribers, exercisable in the event of an overrun by more than 25% of the initial investment sum projected during studies.

Terminal operators consider that they already have a high level of incentive, from their clients and stakeholder(s), to comply with the budgets and investment schedules presented when calls for tenders are issued.

Operators request that the reference investment expenses be established following the responses to calls for tenders, in particular construction tenders. They consider that certain costs, particularly labour and raw materials (steel), depend greatly on the context and are therefore not controllable.

At this stage, CRE believes that the incentive regulation mechanism defined within the framework of the long-term renewal project for the Fos Tonkin terminal leads to a balanced sharing of risks between clients and operators. It therefore intends to extend this mechanism to all significant investments carried out during the next tariff period. The regulation parameters will be adjusted according to the particularities of each project based on projected costs calculated before the allocation of capacities and thus prior to the calls for tenders for construction. The aim of the incentive regulation is to protect subscribers that make firm commitments prior to the launch of calls for tenders from operators.

Question 6: Do you agree with the implementation of this investment incentive regulation mechanism as part of the next tariffs?

1.5. Operating expenses

Operating expenses are determined based on all the costs of an efficient operator. This level is set based on the analysis of:

- past fiscal results, using the operator's accounts;
- assumptions concerning the trajectories of expenses forwarded by operators for the years 2013 to 2016.

CRE is currently conducting a thorough analysis with the support of an external consultant, aimed at ensuring that projected expenses presented for the next tariff period from 2013-2016 correspond, as provided for in Article L.452-1 of the French Energy Code, to those of an efficient infrastructure operator. As part of this audit, CRE is studying in particular the methods of distributing expenses common to the three terminals.

1.6. The income and expenses clawback account (CRCP)

Tariffs are calculated based on expenses and capacity subscription assumptions established for the period during which they are applied. These assumptions present certain uncertainties at the time that tariffs are defined.

The CRCP is a non-ledger trust account which is credited at regular intervals by all or a part of the differences in cost or revenue recorded for predefined items. As part of the current tariff, the reconciliation of the balance of this account is performed at the end of the tariff period concerned, over the following tariff period, by reducing or increasing the income to be collected via the tariffs.

In order to ensure financial neutrality of the mechanism, the amounts taken into account in the CRCP are adjusted to present value using an interest rate equivalent to the risk-free rate used in the tariff framework.

Within the framework of the current tariff, the items eligible for the CRCP are as follows:

- revenue associated with subscriptions for regasification capacity and reloading services: any differences are covered 50%;
- revenue associated with penalties charged by operators in the event of late cancellation of cargo is covered 100% for the full benefit of the users of the terminal concerned;
- capital costs borne by operators: any differences are covered 100%;

- income and expenses related to power sources: electricity and CO₂ quotas, including energy expenses related to the intraday flexibility service: any differences are covered 90%.

Operators wish to maintain the CRCP calculation method for the next tariff period with the exception of the following two changes:

- deletion of the item concerning penalties charged for late cancellation in order for the corresponding revenue to be redistributed directly to clients affected in the month following the event (see section 3.1.4.1.)
- introduction of an item covering in full any increases in taxes and duties.

At this stage, CRE is favourable to maintaining the current scope of the CRCP. However, since the tariff period is increased to four years, it is considering a mid-term reconciliation of the CRCP.

CRE considers the increase of the rate of revenue associated with subscriptions. Indeed, the retained assumptions may be those of the currently known in portfolio, as the LNG global market is not in favour of new subscriptions on the European terminals. In these conditions, the current rate could increase from 50% to 75 %, at least for the first subscriptions above the retained level.

With regard to the energy line item, CRE wishes to change the coverage rate for this item to 80% in line with the rate applied to the energy line item in the tariffs for the use of the transmission and distribution networks.

CRE is not opposed to operators' proposal concerning the redistribution of penalties.

However, it considers that any tax and duty developments must be handled within the framework of the revision clause as described hereafter.

Question 7: Do you agree with the developments proposed concerning the CRCP?

1.7. Revision clause for operating expenses

In line with the current tariff for the use of GrDF's distribution networks, CRE wishes to introduce a revision clause for the operating expenses trajectories that can be activated mid-term of the tariff period.

The principle is as follows: at the end of the first two years during which the tariff is applied, the difference between the effective operating expenses and the trajectory of the net operating expenses taken into account by the tariffs is measured. If this difference exceeds 1% and is the result of new expenses related to legislative, regulatory or jurisdictional provisions independent of the activity of an efficient operator, the levels of operating expenses to be covered by the tariffs may be re-evaluated to take into account these new expenses for the following two years.

Question 8: Do you agree with the introduction of a revision clause for operating expenses, following the described conditions?
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2. Tariff level

2.1. Assessment of the ATTM3 tariff

2.1.1. Subscriptions

For the current tariff period, actual revenue related to subscriptions have been higher than forecasts for the Montoir and Fos Tonkin terminals and lower for the Fos Cavaou terminal. For the Fos Cavaou terminal the difference in forecast and actual revenue was due mainly to the late start of commercial operation of the terminal.

Average subscriptions for the 2010-2012 period	Fos Tonkin	Montoir	Fos Cavaou
Subscriptions forecast in the tariff (TWh/year) ³	48.5	110.7	92.2
Actual subscriptions (TWh/year) (actual data for 2010 and 2011 and estimates for 2012)	51.7	117.5	87.2

In accordance with the current tariff, differences in revenue related to actual subscriptions at the end this tariff period will be covered 50% by the CRCP for the three LNG terminals with the exception of differences due to diversion of cargo to the Fos Tonkin terminal before the commissioning of Fos Cavaou. These differences will be covered 75% by the CRCP.

2.1.2. Operating expenses

Actual operating expenses for the 2010-2011 period and estimates for 2012 are compared with data forecast in the current tariff in the table below:

Average operating expenses for the ATTM3 period (€M)	Fos Tonkin	Montoir	Fos Cavaou
Net operating expenses taken into account in the tariff	26.7	49.5	39.2
Actual net operating expenses ⁴	27.7	49.4	37.5
Difference	+1.0	-0.1	-1.7

The analysis of the actual operating expenses is being audited by an external consultant appointed by CRE.

2.1.3. Capital costs and the regulatory asset base

Normative capital costs based on actual amounts for the 2010-2011 period and estimates for 2012 are compared with data forecast in the current tariff in the table below:

Average normative capital costs (NCC) for the ATTM3 period (€M/year)	Fos Tonkin	Montoir	Fos Cavaou
Average annual NCC used in the tariff	28.3	50.4	112.3
Actual average annual NCC ⁵	28.2	51.3	114.8
RAB level estimated as at end 2012	128.6	312.5	824.2

Actual normative capital costs are being analysed by CRE.

2.1.3. CRCP

CRCP balances for the 2010 to 2012 period forwarded by operators and based on actual amounts for 2010-2011 and estimates for 2012, are being analysed. The results of the CRCP coming from the current tariff period will be uniformly reconciled on the four years of the next tariff period.

³ After integration of the ship or pay assumption (obligation to pay for 95% of capacities subscribed)

⁴ The level of Fos Cavaou takes into account the postponement of the commissioning of the terminal, at 20% of its capacities from 1 April 2010, at 100% of its capacities from 1 November 2010. The actual operating expenses have been annualized in order to be compared to the tariff level.

⁵ The capital costs for 2010 have been annualized for Fos Cavaou

- For the Montoir terminal, the CRCP balance passed on by the operator would lead to a reduction by about €15 M in the expenses to be covered in the next tariff. This difference is mainly related to actual subscriptions being higher than forecasts.
- For the Fos Tonkin terminal, the CRCP balance forwarded by the operator would lead to a reduction by about €20 M in the expenses to be covered in the next tariff. This difference is mainly related to subscriptions being higher than forecasts, resulting in particular from the diversion of cargo to Fos Tonkin that were initially assigned to the Fos Cavaou terminal.
- For the Fos Cavaou terminal, the CRCP balance forwarded by the operator would lead to an increase by about €20 M in the expenses to be covered in the next tariff. This difference is mainly related to subscriptions being lower than forecasts and normative capital costs exceeding forecasts.

2.2. Operators requests for the ATTM4 tariff and CRE's preliminary analysis

2.2.1. Subscriptions

In the current context of the global LNG market, the use rates of LNG terminals are currently declining, in particular for the Montoir terminal. Forecast subscriptions proposed by operators are equal to subscriptions already in portfolios.

Capacity subscribed (TWh) <i>Available capacity (%)</i>	ATTM3 ⁶ level	Capacity subscribed			
		2013	2014	2015	2016
Fos Tonkin ⁷ <i>Maximum technical capacity: 57 TWh</i>	48.5	48.0 <i>15.8%</i>	44.8 <i>13.0%</i>	35.0 <i>0.0%</i>	35.0 <i>0.0%</i>
Montoir-de-Bretagne <i>Maximum technical capacity: 123 TWh</i>	110.7	123.0 <i>0.0%</i>	123.0 <i>0.0%</i>	106.9 <i>13.1%</i>	106.9 <i>13.1%</i>
Fos Cavaou <i>Maximum technical capacity: 97 TWh</i>	92.2	87.2 <i>10.0%</i>	87.2 <i>10.0%</i>	87.2 <i>10.0%</i>	87.2 <i>10.0%</i>

With regard to the next tariff period, CRE considers that it is justified to use the current subscriptions for LNG terminals as forecasts. Current market conditions make subscription of new capacities very unlikely in French terminals. These assumptions will be updated on 1 April 2015 for 2015 and 2016.

Question 9: Do you consider that it is justified to set the level of forecast subscriptions at the level of known subscriptions?

2.2.2. Payment obligation (Ship or pay)

For the three terminals, the current tariff provides for a minimum payment obligation on the shipper equal to 95% of capacity subscribed.

Operators propose to increase this payment obligation to 100% of capacities subscribed to avoid, on the basis of an equivalent authorised revenue, increasing the tariff terms by 5%.

CRE is currently favourable to the introduction of an obligation to pay for the full subscription. This would simplify and increase the clarity of tariffs making them consistent with use in the transmission field, without penalising terminal users that have already booked capacities.

⁶ After integration of the ship or pay assumption (obligation to pay for 95% of capacities subscribed)

⁷ Fos Tonkin's technical capacity will go from 57 TWh in 2013, to 51.5 TWh in 2014 and to 35 TWh from 2015

Question 10: Do you support the introduction of a 100% payment obligation for subscribed capacity?

2.2.3. Authorised revenue and tariff level

The figures below correspond to operators' requests, which take into account the following assumptions:

- accelerated depreciation of the Fos Tonkin terminal to obtain a RAB of zero by end 2020;
- the request formulated by operators for an increase of the bonus specific to LNG to 3%;
- ship or pay obligation at 100%.

These requests are being analysed. In particular, an audit of operators' operating expenses is currently being conducted by an external consultant appointed by CRE.

2.2.2.1. Fos Tonkin terminal

€M	ATTM3 level	2013	2014	2015	2016
Operating expenses	26.7	29.1	30.2	31.9	31.9
Normative capital costs	28.3	34.3	35.1	35.4	36.2
CRCP reconciliation		-4.8	-4.8	-4.8	-4.8
Authorised revenue	55.0	58.6	60.5	62.5	63.3

The trajectory resulting from Elengy's request represents, for the Fos Tonkin terminal, a tariff increase of roughly 13% for the first two years compared to the current tariff. This increase breaks down as follows:

- +5.6% related to an increase in operating expenses mainly due to the increase in regulatory constraints and the increase in the taxes and duties line item;
- - 9.1% due to CRCP reconciliation;
- +12.2% related to an increase in capital costs (accelerated depreciation). The increase in the LNG-specific bonus from 2% to 3% has about a 2% impact on the tariff increase;
- +4.4% related to the drop in capacity subscription.

Based on this data, the average tariff for the Fos Tonkin terminal would therefore increase from €1.14/MWh to €1.28/MWh for the period from 1 April 2013 to 31 March 2015. Beyond that date, the tariff would increase to €1.8/MWh, all things being equal.

2.2.2. Montoir-de-Bretagne terminal

€M	ATTM3 level	2013	2014	2015	2016
Operating expenses	49.5	55.8	58.0	58.2	59.0
Normative capital costs	50.4	60.5	62.6	63.7	65.0
CRCP reconciliation		-3.7	-3.7	-3.7	-3.7
Authorised revenue	99.9	112.6	116.9	118.2	120.4

The trajectory resulting from Elengy's request represents, for the Montoir terminal, a tariff increase of roughly 3% for the first two years compared to the current tariff. This increase breaks down as follows:

- +6.7% related to an increase in operating expenses mainly due to the increase in regulatory constraints and the increase in taxes and duties line item;
- - 3.3% due to CRCP reconciliation;
- +10% related to the increase in capital costs due mainly to the end of the terminal renovation: €20M for commissioning in 2012 and €26.5M for commissioning in 2013. The increase in the LNG-specific bonus from 2% to 3% has about a 3% impact on the tariff increase;
- -10% related to the increase in capacity subscription.

Based on this data, the average tariff for the Montoir-de-Bretagne terminal would therefore increase from €0.90/MWh to €0.93/MWh for the period from 1 April 2013 to 31 March 2015. Beyond that date, the tariff would increase to €1.1/MWh, all things being equal

2.2.3. Fos Cavaou terminal

€M	ATTM3 level	2013	2014	2015	2016
Operating expenses	39.2	51.2	51.8	51.5	53.1
Normative capital costs	112.3	122.3	121.7	120.8	119.9
CRCP reconciliation		5.0	5.0	5.0	5.0
Authorised revenue	151.5	178.4	178.4	177.2	178.0

The trajectory resulting from Fosmax LNG's request represents, for the Fos Cavaou terminal, a tariff increase of roughly 24% for the first two years compared to the current tariff. This increase breaks down as follows:

- +8.6% related to an increase in operating expenses due mainly to the increase in the taxes and duties line item and the increase in charges invoiced by Elengy for operating the terminal;
- +3.5% due to CRCP reconciliation;
- +6.8% related to the increase in the normative capex. The requested increase in the LNG-specific bonus from 2% to 3% would have an effect of 6% on the increase of the tariff;
- +5.5% related to the drop in capacity subscription.

Based on this data, the average tariff for the Fos Cavaou terminal would therefore increase from €1.65/MWh to €2.05/MWh for the period from 1 April 2013 to 31 March 2015. Beyond that date, the tariff would remain at the same level, all things being equal.

3. Development of the tariff structure and services proposed

Operators have requested the developments outlined below following work conducted within the framework of Concertation GNL. The operators' proposal is included in the annex to this consultation.

3.1. Tariff structure

The current tariffs for the use of LNG terminals offer three basic regasification services:

“continuous” service: this service is intended for shippers that unload on average ten or more cargos at a terminal in the course of the year. For this service, the operator provides continuous send-out over the contractual period and as regularly as possible for the user, depending on the terminal's overall unloading schedule.

“uniform” service: this service is intended for shippers that unload at most one cargo per month on average over the year at a terminal. For this service, each cargo is sent out as a flat band that continues for 30 days starting from the date at which unloading ends;

“spot” service: this service is intended for cargo unloaded in month m , subscribed after the 20th day of month $m-1$. Subscriptions are carried out for slots vacant in the monthly schedule at the time of booking. Each cargo is sent out as a flat band that continues for 30 days starting from the date at which unloading ends.

An assessment of the use of these services was conducted in 2011 and 2012 within the framework of Concertation GNL. Feedback from users on the basic services has been positive. Priority currently given to upstream flexibility (terminals’ capacity to adapt their unloading schedule) over downstream flexibility (control of send-out by shippers) is considered a principle to maintain although adjustments are required.

Following consultation work, operators forwarded to CRE their proposals for the development of the services⁸ keeping the main characteristics of the services currently proposed while adapting them to ensure better sharing of risks between users of these services.

Question 11: What is your assessment of the services proposed within the framework of the current tariffs?

3.1.1. Developments envisaged for the structure of the commercial offer

3.1.1.1. The continuous service

Elengy and Fosmax LNG propose opening access to the continuous service to all clients as from their first cargo subscription. The rules for sharing send-out between the different clients of the continuous service apply without difficulty regardless of the number of cargo unloaded in the course of the year. For example, the continuous send-out of gas over a full year requires the unloading of approximately 10 tankers on average distributed evenly across the period. The use of the continuous service for a single cargo would enable continuous send-out of gas for a period of between 1 to 2 months at most.

At this stage, CRE is in favour of the development proposed since it would enable a shipper to use different services.

3.1.1.2. The uniform service

Elengy proposes limiting for each month the regasification capacity sold as part of the uniform service to a third of the terminal’s total monthly capacity. Fosmax LNG has not made any similar requests, as 90% of its customers have subscribed continuous service.

Elengy considers that beyond one third of the monthly send-out capacity, its terminals’ storage capacity is unable to support additional cargo in uniform service sent out regularly over 30 days.

At this stage, CRE is in agreement with this proposal since it reflects a real physical constraint for the operational management of the terminals.

3.1.1.3. The spot service

Operators propose to maintain the conditions governing access to the spot service without any modifications. The rule limiting regasification capacity to one third of total monthly capacity will apply to the spot service as for the uniform service.

Question 12: Do you support the envisaged developments concerning access to the basic services?

⁸ In the Annex attached hereto

3.1.2. Rebalancing of the quantity unloaded term and the number of cargo unloaded term

On a constant overall revenue basis, operators propose to increase the number of cargo unloaded term and symmetrically reduce the quantity unloaded term. The sums invoiced to shippers for the quantity unloaded term represent approximately 95% of terminal operators' income. Operators consider that the current structure of their commercial offers does not reflect the costs and constraints related to the use of wharfs and infrastructure specific to the unloading of LNG tankers regardless of their size. Therefore, they propose to increase the term for the number of cargo unloaded currently set at €40,000 for the Montoir and Fos Tonkin terminals and €50,000 for the Fos Cavaou terminal to between €150,000 and €300,000.

CRE wishes to obtain the market's opinion on this proposal.

Question 13: Do you agree with rebalancing the quantity unloaded term and the number of cargo unloaded term according to the conditions proposed by the operators?

3.1.3. Withholding of gas taken off

In order to meet the terminals operating needs, the current tariff allows for the withholding of 0.3% of gas unloaded at Fos Tonkin and 0.5% at the Montoir-de-Bretagne and Fos Cavaou terminals. Any gas not used by the operator is redistributed in kind to shippers at the end of the year proportionate to the quantities unloaded over the past year.

Over the current tariff period, operators have observed that the rates applied have been higher than the actual needs of the terminals. However, the low number of unloading operations recorded since the start of 2012 has led Elengy to flare additional volumes of gas in order to avoid over-pressuring of tanks and therefore maintain the rate of gas withheld in kind at the Montoir terminal.

The rate of gas withheld in kind proposed by the operators is as follows:

- Fos Tonkin 0.2%
- Montoir-de-Bretagne 0.5%
- Fos Cavaou 0.2%

The operators wish to be able to conduct a mid-term review of this rate given the uncertainties concerning the effective use rate of the terminals. Moreover, they request the implementation of a mechanism if these rates were to be exceeded on an exceptional basis in the event of a significant event (loss of regasifiers, exceptionally cold temperatures, etc.).

Moreover, operators propose implementing a procedure to manage these situations. Shippers that are clients at a terminal would be informed by the operators in advance of a period of shortage with regard to the schedules received. The gas flared during this period would be charged not to all shippers as part of gas withheld in kind, but to those that have not used all of their subscribed unloading slots in proportion to the difference between 50% of the capacity subscribed and the actual quantity unloaded.

CRE agrees with reducing the rate of gas withheld in kind as proposed by the operators. These reductions will be associated with the implementation of a specific procedure to recover quantities of gas flared when there is a shortage of LNG at a terminal.

Question 14: Do you agree with the developments envisaged concerning the withholding of gas in kind and the procedure planned in the event of an LNG shortage?

3.1.4 Optimisation of the use of regasification capacities

3.1.4.1. Penalty for non-compliance with the schedule (late cancellation)

Within the framework of the current tariff, when a shipper cancels an LNG cargo with less than 3 days' notice, this shipper is fined for late cancellation which corresponds to 50% of the unloading tariff. Moreover, this shipper's send-out is given lower priority. This penalty is fully returned to users through the CRCP.

Elengy and Fosmax LNG propose to make this penalty degressive depending on when the cancellation notice is given, between 50% of the unloading tariff less than 5 days' notice is given and 0% if the notice is given more than 10 days in advance. If the cancellation has an impact on the send-out of other clients of the terminal that is less than 10%, no penalty will be applied. The sums collected would be redistributed the following month to shippers affected, in proportion to the send-out allocated the month of the cancellation.

The operators' proposal has been widely discussed within the framework of Concertation GNL. Some shippers which use in particular the continuous service consider that the principle of a "fine" does not adequately reflect the impact of a late cancellation on the monthly send-out schedule of other shippers at the terminal compared to the potential gains made by the shipper cancelling a cargo, for example within the framework of arbitrage between consumption zones.

An alternative to the penalty would be the implementation of a mechanism for compensation in gas at adjacent hub (PEG), by the shipper responsible, for disturbances in the monthly send-out schedule following a late cancellation. Beyond a certain limit on the quantity of gas to be given as compensation, which would depend on the PEG's liquidity, financial compensation (based on a gas value to be defined) could complete the compensation in gas. A limit of 150 GWh/d at the North PEG and 30 GWh/d at the South PEG has been suggested. This type of mechanism already exists between shippers subscribed to the continuous service at the same terminal as part of send-out sharing procedures.

Some shippers that use in particular the uniform service consider that the implementation of such compensation would pose a financial risk to the uniform and spot services and jeopardise their appeal.

At this stage, CRE is favourable to applying a penalty to shippers that give notice of less than 5 to 10 days. As for the replacement of this penalty by compensation at PEGs, it would like to obtain the opinion of market players on those proposals.

Question 15: Do you agree with the development proposed by operators concerning the penalty in the event of late cancellation?

Question 16: Do you think that the implementation of compensation in gas and/or financial compensation would be acceptable? If so, with what limits?

3.1.4.2. Capacity release

The current tariff has strengthened the use-it-or-lose-it mechanism by requiring regasification capacity subscribers to indicate, by the 20th day of month $m-1$ at the latest, their desired schedule for month m and their projected schedules for months $m+1$ and $m+2$. Operators publish available capacity on the 25th day of month $m-1$ for month m at the latest, and update this information at the start of the second week of month m .

Operators propose developing the current mechanism in order to offer more visibility on the send-out program, by optimizing the follow-up of the stocks. Thus, they propose enabling their clients to release their capacity with a longer deadline. As such, capacities not scheduled by a shipper by the 25th day of month $m-1$ will be published for months m , $m+1$ and $m+2$ to facilitate their resale while increasing the visibility of the terminal's send-out schedule for the following months. Unused capacity is payable under the ship or pay clause and may be booked by other shippers, in particular, those that use the spot service.

At this stage, CRE is not opposed to this proposal.

3.1.4.3. Secondary market in capacity

In the current operating rules, operators offer shippers the possibility of publishing the capacity they wish to obtain or sell in the secondary market (bulletin board). This service is currently billed per post by Elengy and Fosmax LNG.

Operators propose to shift from payment per post to a payment per transaction depending on the actual capacity exchanges between clients. Operators propose an initial tariff of about €0.02/MWh. This sum paid by the transferee would be doubled in the event of a transaction for which Elengy acts as an anonymous intermediary or if the regasification service is changed.

CRE is opposed to charging the secondary market, whether on the basis of posts or the quantity exchanged. It considers that the development of a secondary market is an important element contributing to improving access to regulated infrastructure for the benefit of all users. At this stage, the cost elements forwarded by operators related to the updating of a bulletin board do not justify a specific tariff system.

Question 17: Do you support the Elengy proposition to bill the intermediated exchanges of capacities?

3.2. Development of services

3.2.1. Development of send-out rules

Currently, each operator forwards a monthly unloading program and a send-out schedule to all of its clients on the 25th day of month $m-1$ for month m based on schedule requests submitted by the 20th day of month $m-1$ at the latest. Moreover, Fosmax LNG forwards the 25th day of month $m-1$ indicative programs for the months $m+1$ and $m+2$.

The consequences of any modifications to the monthly send-out schedule are fully borne by continuous service shippers. As part of Concertation GNL, a proposal was made to rebalance the effects of schedule modifications on the continuous, uniform and spot services on a whole.

- The continuous service

Operators do not intend to make any changes to the continuous service, since schedule modifications made in the course of the month are managed through a procedure for sharing send-out among continuous service clients implemented at each terminal.

CRE agrees with the developments proposed by operators that aim to limit the effects of schedule modifications in the course of the month on shippers that use the continuous service. In addition, these adaptations developed within the framework of Concertation GNL are not likely to affect the value of the uniform and spot services given the wholesale market conditions that have improved.

- The spot service

When an unloading operation is scheduled in the spot service after the 20th day of month $m-1$ for month m , operators propose that the associated send-out be delivered in a 30-day flat band provided that the send-out in the monthly schedule of other shippers is not modified beyond 10% each day. Operators consider that this value could be between 0 and 20%. Beyond this limit, the duration or volume of the send-out profile associated with the spot service will be modified to face this constraint and proposed to the subscriber at the time of booking.

- The uniform service

When an unloading operation is rescheduled in the uniform service after the 20th day of month $m-1$ for month m , operators propose that the basic send-out profile in a 30-day band should be able to be modified following the same conditions as those provided for the spot service described above.

CRE notes that these proposals have been thoroughly discussed in Concertation GNL and it appears that a consensus has been reached. CRE therefore is currently favourable to the developments proposed by the operators.

Question 18: Do you agree with the developments envisaged for the send-out rules for the basic services?

Question 19: What do you think of the 10% limit proposed by the operators? Do you think that it is appropriate to limit the variances applied to shippers that use the uniform service? If so, do you have any practical proposals?

3.2.2. Cargo sharing

Operators wish to implement rules enabling the sharing of sold cargo among several shippers that do not have any contract relations with each other. The tariff associated with this delivery would apply to each of the shippers concerned on the basis of one carrier unloading operation for each shipper and a cargo size proportionate to the quantity of LNG allocated to each shipper.

At this stage, CRE is not opposed to the implementation of this proposal.

Question 20: Do you agree with the possibility of sharing cargo among several shippers?

3.2.3. Early send-out or send-out postponement service

Currently, an advancement and postponement service for send-out is proposed to shippers that use the uniform and spot services, enabling them to defer or advance by one or two days their send-out on the transmission network compared to the scheduled date. The tariff applied is made up of a fixed portion (€10 k) and a variable portion depending on by how many days the send-out is deferred or advanced (number of days x €7.5 k). The revenue generated is shared 50/50 at the start of the year between the operator and the shippers subscribed to the "continuous" service in proportion to the quantities unloaded over the past year.

Operators propose the following developments:

- limit, for the basic service, the possibility of subscribing to this service until the establishment of the monthly send-out schedule on the 20th day of month $m-1$ for month m in order to limit the impact on the monthly send-out schedule established. It would be available intra-monthly only if it does not disturb the send-out of other shippers by more than 10%;
- establish a progressive rate depending on the quantity of gas advanced or deferred instead of the number of days advanced or deferred. (practical proposal/tariff impact);
- 50% of the revenue generated would be paid back each month to clients subscribed to the continuous service in proportion to the send-out allocated to each of them for the previous month.

CRE agrees with the developments proposed by the operators since these new arrangements better represent the impact generated by the service on the operation of a terminal.

Question 21: Do you agree with the development proposed for the send-out advancement/postponement service?

3.2.4. Downstream send-out flexibility service

The available downstream flexibility given to shippers is limited by the upstream flexibility on unloading and by technical constraints. Indeed, design of tanks at the terminals allows for only short-term operational storage of the gas unloaded. Beside, the downstream flexibility of send-out on the transmission network is conditioned to functioning periods of the infrastructures.

Fosmax proposes downstream flexibility for the nomination of send-out from one week to another with daily updates of limited margins. The available flexibility is shared between shippers. Elengy offers the possibility of variations on week/week-end send-out and intends to develop flexibility margins from one week to another.

The development of downstream flexibility is highly requested by clients. At this stage in their studies, operators are unable to systematically propose send-out flexibility apart from what is already in place.

In the meantime, in the event of exceptional events (extreme cold), shippers that use the continuous service can make a request to operators for an increase in send-out scheduled, whose feasibility will be studied in regards to technical constraints.

CRE sees the development of downstream flexibility at the terminals as an important variable of attractiveness.

Question 22: How important for you is the development of downstream flexibility? Do you have any practical proposals?

3.2.5. Loading of tankers

At the start of 2012, CRE authorised⁹, on an experimental basis, the implementation of an LNG tanker loading service at the Montoir-de-Bretagne and Fos Cavaou terminals. Fifty per cent of the revenue generated by this service is incorporated into the CRCP deducted from the authorised revenue to be covered for the next tariff period. The first loading operation was conducted in April 2012 at the Montoir-de-Bretagne terminal. Feedback has shown that it was carried out according to the technical and financial arrangements defined in CRE's deliberation.

Operators are in favour of the long-term continuation of this service at the Montoir-de-Bretagne and Fos Cavaou terminals following the operational and tariff conditions used in the experiment.

Half of the revenue generated by the loading service is incorporated into the CRCP and deducted from the revenue to be covered by the next tariff period, thus contributing to reducing the next tariffs.

At this stage, CRE intends to renew the service proposed under the current tariff conditions.

Question 23: Are you in favour of the integration of the loading service in the Montoir and Fos Cavaou tariffs?

3.2.6. Loading of trucks

Elengy intends to launch a truck loading service at the Montoir-de-Bretagne terminal. This service would enable the road transport of LNG tanks for use in new areas (such as fuel gas).

CRE considers that the provision of this service must not jeopardise users of the regasification service. Therefore, Elengy must keep separate accounts for this activity, and the tariff for this service will at least have to cover the specific costs. Once costs are covered, half of the revenue generated will be incorporated into the CRCP and deducted for the next tariff period therefore contributing to reducing the tariffs for the use of the terminal.

4. Procedure for selling short-term capacity available at the Fos Cavaou terminal

CRE's deliberation of 15 December 2003 provides that at least 10% of the terminal's capacity, which corresponds to 0.825 Gm³ per year, i.e. the equivalent of approximately ten unloading slots per year, must be reserved for short-term contracts.

On 3 July 2012, Fosmax LNG proposed to CRE a new procedure for selling short-term capacity for the next tariff period.

Fosmax LNG proposes to sell 0.825 Gm³/year (over the period from 1 April of year N to 31 March of year N+1) from 1 April 2013 to 31 March 2017. Subscribers would request for each annual band a quantity lower than 10 TWh. The quantities requested as part of these bands would be part of a quarterly unloading schedule.

Fosmax LNG proposes to sell these capacities during an open subscription period from 15 October to 15 November 2012. If the requests made during this period are higher than the offer, the operator proposes giving priority to requests for larger volumes.

At the end of the open subscription period, capacities not sold will be allocated based on a "first come first served" basis. These sale rules will be submitted to CRE for approval.

⁹ CRE deliberations of 19 January and 8 March 2012

Question 24: Are you in favour of the process for selling capacity as proposed by Fosmax LNG? Please explain your answer.

Question 25: Do you have any other comment, regarding the next tariff of use of LNG terminals?

5. Questions

CRE invites all interested parties to submit their contributions, by 14 September 2012 at the latest:

- by email, to the following address: dirgaz.cp2@cre.fr;
- by contributing directly on CRE's website (www.cre.fr) in the "Documents/Public Consultations" section;
- by post to: 15, rue Pasquier - F-75379 Paris Cedex 08 – France;
- by directly contacting the Gas Infrastructure and Networks Department: + 33.(0)1.44.50.89.23;
- by requesting an audience with the Commission.

A summary of contributions will be published by CRE respecting secrets protected by law.

Please state in your answer whether you wish for your contribution to remain **confidential and/or anonymous**. Interested parties are invited to provide well-grounded answers to the following questions.

Question 1: Do you agree with a tariff duration of approximately four years with a mid-term update?

Question 2: Do you agree with maintaining the RAB calculation method and the depreciation period used?

Question 3: Do you agree with maintaining the bonus specific to LNG activity at its current level?

Question 4: Do you agree with maintaining the current incentive mechanism for regasification capacities?

Question 5: Do you agree with maintaining the current rate of return on fixed assets in progress based on the cost of debt?

Question 6: Do you agree with the implementation of this investment incentive regulation mechanism as part of the next tariffs?

Question 7: Do you agree with the developments proposed concerning the CRCP?

Question 8: Do you agree with the introduction of a revision clause for operating expenses, following the described conditions?

Question 9: Do you consider that it is justified to set the level of forecast subscriptions at the level of known subscriptions?

Question 10: Do you support the introduction of a 100% payment obligation for subscribed capacity?

Question 11: What is your assessment of the services proposed within the framework of the current tariffs?

Question 12: Do you support the envisaged developments concerning access to the basic services?

Question 13: Do you agree with rebalancing the quantity unloaded term and the number of cargo unloaded term according to the conditions proposed by the operators?

Question 14: Do you agree with the developments envisaged concerning the withholding of gas in kind and the procedure planned in the event of an LNG shortage?

Question 15: Do you agree with the development proposed by operators concerning the penalty in the event of late cancellation?

Question 16: Do you think that the implementation of compensation in gas and/or financial compensation would be acceptable? If so, with what limits?

Question 17: Do you support the Elengy proposition to bill the intermediated exchanges of capacities?

Question 18: Do you agree with the developments envisaged for the send-out rules for the basic services?

Question 19: What do you think of the 10% limit proposed by the operators? Do you think that it is appropriate to limit the variances applied to shippers that use the uniform service? If so, do you have any practical proposals?

Question 20: Do you agree with the possibility of sharing cargo among several shippers?

Question 21: Do you agree with the development proposed for the send-out advancement/postponement service?

Question 22: How important for you is the development of downstream flexibility? Do you have any practical proposals?

Question 23: Are you in favour of the integration of the loading service in the Montoir and Fos Cavaou tariffs?

Question 24: Are you in favour of the process for selling capacity as proposed by Fosmax LNG? Please explain your answer.

Question 25: Do you have any other comment, regarding the next tariff of use of LNG terminals?