

Deliberation of July 23 2009 regarding French Energy Regulatory Commission's opinion on the request filed by Dunkerque LNG Company for an exemption from regulated third party access to its projected LNG terminal at Dunkirk

Attending the meeting were: Mr. Philippe de LADOUCKETTE, President, Mr. Michel LAPEYRE, Vice-President, Mr. Eric DYEUVRE, Mr. Hugues HOURDIN, Mr. Emmanuel RODRIGUEZ and Mr. Jean-Christophe LE DUIGOU, Commissioners.

In conformity with Article 7-1 of French law n°200 3-8 of January 3 2003, further specified by decree n°2005-877 of July 29 2005 relative to access waivers for certain gas infrastructures, the French Minister of Ecology, Energy, Sustainable Development and the Sea requested on July 6 2009 CRE (French Energy Regulation Commission) to submit its opinion on the request filed by Dunkerque LNG Company on June 26 2009 for an exemption from regulated third party access at their projected LNG terminal at the port of Dunkirk.

I - The Context

1. The European regulatory framework: Directive 2003/55/CE

Article 22 of Directive 2003/55/CE of the European Parliament and of the Council dated June 26 2003 concerning common rules for the internal natural gas market provides for the possibility that large new gas infrastructures (i.e. interconnections between member states, LNG or storage facilities) may benefit, on request, from an exemption from third party access, on condition that the following five criteria are satisfied:

- a) The investment must enhance competition in gas supply and enhance security of supply;
- b) The level of risk attached to the investment is such that the investment will not take place unless exemption was granted;
- c) The infrastructure must be owned by a natural or a legal person which is separate at least in terms of its legal form from the system operators in whose systems that infrastructure will be built;
- d) Charges are levied on users of that infrastructure;
- e) The exemption is not detrimental to competition or the effective functioning of the internal market, or the efficient functioning of the regulated system to which the infrastructure is connected.

The European Commission may request that the regulatory authority or the member state concerned amend its decision to grant an exemption. In the last resort the Commission is entitled to take the decision.

2. The national regulatory framework: French law of August 9 2004 and decree of July 29 2005

Article 22 of EU Directive 2003/55/CE is transposed by Article 7-1 of the law of January 3 2003, as modified by Article 44 of law n° 2004-803 dated August 9 2004 relative to public service in electricity and gas and to electricity and gas undertakings, which stipulates that *"the Minister responsible for energy may authorise the operator of a liquefied natural gas facility or of a natural gas storage facility or of an interconnector with a natural gas transmission network located in the territory of another member state of the European Community to be exempted, as regards all or part of the facility, from the provisions of Articles [...]"* relative to regulated access to infrastructures, to tariff regulation and to the terms and conditions of access to underground gas storage facilities.

*"This waiver is granted on the occasion of the construction or modification of the facility [...] on condition that the **construction or modification helps to enhance competition [...] and to improve security of supply and that it could not take place in acceptable economic conditions without this waiver.***

The decision on exemption is taken after the submission of CRE's opinion [...].

CRE's opinion shall be published with the decision of the Minister.

This decision defines [...] the conditions on which the beneficiary is authorised to refuse to conclude a contract of access to the installation or facility concerned."

Decree n° 2005-877 of July 29 2005 stipulates that:

- the Minister shall request the CRE to submit its opinion; CRE must rule within a period of one month from the date of the request;
- the Minister for energy shall notify to the European Commission its draft decision on the request for an exemption, within a period of three months from the date of reception of the application;
- and that *"[...] The waiver is null and void ipso jure if the project of construction or modification of the facility is not initiated within three years following the date of publication of the waiver. [...]"*

II - Dunkerque LNG's request for exemption

On June 26 2009, the Dunkerque LNG company, a wholly owned subsidiary of EDF group, filed a request with the Minister of Energy for a full exemption from regulated third party access to a projected LNG terminal situated within the Dunkirk port. It requests this exemption to be granted for a period of 20 years, from the date of the commercial entry into service of the terminal planned in spring 2014.

1. Size of the project

The file presented by Dunkerque LNG envisages two variants:

- Project 1: construction of an LNG terminal with a capacity of 10 Gm³ of gas per year
- Project 2: construction of an LNG terminal with a capacity of 13 Gm³ of gas per year

	Project 1	Project 2
LNG processing capacity	10 Gm ³ / year	13 Gm ³ /year
Capacity of emission on the GRTgaz network	1.4 million m ³ per hour, i.e. 363 GWh/d	1.9 million m ³ per hour, i.e. 492 GWh/d
Number of piers (jetty)	1	1
Number of tanks	2 X 190,000 m ³ of LNG	3 X 190,000 m ³ of LNG

The Dunkerque LNG terminal will be designed to receive LNG tankers ranging from 75,000 m³ to 267,000 m³.

2. The commercial approach of the project

Dunkerque LNG plans to sell a part of the capacity of the terminal to companies within the EDF group in order to guarantee the profitability of the investment.

The request presented by Dunkerque LNG contained the following terminal capacity subscription scenarii:

	Project 1: 10 Gm ³	Project 2: 13 Gm ³
EDF Group	5-8 Gm ³	5-8 Gm ³
LNG producers	2 Gm ³	2 Gm ³
Others	0-3 Gm ³	3-6 Gm ³

Dunkerque LNG indicates that the number of capacity subscribers will not be higher than 3 or 4, in order to optimise the operational management of the terminal. Dunkerque LNG will offer all the terminal users a package of firm rights including vessel docking windows, LNG storage and regasification capacities and emission capacities onto the transmission network.

Dunkerque LNG indicates that *"the non-existence of subscriptions outside the EDF group is neither planned nor desired"*.

However, no contract reserving regasification capacities had been signed to date.

During the first half of 2009, Dunkerque LNG directly contacted some energy utilities, in particular LNG producers.

As a result of these initial contacts, it appeared necessary to organise a market test to ensure a comprehensive reservation of capacities at the terminal. Dunkerque LNG intends to launch this test with extensive publicity, targeting:

- LNG producers and suppliers;
- Energy utilities holding licences to supply to the French market;
- Other European energy utilities.

Dunkerque LNG indicates that the list of these companies targeted and the nature of the publicity (mails, publications etc.) for this market test will be communicated to CRE.

Following declarations of interest by market stakeholders, Dunkerque LNG will proceed with the selection of subscribers among applicants presenting the necessary financial guarantees, favouring:

1. Companies seeking for a dual qualification as regasification capacity subscribers and LNG suppliers, within the limit of capacities dedicated to this type of subscriber;
2. Companies wishing to be associated to the development of the project and thus share the risks of the project by taking shares in the capital of Dunkerque LNG;
3. Companies showing an interest in regasification capacities higher than 2 Gm³/year, ranked by size, in order to simplify the operational management of the terminal (companies groupings are admissible).

The operational terms and the non-discriminatory character of this process will be approved by CRE prior to the marketing of capacities, and may, if necessary, be audited by the latter.


In all cases, it is foreseen that Dunkerque LNG indistinctly offers to all the parties with whom it enters into negotiation a package of firm rights, managed by the terminal operator based on a transparent and non-discriminatory methodology.

II – Analysis of Dunkerque LNG’s request for exemption

CRE's analysis of the exemption request is based on the file submitted to the French Minister of Ecology, Energy, Sustainable Development and the Sea by Dunkerque LNG. CRE analyzed the 5 criteria stipulated in EU Directive 2003/55/CE, relying in particular on:

- the interpretative note of the European Commission presented at the 15th Madrid Forum;
- ERGEG’s guidelines of good practice for open seasons and art. 22 exemptions;
- the conclusions of the working group on the regulation of LNG terminals in France chaired by Colette Lewiner;
- the synthesis of the public consultation organised by the CRE between 16 February and 4 March 2009 concerning the preliminary exemption request filed by Dunkerque LNG on 5 February 2009, to which 19 responses were received. This document was published on CRE’s website simultaneously with the transmission of the present opinion to the Minister.

CRE also heard Dunkerque LNG on 11 February and 23 July 2009.

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- 1. Criteria a) the investment must enhance competition in gas supply and enhance security of supply. Criteria e) the exemption is not detrimental to competition or the effective functioning of the internal market (see comment), or the efficient functioning of the regulated system to which the infrastructure is connected**

1.1. Impact of the projected LNG terminal on security of supply

At the time Dunkerque LNG filed its exemption request, it had not finalised the sale of regasification capacities. Moreover, EDF indicates that it had not signed an LNG supply contract for the future terminal. Consequently, the sources of gas supply of future users of the Dunkirk terminal are unknown.

In its file, Dunkerque LNG indicates that *"EDF will only subscribe capacities at Dunkerque LNG if a sufficient coverage of these capacities can be guaranteed by long term LNG supply contracts"*. The ability of EDF to secure its LNG supply is crucial for the effective arrival of gas at the Dunkirk terminal and for its contribution to security of supply in France. The negotiation of long-term supply contracts would be facilitated by the possibility for LNG producers to preferentially subscribe capacities at the Dunkirk terminal, within the limit of the capacities dedicated to them.

The interpretative note of the European Commission presented at the 15th Madrid Forum specifies that an infrastructure contributes to the enhancement of security of supply as soon as it participates to the diversification of sources of supply for the market under consideration.

In this regard, CRE considers that a new LNG terminal inherently constitutes a new entry point onto the market and contributes, by definition, to diversifying the sources of supply by permitting the arrival of LNG cargos from third countries, either via long-term commitments or through spot cargos. It thus improves security of supply by reducing France's exposure to prolonged interruptions in supply at one of the other gas entry points and allows the French market to benefit from conditions of access and use which are more flexible than those generally in force on gas transmission networks.

The great majority of the stakeholders who responded to the CRE's public consultation on Dunkerque LNG's preliminary exemption request shared CRE's analysis. They also approved CRE's proposal to proceed to a re-examination of the exemption file if an LNG export service representing more than 10 % of the regasification capacity of the terminal is put in place after the exemption was granted, as this service would substantially modify the characteristics of the project.

In conclusion, CRE estimates that the criterion relative to the enhancement of security of supply is satisfied on the following two conditions:

- the Dunkerque LNG file foresees the possibility of a gas re-export service by reloading tankers. Depending on how far it is used, such a service could well modify the contribution of the project to enhancing security of supply. CRE advises that the granting of an exemption should be subject to re-examination if a gas re-export service via LNG tankers reloading were to represent more than 10 % of the terminal's regasification capacity;
- The Dunkerque LNG file does not foresee the re-emission of gas via a pipeline exiting directly from the terminal. Such a service could substantially modify the characteristics of the project. CRE consequently recommends the granting of an exemption to be subject to re-examination should the terminal operator propose such a service.

1.2. Impact of the projected LNG terminal on competition

The timeframe chosen by Dunkerque LNG for their analysis of the impact of the project on competition is 2014, which is the year the terminal is projected to come on stream. This study is supplemented by a parallel analysis for 2020.

The timeframe of the latter study seems relevant given the prospect that French gas consumption will be stabilised by 2020, as outlined in the indicative multi-annual plan presented by the French government in 2009.

1.2.1. The size of the terminal

Dunkerque LNG specifies that the outcome of the marketing phase will determine the final dimensions of the project (10 Gm³/year or 13 Gm³/year).

Should the 13 Gm³/year project be selected, the terminal would be close to the maximum size limit possible (size of the site, number of piers, development threshold etc.).

On the other hand, if the 10 Gm³/year project was chosen, it would be important to ensure that Dunkerque LNG's choice of the smaller size would not lead to limit the access to its terminal, where some stakeholders might have wanted to book capacity above 10 Gm³/year.

In its preliminary position, expressed in the consultation note of 16 February 2009, CRE recommended that, for the 10 Gm³/year project, the granting of exemption should be conditional on Dunkerque LNG organising a transparent and non-discriminatory open season, in order to show that market demand would be insufficient to justify the 13 Gm³/year project. As requested by the European Commission in several exemption decisions, CRE wishes that the practical terms of the sale of regasification capacities should be submitted to it prior approval in order to ensure their non-discriminatory character; these terms may also be audited subsequently if necessary.

This recommendation was supported by the majority of the respondents to the public consultation of 16 February 2009.

The CRE observes that the marketing process (described in paragraph II.2.) chosen by Dunkerque LNG in the final file takes into account its recommendations. Indeed, the promoter of the project plans to organise an extensive market test involving energy stakeholders beyond those active in France. The operational terms and the non-discriminatory character of this process will be approved by CRE prior to the marketing phase and may, if necessary, be audited by the latter.


1.2.2. Distribution of regasification capacity

As indicated above, at the time of filing its request, Dunkerque LNG had not finalised the sale of regasification capacities and was thus not able to specify the identity of the subscribers committed to the projected Dunkirk terminal.

In the 10 Gm³/year scenario, EDF and its affiliated companies would hold up to 8 Gm³/year of regasification capacity, representing 80 % of the available capacity. In the 13 Gm³/year scenario, EDF and its affiliated companies would also hold up to 8 Gm³/year of regasification capacity, which would represent 61.5% of the available capacity.

Should demand fall short of supply, Dunkerque LNG guarantees that EDF group does not hold more than 8 Gm³/year of the capacity of the terminal in the long term, in both variants.

The CRE takes note of this commitment and recommends to the Minister that a non-compliance with this condition results in the withdrawal of the exemption granted. CRE also recommends that the granting of the exemption should be conditional on the absence of resale of regasification capacities subscribed by third parties to EDF group.



Furthermore, in the event that a part of the terminal's capacity is not subscribed after the initial marketing phases, CRE recommends that Dunkerque LNG should undertake to offer this residual capacity to market stakeholders at regular intervals, until a buyer is found, by means of transparent and non-discriminatory open seasons. The operational terms and the frequency of these open seasons must be approved by CRE. Dunkerque LNG will be able to sell this residual capacity in the intermediate periods in the form of short-term capacity, including to EDF group.

A majority of the respondents to the public consultation of CRE were in favour of a regular marketing of unsubscribed capacities, at a frequency varying between 6 months and 2 years.

1.2.3. *Impact on the wholesale and retail natural gas markets in France*

In order to demonstrate that criteria a) and e) relative to competition and to the proper functioning of the domestic market are met, Dunkerque LNG studied the impact of its project on the wholesale and retail gas markets. The analysis examined the effect of the entry into service of the terminal in 2014 on market concentration, as measured by the HHI index.

The relevant market analysed by Dunkerque LNG is the gas wholesale market on a geographical scale covering the whole of France. Other relevant markets have also been analysed by Dunkerque LNG as follows:

- A extended geographical zone including North-West Europe.
- Markets situated upstream of the terminal (generation, maritime transport).
- The downstream market, distinguishing 5 French customers segments (large industrial customers, small industrial customers, domestic consumers, local supply companies and electricity generators). Dunkerque LNG foresees that EDF's share of the retail gas markets will in no circumstances exceed 15 %.

The study tends to show through 90 simulations concerning different distribution of the terminal's capacities that the project will reduce concentration in the French natural gas wholesale market in 60 % of the cases or will have no perceptible effect in 40 % of the cases. These results were confirmed by 18 additional simulations aggregating the estimated shares of capacity of EDF, EDF Energy and EnBW in markets beyond the national geographical framework.

In addition, Dunkerque LNG's analysis also shows that, given the dominant position of GDF Suez in the French wholesale and retail natural gas markets, the threshold of subscription allocated to this stakeholder should be less than 1 Gm³/year in order to avoid impairing competition.

CRE thoroughly examined the study submitted by Dunkerque LNG and found that the methodology used complied with that generally used in this type of analysis.

CRE estimates that the project would have positive effects on competition in the wholesale gas market and would have no adverse effect on competition in the retail market. Indeed, by enabling one or more alternative suppliers to secure a significant part of their sourcing, this project could have positive effects for the development of competition in the retail market, insofar that EDF's predicted market share should not allow him to become a dominant player in the gas market.

As proposed by Dunkerque LNG in its file, CRE recommends that GDF Suez or any of its affiliated companies should not hold primary regasification capacities exceeding 1 Gm³/year at the terminal in order to avoid impairing competition.

1.2.4. Mechanism for bringing back unused primary capacities back on the market

LNG terminals play an important role in developing competition in the wholesale and retail gas markets in France and in Europe. In this regard, the optimisation of the use of regasification capacities through mechanisms such as Use It Or Lose It (UIOLI) or secondary capacity market is a major stake for the market.

Dunkerque LNG's file provided only a cursory description of the principles envisaged for the Use It Or Lose It mechanism, which does not allow to judge its operational efficiency. However, CRE understands that it is not possible to describe the mechanism precisely before defining in detail the service that would be proposed to shippers.

Consequently, CRE recommends that the exemption should be conditional on the implementation and publication of UIOLI and secondary capacity market mechanisms by Dunkerque LNG before the terminal comes on stream. The UIOLI system must be approved by CRE, which will organise regular return on experience and may demand that Dunkerque LNG carry out modifications if necessary.

On this specific point, the respondents to the public consultation estimated that a UIOLI mechanism is essential but not explicit enough in Dunkerque LNG's preliminary consultation file. They approve the principle of a prior CRE's approval of the mechanism finally selected and ask for a continued long-term monitoring.

1.2.5. Coexistence with regulated terminals


Terminals benefiting from an exemption must not be given a competitive advantage over regulated terminals.

In this regard, Dunkerque LNG will have to comply with CRE's decisions on operational rules concerning interfaces with other infrastructures. In addition, the current tariff for using natural gas transmission networks provides that:

- The holding of regasification capacities, whichever the duration and level, entails the obligation to subscribe the corresponding entry capacities on the transmission network;
- An economic test is performed to check that the costs of connection directly linked to each project are borne by the shippers concerned. This economic test is based on the principle that income from subscribed capacities entering the transmission network from the LNG terminal should make it possible to cover the cost of the installations to be built between the terminal and the core of the transmission network over a period of 20 years.

Consequently, subscribers of regasification capacities at the Dunkirk terminal will be required to subscribe corresponding network entry capacities, in terms of level and duration, from GRTgaz. GRTgaz must in addition receive an income corresponding to the total capacity created at the Dunkerque LNG entry point in order to ensure that the connection of the LNG terminal is not be subsidised by other users of the network. Under these conditions, CRE recommends that Dunkerque LNG financially compensates GRTgaz in the event that shippers holding regasification capacities at the LNG terminal do not subscribe all the entry capacities into the transmission network from the Dunkirk terminal.

This principle was approved by the majority of the respondents to the public consultation relative to the preliminary exemption request file.



Moreover, in application of the current tariff for using the gas transmission networks, Dunkerque LNG will have to, if necessary, cover any difference between the amount of GRTgaz's forecasted investment costs for the connection of the terminal and the income resulting from the charge applicable at the entry point onto the transmission network from the Dunkirk terminal. In compliance with the terms of the study convention signed with GRTgaz as well as with Dunkerque LNG's final waiver request file, Dunkerque LNG would also reimburse GRTgaz for the costs of all studies, should the project be abandoned.

As regards the contribution to infra-day flexibility, the majority of the respondents to the public consultation estimated it necessary to ensure equality of treatment between regulated and exempt terminals.

CRE recommends that any decisions concerning the contribution of LNG terminals to infra-day flexibility on the gas transmission networks that may be taken in the future should also apply to exempted terminals. This contribution must not impact the day-to-day emissions of capacity subscribers.

1.3. Conclusion regarding criteria a) and e)

CRE considers that criteria a) and e) are satisfied as long as the conditions set out above are complied with.

2. Criterion b) the level of risk attached to the investment is such that the investment will not take place unless exemption is granted

2.1. Analysis of the risks linked to the regulated framework

Dunkerque LNG underlined the difficulties, within a regulated third party access framework, to:

- define without restrictions the services proposed and adapt them if necessary;
- select subscribers according to the promoter's own criteria;
- set the conditions of use for 20 years.

According to the promoter of the project, this uncertainty might constitute a risk factor in the elaboration of the business plan presented to parties possibly interested in financing the project. In its file the sponsor of the project pointed out that the development model for this terminal was not that of an infrastructure operator holding an essential facility.


Dunkerque LNG considered that an exemption is necessary to guarantee that EDF group would have significant access to the infrastructure and to allow it (Dunkerque LNG) to offer participation and access to capacities to partners selected according to non-discriminatory criteria, thus permitting the establishment of long-term contracts.

CRE considered that these arguments are well founded and that the investment might well not take place if a regulated framework was imposed.

2.2. The financial risks

Dunkerque LNG estimates that, to be viable, the project has to find a balance between a satisfactory return on investment for shareholders, a tariff set at an acceptable level for shippers and secure income flows to enable the reimbursement of the debt.

The analysis carried out by Dunkerque LNG concludes that only a exempted regime over a period of at least 20 years would ensure the economic and commercial attractiveness of the project and thus guarantee its viability.



In the synthesis of the public consultation, CRE notes that a majority of shippers are satisfied by the demonstration of the financial risks linked to the project provided in Dunkerque LNG's public file. The other respondents, in particular the industrial consumers, were not totally convinced by the evidence presented, finding that the current regulated framework provides a level of remuneration which is comfortable and which could be adapted to meet investors' needs.

CRE finds that the hypotheses used by Dunkerque LNG for the analysis of the financial risks linked to investment are sound.

CRE considers that criterion b) is satisfied.

3. Criteria c) the infrastructure must be owned by a natural or a legal person which is separate at least in terms of its legal form from the system operators in whose systems that infrastructure will be built.

The demonstration that there is no legal link between Dunkerque LNG and GRTgaz, the operator of the gas transmission network to which the terminal will be connected, is immediately clear and do not give rise to comment on the part of the CRE.

All the respondents to the public consultation considered that this criterion is satisfied.

As regards the electricity grid, Dunkerque LNG stressed that it is legally distinct from the electrical systems operators RTE and ERDF. Dunkerque LNG's demonstration is satisfactory and do not give rise to comment on the part of the CRE.

CRE considers that criterion c) is satisfied.

4. Criterion d) charges are levied on users of that infrastructure

Dunkerque LNG indicates that it will put in place a single tariff which will be known to all the subscribers at the terminal. This tariff will cover terminal construction and operation charges, will enable the debt to be reimbursed and will ensure a satisfactory rate of return on the capital invested.

All the respondents to the public consultation considered that this criterion was satisfied.

CRE recommends that Dunkerque LNG should transmit to him the tariff for the use of the infrastructure and all the capacity subscription contracts signed to the CRE, as indicated in the exemption request file,

As long as these conditions are met, CRE considers that criterion d) is satisfied.

5. Synthesis of the analysis of the exemption request

Among the 14 respondents to CRE's public consultation who clearly answered the question relative to the exemption, 7 companies are in favour of the principle of a full exemption over 20 years (a majority of shippers being in favour of a 20-year exemption), 2 are in favour of a partial exemption and 5 are opposed to the principle of an exemption (principally the industrial consumers).

In view of the analysis of the 5 criteria set out above, CRE considers that a full exemption from regulated third party access can be granted to this project for 20 years, on condition that certain requirements are met.

IV - Opinion of the CRE


CRE issues a favourable opinion to the request for an exemption from regulated third party access over a period of 20 years filed by the Dunkerque LNG Company for its projected LNG terminal at Dunkirk. CRE recommends that the granting of this exemption is be associated with the following conditions:

In first place, Dunkerque LNG will have to comply with the following rules concerning the allocation and use of regasification capacities at the terminal:

1. Dunkerque LNG shall implement on open season in compliance with the good practice guidelines defined by ERGEG in order to test market demand in an efficient, transparent and non-discriminatory manner. The terms of this market test will be approved by CRE, prior to any marketing operation;
2. The long-term share of the terminal's regasification capacities subscribed by EDF group will be limited to 8 Gm³/year.
3. EDF group commits not to buy, in the framework of a long-term agreement, gas imported by shippers holding the rest of the terminal's long-term regasification capacities.
4. Long-term primary regasification capacities at the terminal sold to GDF Suez may not exceed 1 Gm³/year.
5. In the event that residual capacity should remain unsubscribed, Dunkerque LNG undertakes to offer this long-term capacity to market players at regular intervals, until a buyer is found, by means of transparent and non-discriminatory open season, the frequency and terms of which will be approved by the CRE.
6. Dunkerque LNG shall establish and publish the conditions under which subscribed but unused capacities should be brought back onto the market. The UIOLI mechanism adopted will be submitted to the CRE for approval.
7. Dunkerque LNG shall transmit to CRE its tariff for access to capacities at the terminal and any capacity subscription contracts signed;
8. Dunkerque LNG shall publish at least the same information as that required from operators of regulated terminals.

Secondly, Dunkerque LNG must comply with the regulations and, if necessary, with CRE's decisions on LNG terminals regarding interfaces with gas transmission networks:

1. the obligation for the users of the Dunkirk terminal to subscribe entry capacities onto the transmission network, corresponding in terms of level and duration to the regasification capacities subscribed;
2. the obligation for Dunkerque LNG to financially compensate GRTgaz if the entry capacities onto the transmission network are not subscribed by the shippers using the terminal;
3. the obligation for Dunkerque LNG to compensate for the proportion of the cost of connecting the terminal to the core of the transmission network potentially not covered by the income generated by the entry charge onto the natural gas transmission network. This requirement is based on the forecasted connection costs communicated by GRTgaz at the time the file was registered;
4. the application of the rules defined for LNG terminals concerning the provision of infra-day flexibility.



Finally, CRE recommends that Dunkerque LNG should be required to file a new exemption request in the event of any substantial modification of the physical or commercial characteristics of the project. This would apply in case of a change in the physical configuration of the terminal involving natural gas re-export by tanker or by pipeline of more than 10 % of the terminal's regasification capacity or in case of an evolution of the shareholding of the terminal operator or of the subscribers.

CRE recommends that non-compliance with these conditions during the period of the exemption could lead the Minister responsible for energy to withdraw the exemption, following a proposal by CRE.

Signed in Paris, 23 July 2009

For the Energy Regulation Commission (CRE),
The President

Philippe de LADOUCKETTE