

## **Sale of access capacities at the Montoir terminal**

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### **Draft Commercialization procedure for available capacities at the Montoir LNG terminal pursuant to the decision of the European Commission of 3 December 2009 (ref C(2009) 9375 final)**



**Publication date: 7 January 2010**

## **1 Introduction and context**

On 3 December 2009, the European Commission adopted decision "C(2009) 9375 final" ("the Decision") rendering the commitments given by GDF SUEZ and its subsidiaries ("the commitments") legally binding. This decision notably involves the commercialization by Elengy of H-Gas Long Term Firm Entry Capacities at the Montoir LNG terminal, transferred by GDF SUEZ.

In order to facilitate transparent and non-discriminatory access to these capacities by all interested companies, Elengy will hold an Special Marketing Process ("Special Marketing Process"). This document is a Draft Commercialization Procedure ("the Draft Commercialization Procedure") which outlines the practical details of this Special Marketing Process. The principles outlined in this document were presented to the market players by Elengy in the presence of the French Energy Regulatory Commission (Commission de Régulation de l'Énergie - CRE) on 15/12/2009 and were the subject of preliminary discussions which have been incorporated into this document.

As part of this Special Marketing Process, an open subscription period will be launched in February 2010, permitting interested shippers to submit a Subscription Request for annual firm capacity from 1 October 2010 to 31 December 2035 at the Montoir LNG terminal.

All subscription requests received during this period will be deemed to have been received simultaneously and will be processed in accordance with the allocation procedure described in paragraph 7 relating to the Allocation Rules ("the Allocation Rules").

The information contained in this document takes precedence over all other information previously published or communicated by Elengy in relation to the Special Marketing Process, with the French language version taking precedence over the English language version.

The attention of the interested parties is drawn to the fact that certain provisions currently envisaged and presented in this document, in particular the Allocation Rules, are likely to be amended following discussions with the market players and the CRE as mentioned in paragraph 2.1.3.2.1. of the Commitments. The final Commercialization procedure will be published in February 2010 and will incorporate:

- Discussions with the market players;
- The results of the public consultation process currently planned by the CRE for the last two weeks of January 2010;
- The deliberation of the CRE planned for February 2010;

For the entire duration of the Special Marketing Process, all other free Elengy capacities, not transferred by GDF SUEZ, will continue to be available for subscription in accordance with the "first come, first served" procedure published on the Elengy website.

## 2 Elengy, operator of the GDF SUEZ Group's LNG terminals

Elengy, a wholly owned subsidiary of GDF SUEZ, is responsible for the operation and development of the GDF SUEZ Group's LNG terminals in France. Elengy's more than 40 years of know-how are currently being put to use satisfying 13 clients, and it has ambitious plans for future development.

Elengy owns and operates the Montoir-de-Bretagne and Fos-Tonkin terminals, located respectively on the Atlantic and Mediterranean coasts, which have provided safe, reliable operation since their construction.

Elengy's current offer of regasification capacities equates to 17 Gm<sup>3</sup>/year, with the regulatory framework guaranteeing transparent and non-discriminatory access to these capacities by third parties.

### Key figures

Regasification capacity	17 billion m <sup>3</sup>
Storage capacity	510,000 m <sup>3</sup>
Vessels received in 2008	233
Clients	13 as of 31/08/2009
Capital	EUR 101,074,900

Terminal	Regasification capacity	Year commissioned	End of subscriptions	Maximum size of vessels
Fos-Tonkin	7 Gm <sup>3</sup> /year <sup>1</sup>	1972	2014	75,000 m <sup>3</sup>
Montoir-de-Bretagne	10 Gm <sup>3</sup> /year	1980	2035	216,000 m <sup>3</sup>

Elengy also operates the Fos-Cavaou LNG terminal owned by the *Société du Terminal Méthanier de Fos-Cavaou*, a 71.2% owned subsidiary. The LNG terminal will have a regasification capacity of 8.25 Gm<sup>3</sup>/year at the time of its planned commissioning in 2010.

## 3 The Montoir LNG terminal: a strategic location and a reliable piece of infrastructure at a very competitive price

Located on the French Atlantic coast, directly connected to GRTgaz's Northern PEG [Title Transfer Point] and midway between Northern and Southern Europe, the Montoir terminal is a preferred entry point into Europe for France and neighboring markets.

The Montoir LNG terminal was commissioned in 1980. It occupies 73 hectares on the northern bank of the Loire estuary, in western France.

It includes two jetties which are capable of handling LNG tankers with a capacity of up to 215,000 m<sup>3</sup> of LNG. The terminal has unloaded sixty-seven different vessels, ranging in size from 114,000 m<sup>3</sup> to 215,000 m<sup>3</sup>. It currently mainly receives LNG from Algeria, Nigeria and Egypt but also from the Middle East, Trinidad and Tobago and from Snøhvit. Since it was commissioned, the Montoir terminal has received more than two thousand three hundred cargoes of LNG, and has received an average of one hundred LNG tankers per year since 2000.

It has an annual LNG capacity of 10 Gm<sup>3</sup>(n)/year. Current storage capacity is 360,000 m<sup>3</sup> of LNG, divided between three concrete above-ground storage tanks, each with a capacity of 120,000 m<sup>3</sup>.

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<sup>1</sup> Capacity reduced to 5.5 Gm<sup>3</sup>/year once the Fos-Cavaou terminal is brought online

## 4 Product offered for sale

### 4.1 Capacities offered

The Commitments given include two cases:

- Case 1: Commercialization of long term firm capacity of 1 Gm<sup>3</sup>/year from October 2010 until December 2035 ("Lot A");
- Case 2: Commercialization of Lot A and additional commercialization of long term firm capacity of 1 Gm<sup>3</sup>/year from October 2011 until December 2035 ("Lot B").

As mentioned in the Commitments, Lot B will only be offered for sale if the conditions for the disposal by GDF SUEZ of entry capacity on the Dunkirk transmission network are not met.

The commercialization of Lot B will be confirmed by 7 February 2010 at the latest.



#### 4.1.1 Description of Lot A

Lot A consists of:

- In 2010: Three unloading operations scheduled for October, November and December 2010. The contractual unloaded quantity corresponding to each of these unloading operations is 0,98 TWh.
- From 2011 to 2035: An annual contractual unloaded quantity of 11.75 TWh, corresponding to around 12 unloading operations spaced out regularly over the year.

These quantities will be used when drawing up the Access Contract but may subsequently be revised depending on circumstances in accordance with the procedures set out in the General Terms and Conditions of the Access Contract to the Montoir terminal.

The three unloading dates for Lot A in 2010, amounting to a capacity of 2.94 TWh, are to be chosen from the following:

October 2010	November 2010	December 2010
4 October 2010	6 November 2010	4 December 2010
20 October 2010	16 November 2010	12 December 2010
26 October 2010	24 November 2010	23 December 2010

Each subscriber will have to select one and only one date per month in the final quarter of 2010. To ensure a regular distribution of these slots over the final quarter of 2010, the three dates chosen by the Successful Tenderer when drawing up the Access Contract can not be consecutive in the list of nine dates mentioned above.

For the following years, the number of unloading operations per year will be defined by the Successful Tenderer when drawing up the Access Contract. This number of unloading operations per year will have to be between 9 and 15 and must be compatible with the chosen service (below 10 unloading operations per year, the service is necessarily "uniform" and above 12 unloading operations per year, the service is necessarily "continuous").

It is important to point out that these dates and the number of unloading operations per year will be mentioned in the Access Contract that will be drawn up following the Special Marketing Process. Furthermore, as provided for in the General Terms and Conditions of the Elengy terminal access offering, these dates may be rescheduled at the request of the subscriber.

#### 4.1.2 Description of Lot B

Lot B consists of:

- In 2011: An annual unloaded quantity of 2.94 TWh, corresponding to 3 unloading operations spaced out regularly over the final quarter.
- From 2012 to 2035: An annual unloaded quantity of 11.75 TWh, corresponding to around 12 unloading operations spaced out regularly over the year.

The number of unloading operations per year will be defined by the Successful Tenderer when drawing up the Access Contract. This number of unloading operations per year will have to be between 9 and 15 and must be compatible with the chosen service (below 10 unloading operations per year, the service is necessarily "uniform" and above 12 unloading operations per year, the service is necessarily "continuous").

## 4.2 Service offered

Elengy will offer the following services, based on the new usage tariffs for the Montoir and Fos-Tonkin LNG terminals, as set out in the order of 20 October 2009 approving the LNG terminal usage tariffs, from 1 January 2010:

- The "continuous" service for shippers unloading an average of at least 10 cargos at the terminal over the year. With this service, Elengy ensures that the discharge is managed over the contractual period in as continuous and regular a manner as possible for the subscriber, according to the terminal's overall unloading schedule;
- The "uniform" service for shippers unloading an average of no more than 12 cargos at the terminal over the year. With this service, each cargo is discharged at a constant, uniform rate, over a period of thirty days running from the unloading completion date.

These services will be offered by Elengy to subscribers taking capacity at the Montoir terminal from 2010 to 2012 and beyond subject to the regulatory framework remaining unchanged.

Elengy will nevertheless continue to examine ways to further develop its services in partnership with its clients in order to take into consideration their changing needs. The services offered may therefore be adapted in consultation with clients and the regulator.

### 4.3 Characteristics of the LNG unloaded and permitted vessels

The Montoir terminal has received LNG from a variety of locations since it was first commissioned, but mainly from Algeria, Nigeria and Egypt.

The Montoir terminal can accept all types of LNG, the characteristics of which comply with the following specifications indicated on the Elengy website and detailed in the table below:

Size	Unit	Minimum	Maximum
PCS	kWh/m(n)3	10.70	12.75
Wobbe index	kWh/m(n)3	13.40	15.65
RSH as "S"	mg of S/m(n)3		6
COS+H <sub>2</sub> S as S	mg of S/m(n)3		5
Total S	mg/m(n)3		30
Hg	ng/m(n)3		50
O <sub>2</sub>	ppmv		100

However, Elengy is considering the possibility of accepting cargos of LNG for unloading, the characteristics of which do not meet these specifications.

Vessels included on the list of vessels authorized to access the Montoir terminal (indicated on the Elengy website) are automatically scheduled to unload their cargo at this terminal. Any access request for a vessel not included on this list will be considered based on the vessel's physical dimensions and safety related criteria.

### 4.4 Access Contracts

Parties allocated capacity under the Special Marketing Process will be required to sign a contract with Elengy ("Access Contract") for access to the Montoir LNG terminal which will be drawn up in accordance with the general terms and conditions and specific conditions for access to Elengy LNG terminals ("General Terms and Conditions" and "Specific Conditions") available on the Elengy website.

The Access Contract will include a "ship or pay" clause and will outline the practical details of the annual and monthly scheduling as well as the intra-monthly scheduling of cargos, in accordance with the General Terms and Conditions.

The General Terms and Conditions and Specific Conditions for access to Elengy LNG terminals can be consulted on the Elengy website by clicking the following link:

<http://www.elengy.com/en/commercial-services/access-to-terminals/contracts.html>

## 5 Regulatory framework

Access to LNG facilities is mainly governed by Act no. 2003-8 of 3 January 2003, amended and supplemented by Act no. 2004-803 of 9 August 2004, among other provisions<sup>2</sup>.

Within this framework, Elengy offers regulated access by third parties to its LNG terminals.

Article 7 of Act no. 2003-8 of 3 January 2003 provides that "decisions concerning tariffs are made jointly by ministers responsible for the economy and energy, at the proposal of the Commission de régulation de l'énergie in the case of tariffs for the use of gas transmission and distribution networks and liquefied natural gas facilities".

<sup>2</sup> The French legislation transposes the European regulations, particularly Directive 2003/55/EC of 26 June 2003 which has just been repealed by Directive 2009/73/EC of 13 July 2009 with effect from 3/3/2011.

Furthermore, decree no. 2005-1616 of 20 December 2005 on tariff rules for the use of liquefied natural gas facilities, also provides that usage tariffs for liquefied natural gas facilities are determined on the basis of the full operating costs and the operator's investment costs. Operating costs notably include all expenditure required for the management, maintenance and safety of the facilities. Capital expenditure includes depreciation of fixed assets and any return on capital invested.

The tariff is therefore periodically redefined in this way to take account of any changes in operating costs and capital expenditure.

The new tariffs in force as from 1 January 2010 have been approved by the Minister of Ecology, Energy, Sustainable Development and Sea by order of 20 October 2009 approving the usage tariffs for LNG terminals.

The CRE decided to incorporate individualized LNG terminal access tariffs into these new tariffs in order to specifically ensure that the costs pertaining to each terminal are only passed on to the customers of these terminals.

The regulatory framework governing the determination of tariffs does not permit the fixing of a long term tariff structure in advance.

## **6 Transmission capacities downstream of the Montoir de Bretagne Terminal**

Entry capacities on to the transmission network from LNG terminals are currently automatically allocated to shippers in accordance with the rules defined by the order of 6 October 2008 approving the usage tariffs for natural gas transmission networks.

The terms of the commitment made by subscribers booking capacity at the Montoir PITTM [LNG terminal transmission connection point] to GRTgaz, operator of the gas transmission network downstream of the Montoir terminal, will be those set out in the applicable transmission tariff. The CRE tariff proposal of 10 July 2008 for use of the natural gas transmission network provides that:

"The possession of regasification capacities, for whatever length of time or amount, must entail the right and obligation to book entry capacities on the corresponding transmission network. The purpose of this rule is:

- to ensure that shippers do not experience difficulty in accessing the transmission network if they have booked regasification capacities";

All shippers booking capacities during the Special Marketing Process will consequently be obliged and entitled to automatic booking of equivalent capacities on the Montoir PITTM with GRTgaz.

When drawing up the Access Contract Elengy will check that the Successful Tenderer has signed a transmission capacity anticipated booking agreement with GRTgaz.

Interested parties can find further information about the GRTgaz transmission network by consulting the following website:

[www.grtgaz.com](http://www.grtgaz.com)

## 7 Allocation rules

Interested parties who wish to book regasification capacities offered under the Special Marketing Process ("Potential Subscribers") are invited to follow the commercialization process established for the Special Marketing Process.

This process provides for 2 main steps:

1. Qualification of Subscribers;
2. Allocation of capacities to Qualified Subscribers:
  - Submission and allocation of Subscription Requests;
  - Allocation of capacities to Qualified Subscribers.

Access Contracts will be signed after the end of the Special Marketing Process

### 7.1 Special Marketing Process Qualification Criteria

To participate in the Special Marketing Process, Potential Subscribers will have to establish that they satisfy the qualification criteria by sending the duly signed or, where appropriate, certified qualification documents to the following address ("Qualification and Submission Address") by the qualification deadline of **26 February 2010**:

Elengy  
Special Marketing Process  
Direction Stratégie Développement Commercialisation  
2-6 rue Curnonsky  
75017 Paris

All documents must be sent by registered letter with acknowledgment of receipt or by using any other service that will provide the Potential Subscriber with an acknowledgement of receipt, such as FedEx, DHL or UPS for example.

The qualification documents consist of the following:

- A Request for Qualification in accordance with model Form 1 included in Appendix 1;
- A Power of Attorney in accordance with model Form 2 included in Appendix 1;
- A Declaration in accordance with model Form 3 included in Appendix 1;
- A Guarantee in accordance with Model Form 4 presented in Appendix 1.

Each interested company will have to also provide a guarantee in the form of a deposit or an on-demand guarantee from a first-class bank for the amount of one million euros (EUR 1 million). This guarantee will be substituted by the guarantees provided for in the Access Contract if the tenderer is allocated regasification capacity; the guarantee will be returned if no allocation is made. The purpose of this guarantee is to provide protection to subscribers in the event that the entire allocation process has to be rerun due to the withdrawal of one of the selected subscribers.

Elengy will contact all Potential Subscribers, within a reasonable period of time from the date of receipt of all information required for qualification, to confirm that they qualify for the Special Marketing Process or to reject their requests for qualification by sending model Form 5 of Appendix 1 to the Principal Point of Contact. Elengy will endeavor to ensure that this period of time does not exceed two (2) working days from receipt of said information. A Potential Subscriber whose qualification has been confirmed by Elengy is termed a Qualified Subscriber.

Elengy may refuse to qualify a Potential Subscriber in the event that the latter does not fulfill the qualification criteria set out in these Allocation Rules. Should a request for qualification be rejected, Elengy will explain the reason(s) for the rejection. Elengy will be entitled, at its sole discretion, to indicate one or more inadequacies in a request and invite the Potential Subscriber concerned to submit a new Request for Qualification. In such an event, Elengy will set a deadline for receipt of said new Request for Qualification.



A Qualified Subscriber may withdraw from the Special Marketing Process at any time before the Submission Deadline by transmitting a notice to this effect to Elengy before said deadline. In such an event, Elengy will endeavor to send the Qualified Subscriber an acknowledgement of receipt of said notice within two (2) working days of receipt of the notice. Neither Elengy nor the Qualified Subscriber will incur any liability as a consequence of the latter's withdrawal under the aforementioned circumstances.

Qualified Subscribers must notify Elengy as soon as possible of any change that may affect the information supplied in the qualification documents. In all cases, the relevant notice must be received by Elengy within five (5) working days of the date of occurrence of the change in question. Elengy will then examine the new information and will be entitled to request any additional information, documents, commitments or additional amendments to existing documents already submitted by the Qualified Subscriber.

Elengy may revoke the qualification of a Qualified Subscriber at any time in the event that:

- the Qualified Subscriber breaches the terms and conditions of the Allocation Rules; or
- the Qualified Subscriber is no longer entitled to take part in the Special Marketing Process owing to essential changes having to be notified to Elengy in accordance with the previous paragraph; or
- It has come to Elengy's attention that the Qualified Subscriber did not fulfill the qualification criteria and still does not fulfill them, or if there are other significant objective reasons in existence for revoking the qualification.

Elengy will explain the reason(s) for any such revocation.

#### 7.1.1 Power of Attorney

Each Potential Subscriber must provide a power of attorney bearing the stamp of the company, notarially attested (if required by the legislation in force in the country where the Potential Subscriber has its registered office) in favor of at least one person ("Principal Point of Contact") and giving the latter the powers set out and referred to in Model Form 2 ("Power of Attorney") included in Appendix 1. The Potential Subscriber may designate, on said Form, a second person with the same powers ("Second Point of Contact").

Elengy will be entitled and hereby reserves the right to request the persons signing the Power of Attorney to provide additional proof of their authority to delegate the powers specified in the Power of Attorney.

#### 7.1.2 Declarations

Each Potential Subscriber must undertake the obligations specified in Model Form 3 ("Declarations"). To this end, one of the holders (or the holder) of the power of attorney granted in accordance with Model Form 2 must sign a declaration on behalf of the said Potential Subscriber, using for this purpose Model Form 3 included in Appendix 1.

Potential Subscribers hereby give an undertaking, in particular, that they have the competency to fulfill the obligations resulting from the Special Marketing Process; to follow the Allocation Rules; to indicate to Elengy any Related Party that, to the best of their knowledge, wishes to take part in the Special Marketing Process; and not to collude with other Potential Subscribers.

#### 7.1.3 Guarantee

Each Potential Subscriber must provide a guarantee ("Guarantee"), for an amount equivalent to EUR 1,000,000. The Guarantee may be in the form of a bank guarantee or a banker's deposit:

- In the case of a bank guarantee ("Independent Submission Guarantee"): the Guarantee must consist of a valid, irrevocable and unconditional stand-by letter of credit in EUR, issued by a bank with registered office located in a Member State of the European Union and which has a rating of at least A from Standard & Poor's and A2 from Moody's. Furthermore, said guarantee must not expire any earlier than 30 June 2010, and must be issued in favor of Elengy in the form and terms specified in Model Form 4 of Appendix 1. It is hereby specified that should a Subscriber that has provided an Independent Submission Guarantee withdraw from the Special Marketing Process in accordance with Clause 1 of these Rules, or should the Subscriber fail to qualify or not be selected as a Successful Tenderer, Elengy will return the original of said Guarantee as soon as possible after the occurrence of the event in question.

The Independent Submission Guarantee must be received by Elengy at the Qualification and Submission Address by the Deadline for Qualification at the latest.

- In the case of a banker's deposit the Guarantee must be provided in the form of a payment credited to the following bank account:

Name of bank: BRED  
SWIFT code: BREDFRPP  
Account holder: Elengy Montoir Encaissements  
Account no.: 10107 00109 00518024887 44  
IBAN: FR 76 1010 7001 0900 5180 2488 744  
Reference: OPC MONTOIR

- The deposit must be effective by the Deadline for Qualification at the latest. A deposit will be deemed to be effective when the full amount of the Guarantee has been credited to the above-mentioned bank account. It is hereby specified that should a Subscriber that has provided a banker's deposit withdraw from the Special Marketing Process in accordance with Clause 1.4 of these Rules, or should the Subscriber fail to qualify or not be selected as a Successful Tenderer, Elengy will return the deposit guarantee as soon as possible after the occurrence of the event in question.

#### 7.1.4 Related parties

Where multiple Related Parties wish to qualify jointly for the Special Marketing Process, they must coordinate their action in order to appoint one of them to act as Qualified Subscriber representing all the Related Parties for the purposes of the Special Marketing Process.

Since capacities may be allocated on the basis of a draw, the related parties must coordinate their action in order to appoint one of them to represent them for the purposes of the Special Marketing Process.

Should Elengy become aware that multiple Qualified Subscribers are Related Parties and that the above clause is not being complied with, Elengy will request the parties concerned to comply with said clause. In the absence of an adequate response, Elengy will give priority to the Qualified Subscriber that has been the first to provide Elengy with all the elements necessary for qualification.

## 7.2 Process of allocation of capacities to Qualified Subscribers

The capacities offered during the Special Marketing Process will be allocated according to a non-discriminatory, transparent process that complies with best practice in the area, defined in this paragraph.

These rules may be amended in February 2010 to take account of:

- Discussions with the market players;
- The results of the public consultation process currently planned by the CRE for the last two weeks of January 2010;
- The deliberation of the CRE planned for February 2010;
- 

Qualified Subscribers are invited to submit a Subscription Request, that will be considered as binding, before the Submission Deadline of **3 March 2010**. This submission must be made using the Submission Request Form, included in Appendix 2 and sent to the Qualification and Submission Address.

All documents must be sent by registered letter with acknowledgment of receipt or by using any other service that will provide the Potential Subscriber with an acknowledgement of receipt, such as FedEx, DHL or UPS for example.

A Subscription Request consists of a single profile of capacities ("Profile") for each of the 2 Lots A or B offered for sale. These profiles are referred to as Profile A and Profile B of the corresponding Qualified Subscriber.

GDF SUEZ or related companies of the GDF SUEZ Group will not be entitled to subscribe for capacity under the Special Marketing Process.

### 7.2.1 Profile Characteristics

The Profiles, which are treated as separate for the purposes of the allocation process, contain the following:

- A start date, for all Profiles relating to Lot A, of 1 October 2010;
- A start date, for all Profiles relating to Lot B, of 1 October 2011;
- An end date set on the 31 December of a year between 2011 and 2035 for Lot A;
- An end date set on the 31 December of a year between 2012 and 2035 for Lot B;
- The type of service selected for each profile (“continuous service” or “uniform service”);
- For each Profile A: Transfer Option. Each Qualified Subscriber indicates whether or not it wishes to transfer the request for capacity to Lot B (“yes” or “no”) in the event that the Qualified Subscriber is not selected as a Successful Tenderer for Lot A. If this option is selected, Profile A is then used for Lot B with the start date, but not the end date, being modified so that it is compatible with Lot B.

Following receipt of the Subscription Requests, Elengy shall then check the validity of the Subscription Requests. Only valid Subscription Requests will be considered for the allocation process.

To be considered valid, a subscription request must:

- Be duly completed and signed by a person authorized by virtue of the Power of Attorney and, furthermore, be drawn up in accordance with the model Subscription Request reproduced in Appendix 2;
- Include in a legible way :
  - For Profile A :
    - The year of the end date, between 2011 and 2035, expressed as a whole number with no decimals after the point;
    - The type of service selected : uniform or continuous;
    - The indication of a wish to chose the Transfer Option.
  - For Profile B :
    - The year of the end date, between 2012 and 2035, expressed as a whole number with no decimals after the point;
    - The type of service selected : uniform or continuous.

### 7.2.2 Priority ranking for allocation of Lot A

Following receipt and validation of the Subscription Requests, Elengy will rank the Profiles A based on the following priority ranking order:

- Rank 1 priority: the Profiles are initially ranked according to their Duration, with priority being given to Profiles with a longer duration;
- Rank 2 priority: in the event that two or more Profiles have the same duration, the Profiles are ranked according to the type of service requested, with priority being given to Profiles requesting a “continuous” service over those requesting a “uniform” service;

In the event that, after application of the two preceding priority rankings, multiple Profiles are ranked equally, Elengy will decide between these Profiles by means of an independently supervised draw.

Elengy will then allocate the capacity associated with Lot A by selecting the Profile A with the highest priority ranking. The full capacity of the Profile is then allocated to the Qualified Subscriber that submitted the corresponding Subscription Request. This Qualified Subscriber is termed the Successful Tenderer for Lot A.

### 7.2.3 Priority ranking for allocation of Lot B

Where case 2 outlined in paragraph 4.1 is selected, Elengy will rank the Profiles A and Profiles B of those subscribers not allocated capacity under Lot A but which selected the transfer option for Profiles A. These profiles are considered as "Reserved for Lot B" and are ranked based on the following priority ranking order:

- Rank 1 priority: the Profiles are initially ranked according to their Duration, with priority being given to Profiles with a longer duration;
- Rank 2 priority: in the event that two or more Profiles have the same duration, the Profiles are ranked according to the type of service requested, with priority being given to Profiles requesting a "continuous" service over those requesting a "uniform" service;

In the event that, after application of the two preceding priority rankings, multiple Profiles are ranked equally, the Profile B submitted by the company which was the successful tenderer for Lot A will be deemed to have lower priority.

If multiple Profiles are still ranked equally after all of the above, Elengy will decide between Profiles Reserved for Lot B by means of an independently supervised draw.

Elengy will then allocate the capacity associated with Lot B by selecting the Profile Reserved for Lot B with the highest priority ranking. The full capacity of the Profile is then allocated to the Qualified Subscriber that submitted the corresponding Subscription Request. This subscriber is termed the Successful Tenderer for Lot B.

### 7.2.4 Notification of subscribers

Upon conclusion of this allocation procedure, Elengy will notify Qualified Subscribers of the results and send to the Successful Tenderers the Confirmation Form detailed in Appendix 2, before **7 March 2010**.

The Special Marketing Process ends on **7 March 2010**.

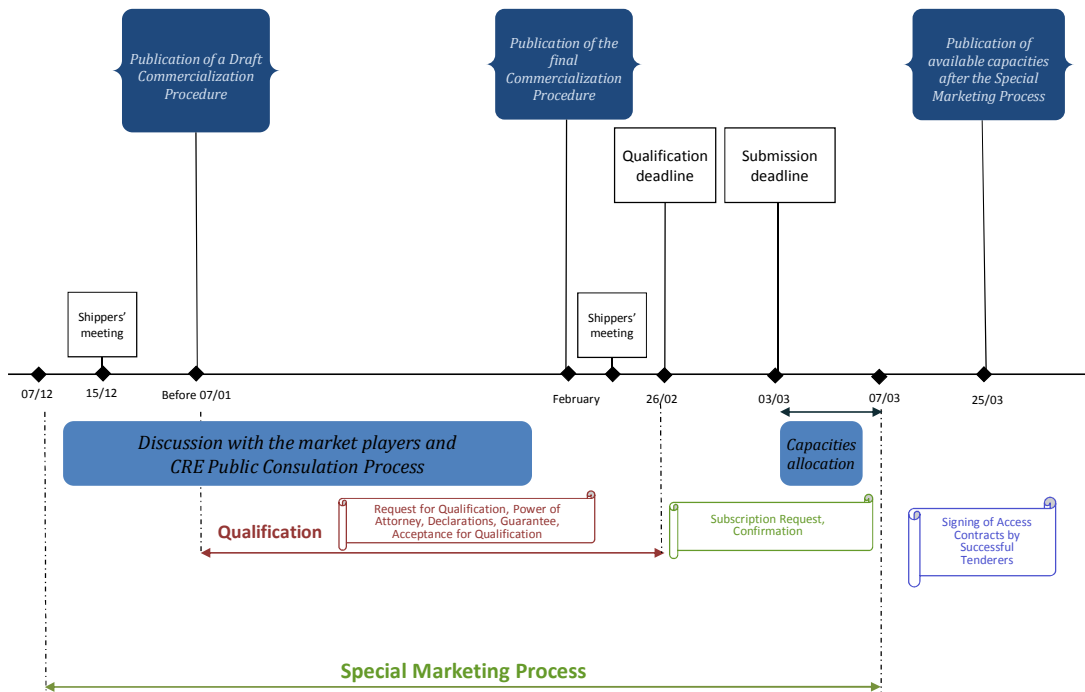
Qualified Subscribers who have been allocated capacity under Lots A and B must then sign a Contract for Access to the Montoir LNG Terminal within 30 days of receipt of the Confirmation Form. For each Lot, this Access Contract will be based on the selected Profiles of the Capacity holding Subscribers.

## 8 Tentative schedule

During the Special Marketing Process, Elengy invites the Potential Subscribers to raise any questions they might have and will be available to deal with these questions. Potential Subscribers are invited to submit any such questions to the following address:

Email: [montoir-release@elengy.com](mailto:montoir-release@elengy.com)

The tentative schedule for the Special Marketing Process is the following:



The purpose of this draft Commercialization procedure is to set out the regasification capacities that Elengy plans to offer under the Special Marketing Process and how they are to be offered to the market.

The terms used have the meanings attributed to them in this draft Commercialization procedure or in the General Terms and Conditions of the Contract for Access to Elengy terminals.

Under no circumstances will the publication of this document be deemed to constitute a contractual offer to subscribe for regasification capacity.

All interested parties are advised to make all necessary enquiries and investigations, in a professional capacity, in order to assess the benefit of responding to the call for subscriptions.

Elengy will not be liable for any assessment and interpretation of the information contained in this document that may be made by the interested parties.

## Appendix 1: Qualification model forms

- Model Form 1: Request for Qualification
- Model Form 2: Power of Attorney
- Model Form 3: Declarations
- Model Form 4: Independent Submission Guarantee
- Model Form 5: Acceptance of Qualification

# Model Form 1: Request for Qualification

Name of Company:

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**For the attention of:**

Elengy  
Special Marketing Process  
Direction Stratégie Développement Commercialisation  
2-6 rue Curnonsky  
75017 Paris  
France  
Mr. Pierre Cotin

Date: .....

Further to Elengy's communication of the Commercialization procedure for capacities available at the Montoir LNG terminal, pursuant to decision "C(2009) 9375 final" of the European Commission, within the context of the Special Marketing Process, we wish to participate in this Special Marketing Process.

To this end, we hereby send you Form 2 (Power of Attorney) and Form 3 (Declarations), which are based on the model forms attached to the Commercialization procedure, duly completed, initialed and signed.

*(delete as appropriate)* We are also sending you our bank guarantee based on the model attached to the Commercialization procedure.

*(delete as appropriate)* Furthermore, we hereby inform you that we have made a bank transfer in accordance with the Commercialization Procedure in order to provide the required Guarantee.

Name/title: .....

Company: .....

Signature: .....

Enclosed.

- Power of Attorney;
- Declarations;
- Independent Submission Guarantee *(delete as appropriate)*



# Model Form 2: Power of Attorney<sup>1</sup>

I, the undersigned  
(First name, LAST NAME) .....

acting in the capacity of:  
(Position) .....

representing the company:  
(Company Name) .....

with its registered office .....  
at:  
Address of registered .....  
office: .....

registered in: ..... under the number .....

(hereinafter referred to as "the Company")  
hereby authorize the following Points of Contact:

## 1. Principal Point of Contact

First name, LAST NAME:	.....
Position within the company:	.....
Address	..... .....
Tel. number:	.....
Fax number:	.....
Email:	.....
Date and signature:	.....

## 2. Second Point of Contact

First name, LAST NAME:	.....
Position within the company:	.....
Address:	..... .....
Tel. number:	.....
Fax number:	.....
Email:	.....
Date and signature:	.....

<sup>1</sup> If required by the legislation of the country where the company is registered, please return this Power of Attorney in the form of an official deed or document authenticated by a notary.

to carry out for and on behalf of the Company, the following actions relating to the Special Marketing Process organized by Elengy:

- sign and make all the necessary declarations to qualify as a Qualified Subscriber (including in particular the declarations that must be made in accordance with Model Form 3);
- submit a Subscription Request and transmit or receive communications concerning the Special Marketing Process and, where appropriate, sign the Access Contract;
- sign and endorse any document, contract or commitment, whatever its nature, which relates to the Special Marketing Process;
- take, on behalf of the company, any other measures that are necessary or appropriate for the purposes of the Special Marketing Process;
- perform all other reasonably necessary actions to fulfill the Company's obligations resulting from the Special Marketing Process.

The terms have the meanings set out in this Commercialization procedure:

Done at: (Place)	.....
On: (Date):	.....
Signature of the grantor of the Power of Attorney:	
In the presence of <sup>3</sup> : (Name and position):	.....
Signature:	

---

<sup>3</sup> In certain countries, the signature of a notary may be required.

## Model Form 3 - Declarations

### To: Elengy

I, the undersigned ..... (name of one of the persons designated in Model Form 2) duly authorized to make declarations concerning the matters described below, accept, confirm and guarantee on behalf of

.....

(the "Company")

the following:

1. The Company is duly incorporated as a company, operates legally in accordance with the law applicable to it and pursues commercial activities;
2. The financial situation of the Company is sound, the Company is capable of paying its debts on time, it is not insolvent and is not in receivership or liquidation;
3. The Company is capable of fulfilling its obligations arising from the Special Marketing Process, and the fulfillment of said obligations has been duly authorized, where appropriate, by all the decisions required of the Company's decision-making bodies. These obligations (including any subsequent additional clauses) constitute valid and unconditional obligations for the Company, which apply to it in accordance with the terms of the obligations, except where said application is limited by the applicable legislation concerning bankruptcy, insolvency, reorganization or any other similar law;
4. The obligations of the Company arising from the Special Marketing Process are not in conflict with, nor do they infringe or violate, any law applicable to the Company, any provision of its Articles of Association or any applicable decision or judgment of a court or of any other public body, nor do they entail non-compliance with the terms of a contract or agreement to which the Company is party or by which it is bound;
5. The obligations of the Company arising from the Special Marketing Process do not require the Company to obtain any approval, authorization, measure, submission or notice from any public body or other competent legal person nor register with, or notify, any public body or other competent legal person under the provisions of any law, agreement or contract to which the Company is party or by which it is bound; or, where required, that such approvals, authorizations, measures, submissions or notices have been duly obtained, carried out or performed and are fully valid and applicable or will be obtained, carried out or performed within the established time limits;
6. To the Company's best knowledge, no entity in relation to which the Company is a related Party wishes to qualify or has already qualified as a Qualified Subscriber for the Special Marketing Process or, where such a Related Party wishes to qualify or is already qualified as a Qualified Subscriber for the Special Marketing Process, it has already informed Elengy of this fact;
7. The Company will comply with the Commercialization Procedure;
8. The Company has not colluded with nor will it collude with other Qualified Subscribers for the Special Marketing Process with a view to obtaining an advantage. Notwithstanding the foregoing, the Company is entitled to conclude agreements with one or more Related Parties relating to their own participation or the participation of the Related Party in the Special Marketing Process subject to giving Elengy prior notice thereof;
9. The Company accepts that all actions carried out by itself or on its behalf in its capacity as Qualified Subscriber should be considered as having been carried out in France;
10. The Company hereby declares to have familiarized itself with the clauses and conditions relating to the Access Contract. Should the Company be allocated regasification capacities following the Special Marketing Process, it agrees to be bound by the said clauses and conditions. Furthermore, the Company undertakes to return an Access Contract, duly signed and initialed, in accordance with these clauses and conditions within 30 Working Days of the dispatch by Elengy of the Access Contract completed and initialed by Elengy;
11. In accordance with the Commercialization Procedure, the Company has provided or will provide a guarantee ("Guarantee") for an amount in principal of EUR 1,000,000. This Guarantee will take the form of (a transfer to Elengy's bank account) / (an Independent Submission Guarantee) *(delete as appropriate)*;

12. The Company undertakes to provide Elengy, in accordance with the Commercialization Procedure, with proof, consisting of a Transmission Capacity Anticipated Booking Agreement (document being drawn up by GRTgaz), of its commitment to conclude, should Capacities be allocated to the Subscriber at the Montoir de Bretagne Terminal, a transmission contract with the Network Operator for the transmission of gas immediately downstream from the LNG Terminal Transmission Interface Point (PITTM) of the Montoir Terminal, covering, at the very least, the period for which Capacities have been allocated to the Subscriber;
13. The Company has accepted and endorsed the terms of these declarations in its own name (and not as an agent, trustee or in any other capacity).

The Company fully understands and agrees that the Subscription Request made during the Special Marketing Process is binding and irrevocable. The capitalized terms used in this Model Form have the meaning attributed to them in the Commercialization Procedure.

This Model Form is governed by, and must be interpreted in accordance with, French legislation.

Name: (must be that of a person designated in Model Form 2)	Position:
.....	.....
.....	.....

Signature: (must be that of a person designated in Model Form 2)

.....

Date: .....

## Model Form 4: Independent Submission Guarantee

Elengy  
2-6 rue Curnonsky  
75017 Paris  
France

Dear Sir/Madam,

We are acting on behalf of our client, (the Company), within the context of the Special Marketing Process for which (the Company) intends to submit a Subscription Request by 3 March 2010 at the latest, for the purposes of concluding a Contract for Access to the Montoir LNG terminal between, on the one part, Holders of Capacities following the Special Marketing Process and, on the other, Elengy.

Under the terms and conditions of the Commercialization procedure for the Special Marketing Process, (the Company) together with all other Registered Subscribers that wish to qualify for the Special Marketing Process, must notably provide Elengy with a guarantee to cover the Company's obligations under the Special Marketing Process.

In consequence, we, the undersigned (Name of Bank) with registered office in a member state of the European Union and having a rating of at least equal to A from Standard & Poor's and A2 from Moody's on the date of issue of this guarantee (hereinafter "the Bank"), irrevocably and unconditionally undertake to pay Elengy upon first demand, in cash and not in the form of a deposit, the principal amount of EUR 1,000,000 in respect of the Special Marketing Process, within five (5) working days, i.e. a day when the banks are open in the financial market of (locality of Bank's registered office), immediately upon request made by Elengy by registered letter with acknowledgment of receipt to the following address (Address of the Bank), in accordance with the model which is attached to this guarantee and which forms an integral part of this document.

This guarantee is given in the form of an autonomous and independent guarantee payable upon request and the Bank hereby expressly renounces any right to invoke any exception resulting from another agreement, notably including the Access Contract or the Commercialization Procedure, in order to delay or refuse payment of the amounts payable under this guarantee, including, among said exceptions, any disputes, legal proceedings or arbitration procedures relating to the Access Contract.

This guarantee is concluded *intuitu personae*.

This guarantee will come into force on 26 February 2010 and will expire upon the earliest of the two following dates:

- The date of setting up of the Guarantee provided for in paragraph 10.1 of the General Terms and Conditions of the Contract for Access to the LNG terminal,
- 30 June 2010.

In the event that no capacity is allocated to (the Company) following the Special Marketing Process, this guarantee will expire on the date of receipt by (the Company) of the notice sent by Elengy informing the Company that no Capacities have been allocated to it.

Upon expiry of the guarantee, this original copy will be returned to us as soon as possible.

This guarantee may only be called upon once and only for the maximum principal amount.

The terms and expressions used in this guarantee have the meanings attributed to them in the Commercialization Procedure and its appendices or in this guarantee.

This guarantee is subject to French law and any dispute arising in relation to it will fall within the exclusive jurisdiction of the Commercial Court of Paris.

Yours faithfully,

**APPENDIX to the Independent Submission Guarantee**

(to be sent by registered letter with acknowledgement of receipt)

I, the undersigned ....., representing the Elengy company, a limited company with share capital of EUR 101,074,900, with its registered office at 23 rue Philibert Delorme, 75017 Paris, France, registered in the Paris Trade and Companies Register under the number Paris 451 438 782 in my capacity as .....

hereby notify (the Bank) that the amount of EUR 1,000,000 is immediately payable by bank transfer to account no. .... held in the name of ..... at the (Banking establishment), in respect of the Independent Submission Guarantee given by (the Bank) on .....

Done in Paris, on .....

## Model Form 5 - Acceptance of Qualification

**To**

(First name, LAST NAME  
of principal Point of  
Contact) .....

(Position of Principal  
Point of Contact) .....

(Company Name) .....

with its registered  
office at (Address  
of registered office)  
.....  
.....  
.....

registered in: ..... under the  
number .....

**Re: Acceptance of your Request for Qualification for the Special Marketing Process**

We acknowledge receipt of all duly completed documents required for your qualification, and certify that we have accepted your Request for Qualification and participation in the Special Marketing Process, as a Qualified Subscriber.

The capitalized terms used in this Model Form have the meanings attributed to them in the Commercialization Procedure and the appendices thereto.

This model form is governed by, and must be interpreted in accordance with, French legislation.

We draw your attention to the fact that you are under a continuing obligation to fulfill the qualification requirements set out in the Commercialization Procedure.

Signature (for and on behalf of Elengy)

Name: .....

Date: .....

## Appendix 2: Subscription Model Forms

- Model Form I: Subscription Request
- Model Form II: Confirmation



## Model Form I: Subscription Request - Page 1/2

<p><b>Qualification and Submission address:</b>  <b>Elengy</b>  <b>Special Marketing Process</b>  <b>Direction Stratégie Développement Commercialisation</b>  <b>2-6 rue Curnonsky</b>  <b>75017 Paris</b>  <b>France</b></p>
---

**Identification of the Qualified Subscriber**

<b>Company Name</b>	
---------------------	--

represented by

<b>First name, Last name:</b>	
-------------------------------	--

hereby submits its Subscription Request within the framework of the Special Marketing Process.

I hereby declare that I am authorized, by virtue of the Power of Attorney, to submit this Subscription Request which unconditionally and irrevocably commits the Qualified Subscriber, should it be designated a Successful Tenderer, to conclude an Access Contract in accordance with the Commercialization Procedure.

The terms and expressions used in this document have the meanings attributed to them in the Commercialization Procedure.

**Signature of the Representative of the Qualified Subscriber**

First name:		Place, date:	... .. ON ... ..
Last name:		Signature:	

## Subscription Request - Page 2/2

LOT A	Start date	End date*	Service selected**	Transfer Option**
Profile A	1/10/2010	31/12/	Uniform/Continuous	Yes/No

\*Clearly indicate the year expressed as a whole number between 2011 and 2035 in the grey zone.

\*\*Delete as appropriate

Capacity for Lot A is fixed at:

- 2.94 TWh/year unloaded from October to December 2010 on three non consecutive dates to be chosen by the Successful Tenderer when drawing up the Access Contract among the following dates:

October 2010	November 2010	December 2010
4 October 2010	6 November 2010	4 December 2010
20 October 2010	16 November 2010	12 December 2010
26 October 2010	24 November 2010	23 December 2010

- 11.75 TWh/year for each year from 2011 to 2035;
- 9 to 15 unloading operations over the year for each year from 2011 to 2035;

LOT B	Start date	End date*	Service selected**
Profile B	1/10/2010	31/12/	Uniform/Continuous

\*Clearly indicate the year expressed as a whole number between 2011 and 2035 in the grey zone.

\*\*Delete as appropriate

Capacity for Lot B is fixed at:

- 2.94 TWh/year in the fourth quarter of 2011;
- 3 unloading operations in the fourth quarter of 2011;
- 11.75 TWh/year for each year from 2012 to 2035;
- 9 to 15 unloading operations per year for each year from 2012 to 2035;

### Signature of the Representative of the Qualified Subscriber:

First name:		Place, date	..... .....
Last name		Signature:	

## Model Form II: Confirmation

For the attention of:

Identification of the Qualified Subscriber

Company Name:	.....
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(hereinafter the "Qualified Subscriber")

represented by

First name, Last name:	.....
------------------------	-------

(hereinafter the "Representative of the Qualified Subscriber")

Address	..... ..... .....
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Re: Confirmation of selection of Profile

Please note that the Profile listed in the table below has been selected in accordance with the Allocation Rules for the Special Marketing Process.

	Start date	End date	Service selected
<b>Profile A</b>	<b>1/10/2010</b>		
<b>Profile Selected for Lot B</b>	<b>1/10/2011</b>		

The capitalized terms used in this model form have the meanings attributed to them in the Commercialization Procedure and the appendices thereto. This model form is governed by, and must be interpreted in accordance with French legislation.

This Confirmation unconditionally and irrevocably commits the Qualified Subscriber, should it be designated as a Successful Tenderer, to conclude an Access Contract in accordance with the Commercialization Procedure.

**Signature (by and on behalf of Elengy):**

Name: .....

Date: .....