

PRICING FOR USE OF LNG TERMINALS

Summary of public consultation

From 17 July to 4 September 2007, CRE organised public consultation on pricing principles for use of LNG terminals, in preparation for a new pricing proposal drawn up for application from 2008 onwards.

CRE received 19 contributions:

- 14 from shippers, consultancy firms or organisations representing them
- 3 from end consumers or organisations representing them
- 2 from gas infrastructure operators.

The contributors were invited to express their views on financial issues and on technical proposals, with a view to:

- assess services currently on offer
- assess the need for pricing visibility
- define the methods used to incorporate costs
- simplify the pricing principles
- optimise terminal use.

This consultation shows that the contributors:

- are largely in favour of the proposal to customize prices for each existing LNG terminal, although some are against the idea
- would like to benefit from pricing visibility for timeframes in excess of 3 years
- consider that the applied rate of return must be consistent with the activity risk profile
- do not approve the principle of restrictions on the secondary market over the long term with regards to re-gasification capacities
- feel it is necessary to implement an effective “Use It or Lose It” mechanism.

GENERAL AND FINANCIAL QUESTIONS

Question 1: *Do you have any experience feedback concerning the current pricing and conditions for use of LNG terminals?*

Two end users felt that the current terms for the use of LNG terminals are not adapted to the consumption levels or profiles of industrial clients. One of them suggested considering the option of spreading deliveries over an entire year. This end user also specified that it has never had the opportunity to complete LNG operations due to a lack of available capacity to perform spot operations in the winter period.

Six shippers expressed their opinions on the current conditions for use of LNG terminals. Three of them have already used French terminals and therefore have authentic experience feedback with regards to the pricing system in force.

Among the users of French terminals, two expressed their satisfaction with the service provided and with the flexibility offered by the terminal operator, although one user felt that this flexibility could be improved by letting the shippers control the end and start dates for each delivery. In one of the shipper's opinions, the pricing system is too complex, whereas another felt that shippers who disrupt deliveries of other users, through their own negligence, should be penalized and added that there is a discrepancy between the highly restrictive scheduling rules applied to LNG terminals and those applied to long-term supply contracts.

The three shippers who did not have sufficient experience of French terminals provided a more general opinion: two of them thought that the current pricing system is set at a higher level than the European average. The third underlined how a pricing system should be simple and transparent.

Gaz de France DGI operator specified that it provides "tailor made" processing of feasibility requests from clients and prospective clients and is committed to providing a response to them within a maximum of seven days. Throughout the year 2006, 85 feasibility requests were processed for the two terminals, with an average processing time of 2 days, concerning around 250 slots, and a satisfaction rate of more than 90%. Furthermore, it underlines that its website is available in both French and English and that the contractual clauses and tools required for the emergence of a secondary market (capacity and/or stock transfers possible, list of contacts for clients and prospective clients, bulletin board, exchange platform, etc.) are all posted on this site. It adds that the LNG terminals operated by Gaz de France DGI have one of the highest using rates in Europe.

Question 2: *What do you think of the proposal to individualise the tariff for each terminal, the pricing structure being the same for all three terminals?*

Three end users considered that a pricing level specific to each terminal would tend to create an imbalance between the different geographic areas, and therefore requires the tariffs from each of the three terminals to be aligned.

Eight shippers expressed their opinions on the issue of individualising pricing levels.

Six of them were in favour of the proposal, since they considered that tariff should reflect any investments and operational costs undertaken by the different terminals and that this method is the most appropriate to prevent cross-subsidies between terminals.

One shipper felt that this proposal could be envisaged, on the condition that it does not cause distorted competitiveness between market newcomers and traditional operators by resulting in a tariff level that is far too low in relation to new projects.

Two shippers were opposed to this idea and would like a single tariff level for all French terminals, firstly to facilitate arbitrage between destinations and secondly to reduce the inconsistency of the degree of penetration for newcomers according to different regions.

Two shippers were in favour of an identical tariff structure for the three LNG terminals since they consider that these terminals provide access to the same market. The two others had no objections to this proposal, on the condition that such simplification does not become an objective in itself.

The STMFC is in favour of applying a specific pricing system to the Fos Cavaou terminal, given its different cost structure. It is prepared to consider any measure that aims to standardize the pricing structure of the three terminals, in light of term-by-term analysis.

Gaz de France DGI felt that the tariff equalisation mechanism was adapted to the situation during start-up, with a single active client for two LNG terminals with equivalent cost structures. The cost structures for these two terminals are not really comparable and, in the event that the Montoir terminal is extended, will diverge in the mid-term. As a result, Gaz de France DGI would like the tariffs for the Fos-Tonkin and Montoir terminals to be individualised. With regards to the structure, DGI considers that the French terminals are subject to the same environment and have direct access to the same transmission system, and, in its opinion, it would seem logical if the tariff structure were identical for all three terminals, but underlined that this structure must be capable of displaying a true representation of the costs linked to the mobilisation periods of the different facilities in each terminal.

Question 3: *What do you think of the proposal to apply the tariff in force in the same way to existing capacities and capacities resulting from the extension of the Montoir terminal?*

Three end users supported this simplification proposal, two of them specifying that this support depends on whether efforts are made to ensure *“that the extra cost endured by consumers when subscribing to existing capacities is not used to fund the resale of natural gas to hubs outside France.”*

Seven shippers were in favour of the proposal to apply an identical tariff to existing capacities and to capacities resulting from the extension of the Montoir terminal. They consider that the coexistence of two tariffs for a single terminal would be difficult to implement, since it would entail sharing part of the infrastructure.

Two shippers were against this proposal, since, in their view, it would lead to a funding by the users of existing capacities of costly investments requested by other shippers.

DGI reiterated that in the event of an extension to the Montoir terminal, operations in existing and new installations would be shared and it considers that it would be simpler to apply a single access tariff to the Montoir terminal.

Question 4: *What do you think of the schedule and duration of the forthcoming tariff envisaged by CRE?*

Schedule of next tariff

Five shippers expressed their views on the schedule of the forthcoming tariffs: four of them are in favour of the tariff applied to the Fos Cavaou terminal coming into force when it is commissioned and the tariff applied to the Fos Tonkin and Montoir terminals coming into force on 1st January 2008. One shipper recommended having a single date when tariffs would come into force for all three terminals and considered that the 1 January 2008 would be appropriate.

Gaz de France DGI considered that the proposed date of January 1 was acceptable, but underlined its desire to see the following tariff applied as soon as the commercial start-up of new capacities comes into effect (in the event of an extension to the Montoir terminal - up to 12.5 Gm³/year).

Duration of forthcoming tariff

Three end consumers specified that industrial clients need both visibility and stability. For this reason, a duration of 10 years would be more suited to the industrial reality.

Five shippers that expressed an opinion on the application period of the forthcoming tariff are in favour of extending this period. Two of them would be satisfied if the tariff application period were extended from between two and three years. Two other shippers felt that a longer period would be more suited to the characteristics of the LNG supply chain, whilst retaining the option of periodic revisions. One of them specified that, in their view, there is no reason to offer a tariff that is applicable over the long-term within a regulated framework. The fifth shipper thought that infrastructure access tariffs should be provided over long periods to offer shippers good visibility of transport costs.

One shipper expressed its desire to be notified as soon as possible with regards to the tariffs likely to be applied to the Montoir terminal, within the framework of the open season process in progress.

The STMFC approved the application period of three years, which corresponds, in its case, with the length of short-term contracts and makes it possible to rapidly deal with any problems encountered throughout construction site completion during the forthcoming tariff period.

Gaz de France DGI considered that the fundamental issue is to obtain a stable and predictable framework to determine the tariffs, in which tariff levels can be regularly adjusted. If this kind of framework were to be implemented, the application date and the envisaged period for the forthcoming tariff would be acceptable to Gaz de France DGI.

Question 5: Do you think that the current tariff framework, which has legally to cover the costs, affords long-term visibility to the new Fos Cavaou terminal and the extension of the Montoir terminal? Do you think that the rules for calculation of capital costs and the methods for periodic tariff reviews should be fixed for long period of time?

The three end consumers felt that the visibility provided by the current framework should be improved and that pricing visibility over 10 years would be desirable. One of them suggested that the prices should be determined using an approach based on the costs at the moment the tariff is being implemented, with transparent adjustment mechanisms, primarily based on changes in the rate of inflation and long-term rates on financial markets, as well as on productivity objectives set for operators.

The eight shippers that replied to this question were unanimously in favour of a tariff with fixed long-term evolution, which would satisfy their stability and visibility requirements.

Three of them felt that it would be advantageous to set stable calculation rules with periodic reviews. One shipper suggested splitting the tariff into two parts: a fixed part, defined over the long-term and based on calculation rules that meet market criteria, and a variable part, defined according an indexed formula.

A final shipper considered the current calculation rules to be lacking in transparency and regretted the level of uncertainty surrounding new projects (badly defined investment and operation costs, details of capital depreciation, etc.) In its opinion, the tariff's dependence on the terminal's rates of use causes instability that has an adverse effect on visibility.

Furthermore, in terms of short-term capacity allocation in Fos Cavaou and in the open season related to the Montoir extension, one shipper considered that it is difficult to commit to capacity reservations without knowing the tariff that will be applied.

According to the STMFC, the pricing proposal should ideally be in line with the economic hypotheses that were applied during the shareholders' investment decision-making process.

Moreover, STMFC felt it was legitimate to expect a rate of return that goes further than simply covering costs, thus justifying large-scale investments.

Gaz de France DGI felt that the only cost covering principle, as defined by the regulations in force, is still just a concept and that, without additional information from the authorities in charge of setting the tariff, this principle alone is not sufficient for an investor to assess the profitability of a construction project for an LNG terminal in France. As a result, DGI felt that it is essential that the rules used to calculate capital costs and the rate of return level, together with the tariff revision procedures, are fixed for at least the term of contractual commitments.

Question 6: *With regards to the project to extend the Montoir terminal, do you think it is legitimate to expect the terminal operator to bear the risk of increased investment costs?*

The three end consumers approved this proposal, on condition that the rules are clearly defined from the outset. One consumer specified that rate of return must be in correlation with the risk level accepted by the operator and recommended an incentive rate of return with a cost objective defined *a priori*.

Eight shippers considered that it was legitimate to expect the terminal operator to bear the risk of increased costs, since the investor has the best visibility of potential costs. One shipper specified that the rates of return referred to in the public consultation document are high in comparison to the rates of return granted to other European operators and that they are only justified if the operator bears the risk of increased costs.

In addition, one contributor felt that subscribers already bear certain risks given the uncertainty of results in the capacity allocation procedure, and these risks must be shared among different players.

One shipper reiterated that the terminal in Fos Cavaou has allocated 100% of its subscriptions and felt that the terminal operator should incur the risk of cost increases.

One shipper felt that the uncertainty range of operating costs (10%) and capital costs (30%) for the extension of the Montoir terminal seemed excessively high.

One shipper felt that the operator should bear the risk of increased costs, and that in return, it should also profit from any increases in productivity.

Three shippers were against this proposal. One of them felt that this rule could entail an overestimation of costs upstream from the project and would be in favour of sharing responsibility after auditing.

The two LNG terminal operators felt that they should not incur the risk of increased investment costs.

The STMFC reiterated that the regulations are based on the "cost-plus" principle and felt that, if the operator bears the risk of increased costs, it must profit from an improved rate of return.

Gaz de France DGI underlined that the regulation in force provides for coverage by the tariff for costs related to LNG terminals and that, as a result, the tariff must take account of the definitive costs of investments made.

Question 7: *What do you think of the means envisaged for calculation of capital costs at the Fos Cavaou terminal (calculation of the interests on assets in the course of construction, date of incorporation in the RAB, etc.)?*

With the exception of infrastructure network operators, the majority of participants who expressed an opinion regarding the methods of calculating IDC were in favour of the proposed calculation methods.

Two of the three end consumers felt that it was legitimate to take account of the IDC, on the condition that the interest rate applied is on the same level as that of the financial markets.

Four of the shipper representatives were in favour of the methods proposed to calculate the IDC. Two of them considered that the proposed approach is standard and complies with the usual practises, with one of them adding that such interest must comply with market values and be sustained as part of the project's funding scheme - set up in accordance with standards applied by a careful and reasonable operator.

Among the shippers who did not express an opinion on the question of IDC, one shipper stated it would like the current principles to remain unchanged to guarantee stability and predictability for the tariff framework, and another shipper stated that the terminal operators' revenue should cover any required operation, research and development costs. Two further shippers made a general remark concerning the current rate of return which is, in their opinion, rather high.

Gaz de France DGI requested that the *interests on assets in the course of construction* be paid at rates that are in line with the risk level, whilst taking account of the capital costs. The STMFC contested the idea that staggering expenses would be enough to cover any financing costs incurred. In its opinion, a "cost plus" system implies an agreed global rate of return that exceeds its strict financing cost to integrate the risks taken by the operator.

Gaz de France DGI also requested that the *interests on assets in the course of construction* should be paid at rates that are in line with the risk level, whilst taking account of the capital costs.

With regards to the date of entry to the RAB, contributors who expressed an opinion on this issue were in favour of taking account of the commissioning date of the terminal.

As for the progressive depreciation method, two consumers were not opposed to this choice and one of the shippers approved the method insofar as it corresponds with an increase in depreciation over the years.

Finally, one shipper suggested that investments taken account in the RAB should be based on standard values.

With regards to the choice of progressive depreciation, STMFC felt that it might push the tariff down over the first year, and then up at the end of the period - particularly around the time when the terminal's capacities are yet to be subscribed (beyond 20 years). The operator pointed out that the project risks are thus significantly increased and requested, in this hypothesis, the asset rate of return be adjusted upwards.

Gaz de France DGI was also against applying a "progressive" depreciation system, which would increasingly put the investors' revenue at risk.

Question 8: *With regards to the Montoir terminal extension, do you think that investments should be included in the RAB as the time of extension start-up, or as the expenditure evolves?*

Two end users approved the principle of integrating investments as the new capacities are commissioned, by integrating the cost of the interests on assets in the course of construction calculated on the base of the interest rates observed on financial markets.

The nine shippers who expressed an opinion on this issue are unanimously in favour of including investments in the RAB as the extension commissions, since, in general, they consider that it would not be fair to make existing capacity holders incur costs related to the start-up of capacities from which they may not even benefit.

Although STMFC shared this opinion, it added that it is necessary to include a return on current assets at the rate applied to LNG terminal assets commissioned after 2003, i.e. 10.5%, since this return is added to and inflated until the corresponding capacities are started up.

Gaz de France DGI considered that the charges related to the Montoir extension should be incurred by the effective users of future capacities and, as a result, would like investments to enter the RAB upon start-up of the facility.

Question 9: *Have you any comments regarding the rates of return on assets for LNG terminals or on their duration of application?*

The three consumers felt that the core issue is the consistency between the return and the associated risk. Two of them felt that there are two possible options: i) if the revenue is guaranteed, the capacities to be taken into consideration are the subscribed capacities, and, in this case, the return must be at the same level as the financial markets and not at 10.5%, ii) or, if the revenue is not guaranteed, the capacities to be taken into account are the total capacities and, in this case, a premium in relation to the financial market is justified.

The general theme of consistency between return and risk was also part of the subscribers' response. Seven shippers thus gave their opinion concerning the rate of return level. Two of them had no particular remarks concerning the rate currently in force, given the risk level associated with the activity in question. However, one of them remarked that the resulting tariff must be at the same level as the tariffs observed on other rival terminals, either regulated or exempt. A third shipper considered that the asset real rate of return at 10.5% before tax is appropriate, provided that the resulting profitability remains comparable to that obtained through regulated activities with similar characteristics on the European market. It considers that this nominal return value should be between 6 and 9% after tax.

The four other shippers considered that, in light of the return guarantee related to the "ship or pay" clause (currently 90% or 95% according to the terminals considered), this rate is high. One of them specified that the long-term capacity subscription contracts and the tariffs set up over the long term are a guarantee of stable revenues for the operator who, as a result, should obtain a reduced risk premium. As a result, this shipper considered that the asset return, specifically the bonus of 200 or even 325 points, appeared to be highly beneficial to the operator in comparison to other relevant European benchmarks. This shipper summarized the risks incurred by the terminal operator along two lines: subscriber solvency and increased investment costs. Furthermore, it specified that the risk related to the solvency of users with reserved capacities in the future terminal in Fos Cavaou is extremely low given that 90% of the usage capacities of the Fos Cavaou terminal are held by Gaz de France and Total who also share-holders in the terminal operator, STMFC. Another shipper underlined that since operator revenues are guaranteed, it would seem reasonable to expect a capital rate of return that is lower than the commercial investment.

The STMFC specified that the terminal share-holders took their investment decision by targeting a profitability objective in line with pricing rules applicable to regulated operators, which, at the time, corresponded to an asset return rate of 11% *"(in the event of structural investments, a maximum increase of 3% could be added to this rate)"*. The operator specified that this rate was lowered to 10.5% and it considered that this rate should be legitimately maintained (at least) over the long-term.

It considered that it would have been legitimate to demand a higher rate, given the high risks associated with the creating a terminal from scratch and the contribution of this new infrastructure to the reduction of congestion on the French market.

Gaz de France DGI underlined that, out of principle, the level of return for the operator in the current “cost plus” context should provide a level of profitability that is comparable to that which could be obtained for investments with a similar risk level and emphasised specific risks related to terminal activity that justify a higher return than other infrastructures:

- technical risks: complexity of technology used to operate in very low temperatures, costly investments, loss of earning during periods of unavailability
- risks related to the market: increased sensitivity of activities to changes in the market. Thus, in the mid- or long-term, a significant and sustained drop in gas consumption in France, compared with forecasts, cannot be ruled out, and the same can be said for price differentials that are unfavourable to LNG delivered in France. In such a hypothesis, repercussions are far greater for terminals than for other infrastructures, given the inherent flexibility of the transport methods associated with this type of supply chain.

The operator added that the allocation of an investment premium similar to that granted to transport assets “*providing a major contribution to market improvements, particularly through the creation of new entry points to the national network*”, makes perfect sense in the case of the construction of new LNG importation capacities.

Question 10: *What do you think of the proposals made in the consultation document with regards to capacity subscription hypotheses to be taken into account for tariff definition?*

As a general rule, the shippers who expressed an opinion on this point felt that it was fair to consider a subscription level that is higher than the level currently observed, thus taking account of any additional subscriptions in the future.

Two of them suggested providing the operator with incentives to optimise terminal use by allocating it part of the additional revenue related to additional subscriptions and improved productivity. Furthermore they added that they would be in favour of the other part of the revenue being paid to clients that have actually subscribed to capacities in the terminals during the period in question, for example through to the expenses and revenues clawback account (CRCP)

One shipper felt that the subscription hypotheses should reflect the normal use rate, based on reservations made in the past.

Another shipper, although it was not in a position to give an objective reply to the question, warned against tariff instability that may result from this method.

One final consumer felt that subscribed capacities must be taken into consideration to calculate the tariff, but on the other hand the rate of return must be set on a level observed on the financial markets.

STMFC declared that the average level of use of terminals in France and Europe is comprised between 60 and 80%. It underlined that “*this state of affairs seems to be a lasting trend since LNG market specialists agree upon the fact that in the mid-term shippers should subscribe to surplus re-gasification capacities of around 40% in relation to their supply capacities, with a view to leaving room for manoeuvre with regards to arbitrage.*”

It also commented on the relative efficiency of “Use It Or Lose It” mechanisms, since, according to its analysis:

- to date, no realisation has been observed in Europe
- if the market is a growth market, the primary holder will use its capacities

- if the market is not leader, the primary holder will release its capacities but they will be of no interest to potential buyers
- finally, if the primary holder knows that a UIOLI mechanism has been implemented, its direct financial benefit will come from sub-letting its capacity on the secondary market, rather than leaving it to the operator.

As a consequence, STMFC requested that *“the pricing calculation denominator should retain the hypothesis of a sale equating to 100% of marketed capacities, the usage level of which would lead to 95% billing, corresponding with the “Ship or Pay” level.*

With regards to the subscription hypothesis, Gaz de France DGI considered that it would be reasonable to conserve any contractual commitments known at this date as hypotheses for subscriptions to determine tariffs, and reiterated that the use rate of subscribed capacities observed in France is lower than the contractual commitments. Furthermore, the operator underlined that marketing capacities beyond known commitments are dependent on market conditions, and, in particular, on the price differentials between Europe and each of the other large-scale markets, America and Asia.

TECHNICAL ISSUES

Question 11: *Do you agree with the proposal to maintain "continuous output" and "30-day band" services? What do you think of the proposal to divide up outputs on the basis of gas volumes scheduled if several shippers subscribe to "continuous output"? What do you think of the proposal to leave the choice between the "continuous output" service and the "band" service to shippers subscribing between 6 and 12 unloading operations per year?*

Maintaining "continuous output" and "band" services

Six shippers gave their opinion on continuous output services.

Four of them expressly stated their support to maintain the two types of service currently in force ("continuous output" and "30-day band").

However, two shippers would like to see the output rule relaxed in relation to the band service, which is, in their opinion, too rigid for newcomers to increase their client portfolio (discontinuity/superimposition of flows at the transition between 2 cargoes). One of them would like the output period to be longer than the current 30 days. The other shipper suggested leaving it to the subscriber to choose the output period within an interval of 28 to 32 days, with the output start date between day D of unloading and day D+1.

Another shipper did not express an opinion regarding the relevance of the two services, but specified that the "band" service is not plausible for shippers with large volumes and that it can therefore only be justified in a market that is still relatively immature. Furthermore, it felt that the "30-day band" service should be more expensive than the continuous service given the LNG storage costs incurred.

Dividing up outputs on the basis of scheduled gas volumes

Three shippers were in favour of a pro rata distribution rule for scheduled gas volumes, but recommended defining the compensation methods between shippers ex ante if the behaviour of a shipper means the "continuous output" service becomes impossible for the terminal operator. One of them reiterated that the existence of a "socialised service" in the Fos Cavaou terminal which would be separate from the "continuous output" service, particularly through the implementation of physical or financial compensation guarantees in the event of failure on the part of a shipper).

One shipper expressed its reservations with regards to the proposal for pro rata distribution of scheduled outputs of gas volumes if several shippers subscribe to the "continuous output" service. Instead, it would be in favour of the emergence of a "multiple-user" service, where each shipper defines its own outputs according to its stocks and requirements, provided such outputs were compatible with the terminal's technical restrictions.

Choosing between the "continuous output" service and the "band" service

One of the final consumers specified that the services currently on offer do not make it possible for a medium consumption industrial player to make optimised use of the LNG terminals since it needs several months to consume the volume contained in a single unloading operation.

The two other final consumers felt it is necessary to offer the "continuous output" service to all shippers, from the first unloading operation onwards, since, in their opinion, with the exception of traditional suppliers, shippers do not attain the critical size needed to unload the required number of cargoes for the "continuous output" service, which is however essential for supplying clients in France.

One shipper stated it was in favour of having the option to choose the service (band/continuous) for shippers who have subscribed to between 6 and 12 unloading operations per year.

One shipper felt that the coexistence of the two services with different tariffs, allocated to the shipper according to capacities that it has reserved, is a discriminatory system. In its opinion it is crucial that the shipper is free to choose between the services, regardless of the capacities it has reserved. It did, however, specify that any shippers who choose the "continuous output" service must unload at least the same amount of cargoes during the winter period as during the summer period.

Two shippers were not in favour of leaving the choice of delivery mode to the shippers. One of them feared that arbitrages would be detrimental to other users, for example by moving deliveries in relation to unloading dates that are unevenly spread throughout the year. The other specified that the "30-day

band” service cannot physically be offered by the terminal operator without the presence of one or several long-term shippers to oversee system operations through the regularity of their unloadings.

STMFC underlined the importance of the continuous service, which is, in its opinion the basic service to access the LNG terminal, since it is intrinsically linked to the long-term commitments that make investments possible. From its perspective, maximum marketing operations of the technical capacities can only be achieved using this service. Therefore, it would like CRE to run monitoring operations, in a general manner, to ensure that capacities sold in “band service” always remain marginal in comparison with the total capacities.

However, the operator is not against providing shippers who have subscribed to between 6 and 12 unloading operations per year a choice between the continuous service and the band service, provided the capacities concerned cannot exceed 10% of the capacities marketed for the Fos Cavaou terminal.

However, the operator reiterated that its capacity access contracts currently make provisions for two regulations based on shared commitment principles:

- pro rata distribution of the output of unloading schedule over a “rolling” period of three months
- allocating a zero output status during any months in which operator has not scheduled any unloading operations.

Furthermore, it specified that it is *“committed to interactive work with its clients to implement these regulations in its information system and to develop them if necessary in light of any experience feedback, which will only be consistent once terminal start-up has been completed.”*

The operator therefore considered that it is too early at this stage to set the regulations, which must be refined further to consultation with clients and to experience feedback from operations in the terminal.

Gaz de France DGI reiterated that the management rules of the outputs for the continuous service user were relatively complex to set out and haven’t been used yet in France. In addition, Gaz de France DGI considered that it is wise not to move too fast and let these mechanisms get over a running period in the Fos-Cavaou terminal for an initial period.

Question 12: *What do you think of the proposal to simplify charges in order to align unit tariffs paid by all users, whatever the volume of subscribed capacities?*

The three end consumers considered that it is reasonable to simplify the pricing structure, with a view to making it more transparent.

The nine shippers that expressed an opinion were, in theory, in favour of simplifying the pricing conditions.

Furthermore, four shippers considered that it is useful to align unit prices paid by all subscribers - to avoid any discrimination between the different user profiles. One of them considered that the pricing terms currently in force result in scaling effects that favour shippers unloading the greatest number of ships and that, insofar as this is not a reflection of the real cost structure, it does not, in its opinion, seem legitimate to favour large-scale shippers over smaller ones.

One shipper stated that the tariff structure must reflect the cost structure used by the operator and that simplifying price conditions must be manifested through a fair allocation of costs to users, as is the case in the majority of tariff structures in Europe.

Two shippers were against aligning unit tariffs paid by users. One of them underlined that the management of different sized ships represents a cost for the operator and each ship requires different operational management methods (arrivals scheduling, storage, etc.) according to its size. The other considered that the continuous service is more advantageous since it is more flexible.

Another shipper specified that a preferential tariff should be retained for spot cargoes.

STMFC reiterated that it needs to have a tariff that reflects the cost of services on offer and fosters investments and optimal use of capacities. It considered that, generally speaking, the system’s efficiency would be harmed by an inappropriate tariff signal leading to an excessively large share of

capacities being sold in “band service”.

Gaz de France DGI reiterated that the structure currently in force was set up on 1 January 2006 and was designed to reflect the use of terminals that it operates and to take into account costs and duration of different equipment use in these terminals. The operator considered that it was useful to underline the educational efforts that it has conducted with its clients.

As a consequence, it considers that the apparent complexity of the tariff system is actually less significant than a true reflection of the costs and it would like to maintain the current structure for the new tariff period.

Question 13: *What do you think of the proposal to raise the payment obligation for subscribed capacities to 95% (“ship or pay”)?*

Two end consumers support this development proposal, which reduces the risk incurred by the operator, thus reducing the capital rate of return. One of them specified that this measure should be accompanied by developments on the secondary market.

Only one shipper out of nine expressed its opinion on this point, and was not opposed to a “ship or pay” level set at 95%.

The eight others thought that a high “ship or pay” level would affect the flexibility of the terminal and would damage its competitiveness in relation to levels set in other countries.

One of them considered that this measure would penalize small shippers (less than 20 cargo unloading operations per year), since if such shippers missed just one cargo, this would mean they were no longer capable of unloading at least 95% of subscribed capacities.

Another highlighted the fact that the terminal operator may compensate for the loss in revenue inherent to a lower “ship or pay” level by selling re-gasification capacities on the secondary market.

A third suggested defining an exoneration mechanism for the ship or pay system for maintenance periods.

A final shipper suggested reducing the current rate, which is set at 90%.

STMFC specified that the “Ship or Pay” level already stands at 95% in STMFC contracts.

Gaz de France DGI requested that the current liability level for subscribed capacities is sustained for the Fos-Tonkin and Montoir terminals. It noted that the “Ship or Pay” level of 90% figures in the user contracts and that any modifications would be likely to lead to renegotiations of existing contracts. Furthermore, Gaz de France DGI considered that the 90% level is adapted to the flexibility requirements related to the LNG supply chains. In the operator’s opinion, an increase in this liability level would result in a “rigidification” of the offer - consequently reducing the appeal of its terminals.

Question 14: *Do you think the penalty envisaged for non-compliance with scheduling is justified?*

The seven shippers were globally against a too heavy penalty for non-respect of the scheduling, even in the event of less restrictive prior notice period (3 days instead of the 5 days currently in force).

One of them considered that the proposed amount, equivalent to 50% of the re-gasification cost, does not reflect the cost of the lack of optimism that ensues; especially since, as another shipper pointed out, the penalty benefits a single terminal operator, whereas non-compliance with scheduling primarily affect the other users. This shipper would rather see a *“late cancellation penalty that would be incurred in the event that it is impossible to compensate the difficulties encountered by other shippers by only reducing the output of the shipper at fault”*.

Two other shippers reiterated that a too heavy penalty would damage the terminal’s flexibility and that the “ship or pay” clause already provides an incentive to respect the schedule.

One shipper added that it is hardly likely that a cargo would be diverted with less than three days notice than three days and that such a situation would undoubtedly related to a force majeure and cannot therefore be penalized.

Another shipper reiterated that this penalty is not suited for the Fos Cavaou terminal where any failures are covered by a physical or financial compensation mechanism, and the terminal operator is also covered by the “Ship or Pay” clause.

STMFC indicated that such a penalty cannot be justified within the context of “continuous service” since the shippers have already undertaken to provide physical or financial compensation for any gas it was not able to delivered. However, since this undertaking does not apply to the “band service”, STMFC considered that it is preferable to only apply this penalty to shippers who have subscribed to this service.

Gaz de France DGI considered that the current amount set for penalties is not sufficiently discouraging, but it did not voice an opinion on the level suggested by CRE.

Question 15: *What do you think about the proposed “Use it or Lose it” mechanism?*

Four shippers are, in theory, in favour of the proposed “Use It or Lose It” mechanism, but two of them underline the need to guarantee anonymity with regards to the publication of unloading schedules.

A fifth shipper underlined the need for an effective UIOLI mechanism, but declined to provide its opinion about the proposed principle. It also presented two fundamental characteristics for such a mechanism: stability of adopted principal and the respect of primary holders’ rights.

One shipper is against this mechanism, which it considered highly restrictive since it requires greater precision concerning criteria used to restore capacities and on the type of capacities restored. It adds that it would be necessary to take account of any efforts on the part of the primary holder to resell this free slot onto the secondary market.

Furthermore, it remarked that the occasional or seasonal non-use of capacities could simply result from a low gas demand and should not entail automatic sanctioning.

A final shipper felt that such a mechanism should only be put in place as a last resort and with relatively short notice given the proximity of LNG supply sources. It added that would be appropriate to envisage publishing the available capacities for week S+2 in week S.

The STMFC considered that, within the framework of a terminal access contract, the monthly schedule is set on the 25th of each month, and this date can only be brought forward to the 20th after consultation with the shippers. The STMFC does not feel that it is necessary to publish the shippers’ unloading schedule, since it has a confidential nature; global publication of the terminal’s available capacities is enough to inform any potential buyers. However, STMFC felt that any mechanism that aims to withdraw capacities from a shipper who had failed to put unused capacities back on the market, could threaten any extension projects since it would discourage shippers who would consider it as an infringement on their freedom.

As for Gaz de France DGI, it considered that the following should be distinguished:

- the management of “unused” subscribed capacities
- the examination of “under-used” contractual capacities.

With regards to the management of “unused” subscribed capacities, Gaz de France DGI considered that its current marketing approach makes it possible for primary holders to make offers on the secondary market for capacities that they do not envisage using. Gaz de France DGI also considered that the existing mechanisms already make it possible to reach the final targets that CRE is aiming for and do not require any additional mechanisms.

With regards to the “under-use” of contractual capacities, the DGI considered that only the regulator is in a position to analyse the causes, through consultation with the users concerned. The operator felt that as a “*vendor of re-gasification capacities, the terminal operator is both judge and jury as to whether it should proceed with any assessments of “under-use of contractual capacities”*”. The DGI specified that it intends to adapt the measures set out in Paragraph 9 in its access capacity allocation regulations, to bring them into line with its own responsibilities.

Question 16: *Do you think it is necessary to control the secondary market to prevent the spread of speculation concerning long-term capacities?*

The three end consumers were all in favour of this measure. One of them drew a parallel with underground natural gas stocks that are not part of the regulated sector and for which the market players immediately began speculating access prices leading to penalize the development of a rival market for the end consumer in France.

Nine shippers declared that they were against placing the secondary market under control of the regulator.

Two shippers thought that the speculation risk is a minor one. One of the two added that the subscriptions are determined according to the long-term forecasts and then adjusted with a view to minimizing costs and declared that they were in favour of maintaining a service for selling capacities similar to the one already in force for the Fos Tonkin and Montoir terminals.

One shipper considered that this measure would prevent terminal users reserving long-term capacities, the only guarantee of investment in these infrastructures. Furthermore, it considered that long-term speculation concerning the capacities would be baseless once the sufficient investments guaranteeing re-gasification capacities have been made across the country. From this point of view, it added that it is essential that the regulatory environment foster investment in infrastructures.

One shipper underlined that such a measure would be “problematic” since there are too many ways of getting around it.

Two shippers did not express an opinion on this proposal but remarked that the general use of the secondary market on regulated European terminals is not particularly developed and is, generally speaking, substituted by gas exchange mechanisms between users.

The STMFC considered that placing restrictions on the secondary market would mean the shippers have significantly less room for manoeuvre when adapting their portfolios. The operator felt that such a measure would have opposite results to those intended: the shippers would not make any further longer-term commitments, making investment projects go bankrupt and the shortage thus created would incite further speculation and the sub-letting of capacities on short-term markets for higher prices than the “regulated” tariffs. Moreover, it added that any restrictions placed on the conditions of use of the secondary market would be contradictory to the implementation of an effective UIOLI mechanism, where the principal and fundamental consequence would be to encourage shippers to resell its unused capacities on the secondary market.

Gaz de France DGI did not consider it wise to place the secondary market under stricter control, where the aim is to facilitate exchanges and not place them under restrictions.

Indeed, Gaz de France DGI considered that *“the restriction proposed by CRE for over-the-counter exchanges on the secondary ATM market, could only meet the target objective if the over-the-counter exchanges were also controlled throughout the entire French gas system (i.e. Gas Exchange Points,*

storage offer), or even the European system (e.g. hubs). If this restriction was not generalized in this way, the proposed measure, quite apart from the fact that it would mechanically have no effect in relation to the targeted objective, would clearly have a detrimental effect on the perceived benefits of the secondary market, or even the TPA offer, even though the terminal operators are continually striving to increase their appeal”.

However, the post ante examination by CRE of any special situations with the suppliers concerned, appeared perfectly adapted to the DGI, and did not require any additional provisions.

Question 17: *Do you think you are sufficiently well informed about conditions for use of LNG terminals and available capacities? If not, what further information would you like LNG terminal operators to make public?*

One industrial player feels that the end consumer should participate in working groups organised by the infrastructure operators, the administration or the regulator.

Three shippers considered that they receive enough information regarding the available capacities and the conditions of use.

One shipper noted that important progress has been observed since the last CRE consultation on this subject, but did however regret the lack of information regarding the effective use of subscribed capacities. It felt it is important that the CRE should keep a record of the effective use of reserved capacities, which would serve as a means to control the effectiveness of the UIOLI mechanism.

One shipper was in favour of increased transparency regarding the use of the terminals and on the available capacity. In particular, it would like increased transparency regarding the unloading schedules and the remaining available slots to encourage the unloading of spot cargoes.

Question 18: *Do you have any remarks regarding the allocation rules published by LNG terminal operators and/or their application, or their reservation methods (short or long term)?*

One final consumer felt the open season process in place in Montoir is not adapted, given the possible lack of an upstream LNG supply contract and the lack of economic elements at the time when the subscriber must commit in a fixed and irreversible manner. Furthermore, it specified that bringing forward the Open Season schedule for the Taisnière-Zeebrugge connection does not make it possible to construct a global procurement strategy, particularly for small-scale shippers.

One shipper expressed a few reservations with regards to the allocation of capacities related to the extension of the Montoir terminal. It felt that the classification criterion that gives “*priority, ceteris paribus, to a profile of 5bcm/year over 5 profiles to 1bm/year*” is discriminatory and that the extendible parts are incompatible with a LNG supply contract.

Another remarked that the allocation of short-term capacities from Fos Cavaou had led to significant parcelling of a small amount of the available capacity and would like to express its doubts with regards to the positive impact of this distribution on market competitiveness. Furthermore, it raised questions concerning the compatibility of the long-term allocation of 90% capacity from Fos Cavaou to traditional operators Gaz de France and Total with the legislation in force (European and French).

One shipper felt that the allocation of transport capacities according to capacities detained in the terminal is a positive measure, but found it inappropriate to force shippers to commit to paying firmly for the capacity constructed for extension, whereas the terminal and network operators are not committed to the start-up dates and that possibilities to resort to the secondary market are limited.

One shipper would like the clause stipulating that a long-term supply contract must be held in order to be able to subscribe to long-term capacities to be removed from the DGI's capacity allocation regulations, since it constitutes an obstacle.

Question 19: *Have you any further remarks concerning tariffs and methods for use of LNG terminals?*

One shipper would like the possibility of using LNG terminals as a flexibility tool to be explored, with the possibility of its gas being delivered on the network as part of less rigid services than those currently on offer.

One shipper stated, *"if the French market is to develop it is crucial that the regulatory environment encourages new investments"*. Thus, it is strongly devoted to maintaining the exemption to third party access from article 22 of Directive 2003/55/CE.

One shipper felt it would be useful to specify and publish certain concurring adjunct services to the missions of an LNG terminal (ship authorizations, prolongation of a stopovers, bilge drainage, etc.).

One shipper underlined the highly dynamic context of LNG terminals in France and specified that, *"contrarily to the situation of transmission networks, these different terminals shall be in competition with one another, particularly for mid-term LNG supply contracts and for spot cargoes"*. Furthermore, an intra-European competitiveness will be added to the competition between French terminals *"as soon as the interconnections between transport networks have been strengthened."* It considered therefore that this new hand necessitates *"innovative thought into the regulatory framework of all LNG terminals, i.e. not only those that today are subject to regulated third party access (Fos Tonkin, Montoir and the future Fos Cavaou), but also those that are yet to be built, presumably under the partial or total exemption from third party access scheme, provided for in article 22 of directive 2003/55/CE"*.

It confirms its wish to see LNG terminals take on an essential role in supplying security and market liquidity and recognized that a *"significant part of the capacity of each of these terminals shall be allocated to flows contracted over the long term, for which access exemption constitutes an essential element to fund the terminals, but also a means to share gas resources and suppliers, thus improving France's supply security"*.

It considered that competition between the terminals constitutes a determining element that should lead to a reduction in prices for the benefit of suppliers and consumers and suggests CRE should lead new studies into the regulation of LNG terminals in the context of surplus capacity forecasts from 2008 onwards that is likely to last.

STMFC underlined the excellent results from sales operations conducted in June 2007 on the Fos Cavaou terminal. It felt it was therefore *"inappropriate to destabilize tariffs rules with a view to lowering re-gasification tariff in the short term that have already been accepted by the market."*

Gaz de France DGI was in favour of an automatic subscription mechanism for firm entry capacities to the transmission network for a period equal to that of the re-gasification capacity subscriptions, but noted, however, that the ratio of 1/330 for continuous service is not compatible with correct management of terminals running at their maximum capacity.

As an example, this level of flexibility permitted satisfactory use at the Montoir terminal for a demand that did not exceed 8 bcm/year. In the event that the maximum capacity of 10 bcm/year is used, this ratio would entail a reduction in flexibility in terms of unloading schedules and outputs management.

Gaz de France DGI considered that the flexibility required to effectively manage a terminal leads to a ratio of 1/300 between capacities subscribed for the "continuous" service and the firm capacities on the transmission network; this ratio leads an adjustment of +/-20% in relation to the average outputs from the terminal.