

3 April 2013

Public consultation of the French Energy Regulatory Commission (CRE) with regard to the sale of a trans-shipment service at the Montoir-de-Bretagne LNG terminal operated by Elengy

Three LNG terminals are currently in operation in France. The Montoir-de-Bretagne and Fos Tonkin terminals are operated by Elengy, a GDF Suez subsidiary. The Fos Cavaou terminal is operated by Fosmax LNG, in which Elengy has a 72.4% interest and Total Gaz Electricité Holding France (TGEHF) has a 27.6% interest. All three terminals are regulated.

A fourth terminal is currently under construction in Dunkirk by Dunkerque LNG, a company owned by EDF (65.01%), Fluxys (25%) and Total (9.99%). It is set to be commissioned at the end of 2015. This terminal is exempted¹ from regulated third-party access and tariff regulations, for its entire capacity and for a twenty-year period.

Elengy has contacted CRE with a view to market a trans-shipment service at the Montoir-de-Bretagne terminal. This service involves transferring liquefied natural gas (LNG) between two vessels docking at the same time. Elengy believes that this trans-shipment service is not covered by the scope of European Directive 2009/73/EC and as such requests permission from CRE to market the service within an unregulated framework.

CRE wishes to consult the market players on the sale conditions of this trans-shipment service. Following this public consultation, CRE intends to issue a deliberation on the terms governing the provision of this service.

Interested parties are requested to reply to the questions at the end of this document, by 22 April 2013 at the latest.

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¹ French Order dated 18 February 2010 granting Dunkerque LNG exemption from regulated third-party access for its LNG terminal project in Dunkirk

1. Description of the proposed service

Elengy plans to market an LNG trans-shipment service at the Montoir-de-Bretagne terminal over the coming months. This service would be available as of 2017 and would involve subscriptions for periods greater than ten years.

The purpose of this service is to trans-ship quantities of LNG between two LNG tankers simultaneously moored at the terminal's two existing piers. The transfer is completed by using direct connections between the two LNG tankers. The quantities of LNG transferred are therefore not mixed or stored with the LNG already present in the terminal's storage tanks.

Elengy plans to market up to a maximum of 79 trans-shipment slots per year. Elengy plans to offer this new service without reducing the terminal's regasification capacity, remaining at 123 TWh/year.

The provision of this service requires investments, in particular for the renovation of one of the terminal's two piers. Elengy specifies that the availability of existing loading and regasification services would not be affected during the renovation period. Furthermore, these investments would increase the piers operational performance, thus benefitting all terminal users.

2. Regulatory framework' proposal

2.1. Elengy's proposal

Elengy points out that under European Directive 2009/73/EC dated 13 July 2009², an LNG facility is described as “a terminal used for [...] the importation, offloading, and re-gasification of LNG, and includes ancillary services and temporary storage necessary for the re-gasification process and subsequent delivery to the transmission system [...]”.

Elengy emphasizes that the trans-shipment service doesn't aim to supply the internal market and that :

- the facilities will be used neither for liquefaction nor for a process including the importation, offloading and re-gaseification of LNG ;
- this service is neither necessary nor complementary for the access to the LNG facility.

Consequently, Elengy believes that this service does not come under the scope of the provisions of Directive 2009/73 of the European Commission defining the facilities requiring a regulatory framework, and has therefore requested the permission to market it within an unregulated framework.

2.2. CRE's preliminary analysis

Article L 452-1 of the French Energy Code states that “*The tariffs for the use of the natural gas transmission and distribution networks and of liquefied natural gas facilities, including facilities providing ancillary services and flexibility, the commercial conditions for the use of these networks or facilities, and the tariffs of ancillary services provided by the facilities or system operators, are established in a transparent and non-discriminatory way in order to cover all the costs borne by these operators, insofar as such costs correspond to those of an efficient facilities or system operator*”.

The French Energy Code transposes the European Directive 2009/73/CE which provides that “*Member States shall ensure the implementation of a system of third party access to the transmission and distribution system, and LNG facilities based on published tariffs, applicable to all eligible customers, including supply undertakings, and applied objectively and without discrimination between system users. Member States shall ensure that those tariffs, or the methodologies underlying their calculation are approved prior to their entry into force in accordance with Article 41 by a regulatory authority referred to in Article 39(1) and that those tariffs — and the methodologies, where only methodologies are approved — are published prior to their entry into force.*”

Furthermore, as stated by Elengy, LNG facilities are defined by the Directive as “a terminal which is used for [...] the importation, offloading, and re-gasification of LNG, and includes ancillary services and temporary storage necessary for the re-gasification process and subsequent delivery to the transmission system [...]”

² DIRECTIVE 2009/73/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL dated 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC

In line with the analysis presented by Elengy, CRE believes, at this point in time, that the provision of a trans-shipment service would not come under the scope of application of Article L.452-1 of the French Energy Code. The service only uses part of the liquefied natural gas facilities and cannot be deemed an ancillary service under the Directive. Such a service would therefore not be subject to the provisions of Article L. 452-1 of the French Energy Code.

CRE notes that the provision of a trans-shipment service would not come under the scope of the regulated activities as defined by the Directive as much as its provision is not necessary to access to the LNG facility and does not aim to import, unload or regas the gas or access to the internal market.

Nonetheless, CRE notes that the regulated regasification and LNG reloading services and the trans-shipment service require the shared use of the terminal's piers. Consequently, the coexistence of these different services requires the implementation of operating rules for access to the piers in order to ensure that the provision of the new trans-shipment service does not have a negative impact on the access conditions for the regulated services offered by Elengy.

In addition, CRE states that pursuant to Article L. 111-89 of the French Energy Code, it has the power to approve the "accounting scope and principles determining the financial relations between the different activities (conducted by the operators)".

Consequently, CRE believes that the provision of a trans-shipment service within an unregulated framework must be subject to the implementation of:

- Organisational and accounting measures in order to ensure the transparency of the allocation of the respective costs of the different services and in particular to ensure the allocation of costs generated by the trans-shipment service to the users of said service,
- Operational rules in order to ensure that the provision of the trans-shipment service does not have a negative impact on the access conditions for the regulated services offered by Elengy.

Q1: Are you in favour of the general framework conditions planned by CRE for the trans-shipment service?

3. Rules covering the allocation of costs related to the provision of the trans-shipment service

3.1. Elengy's proposal

3.1.1. Capital cost allocation rules

The trans-shipment service requires specific investments and the use of some of the LNG terminal's pre-existing assets. Elengy proposes to:

- Allocate to the trans-shipment service 100% of the new investment costs required for the provision of the service (renovation of one of the docking stations),
- Allocate, in due proportion, to the trans-shipment service, the share of capital costs for regulated assets contributing to the provision of said service. Besides the use of the docking stations, Elengy has stated that the provision of the trans-shipment service also requires the use of various assets already at the terminal, including unloading lines. Elengy proposes to allocate the corresponding capital costs to the trans-shipment service through the application of allocation keys.

3.1.2. Operating cost allocation rules

Elengy states that the provision of the trans-shipment service does not give rise to considerable operating expenses. However, it is only made possible by pooling pre-existing functions, the costs of which are currently entirely borne by the regulated tariffs for off-loading-regasification and reloading services. Elengy proposes to:

- Allocate to the trans-shipment service 100% of the additional operating costs generated by said service (mainly related to fiscal impact and maintenance costs),

- Allocate, in due proportion, to the trans-shipment service, the share of operating costs partly contributing to the provision of said service (personnel costs, property costs, central costs, etc.).

3.2. CRE's preliminary analysis

With regard to the treatment of investments and operating costs specific to the trans-shipment service, CRE is, at this stage, in favour of the rules proposed by Elengy.

With regard to the operating and capital costs related to the pooled use of pre-existing functions or assets, CRE believes that the allocation of these costs must take into account their effective contribution to the provision of the trans-shipment service. Therefore, in line with the provisions of Article L. 111-89 of the French Energy Code, cost allocation must be based on rules set by CRE in order to avoid any form of discrimination, cross-subsidisation or distortion of competition. Other things being equal, these cost allocations will lead to a reduction in the level of authorised income to be covered by the regulated tariff.

In addition, given the level of income likely to be generated by the trans-shipment activity in comparison to Elengy's authorised income and with a view to guaranteeing cost traceability, CRE believes that the creation of a subsidiary devoted to the trans-shipment activity is a necessary condition for the provision of this service in an unregulated framework. If this is the case, a reasonable margin would need to be applied to the services re-invoiced by Elengy to its subsidiary.

Q2: Are you in favour of the CRE's principles for the allocation of capital and operating costs to the trans-shipment service?

4. Operations management rules

4.1. Elengy's proposal

Elengy states that the possible marketing of a maximum of 79 trans-shipment slots per year does not reduce the terminal's regasification capacity, remaining at 123 TWh/year.

However, the provision of the trans-shipment service requires the simultaneous use of the terminal's two docking stations, thereby reducing the number of possible vessel off-loading and reloading slots. The renovation of the second docking station will optimise its availability.

The creation of the terminal's annual schedule must take into account requests from both users of the regulated regasification and off-loading services and users of the trans-shipment service. The same applies to the monthly schedules and the processing of intra-monthly rescheduling requests. Elengy proposes that the scheduling rules would not give users of the trans-shipment service an advantage over users of the regasification and reloading services.

Lastly, Elengy states that trans-shipment operations will generate marginal. These quantities of energy cannot be physically trans-shipped and will be sold to a user of the regasification service. If no sale is possible, the corresponding quantities would be used to reduce the gas in kind off-take of regasification service customers, resulting in a reduction of the charge related to gas in kind for the regasification service.

4.2. CRE's preliminary analysis

The conditions of access to the terminal's piers will be modified due to the shared access of these piers by users of the regulated services and of the trans-shipment service. CRE believes that the implementation of operating rules ensuring neutral access between the different services is necessary.

With regard to the terminal's annual and monthly schedules, CRE is, at this point in time, in favour of Elengy's proposal, according to which the scheduling of trans-shipment slots would not negatively affect the conditions of access to the regulated regasification services.

However, for intra-monthly rescheduling requests, CRE believes that in the event of a conflict between rescheduling requests for trans-shipment and off-loading slots, the regulated services will have to take priority, in order not to impact the predictability of the terminal's send-out profile is not adversely affected.

CRE plans to ask Elengy to submit, for CRE's approval, the operations management detailed rules in line with these principles.

In light of the documents submitted by Elengy, CRE notes that the provision of the trans-shipment service does not create any additional restrictions on the terminal's send-out capacity to the transmission network.

In general, CRE believes that the trans-shipment service will help to increase the Montoir-de-Bretagne terminal's appeal, as some users of this service wishing to bring quantities of natural gas to the European market may subscribe to regasification capacity for this purpose.

Q3: Are you in favour of the planned operations management rules?

5. Questions

Q1: Are you in favour of the general framework conditions planned by CRE for the trans-shipment service?

Q2: Are you in favour of the CRE's principles for the allocation of capital and operating costs to the trans-shipment service?

Q3: Are you in favour of the planned operations management rules?

Q4: Do you have any other comments?

CRE asks all parties concerned to submit their contribution, by 22 April 2013 at the latest:

- By email to the following address: dirgaz.cp4@cre.fr,
- By submitting their response directly on the CRE website (www.cre.fr), in the section "Documents / Public consultations",
- By post to: 15, rue Pasquier - F-75379 Paris Cedex 08,
- By contacting the Division of Gas Infrastructures and Networks: + 33.1.44.50.41.44,
- By requesting a meeting with the Commission.

A summary of the contributions will be published by CRE, in accordance with the legal confidentiality requirements.

Please state in your contribution whether you would like to **remain anonymous / have your response treated as confidential**. The parties concerned are asked to answer the questions, justifying their responses.