

Deliberation of the French Energy Regulation Commission (CRE) of October 7th, 2010 on the short-term capacity allocation rules on the Fos Cavaou LNG terminal

Participating in the deliberations were: Mr Philippe de Ladoucette, Chairman, Mr Maurice Meda, Mr Michel Thiolliere, Vice-Chairmen, Mr Jean-Paul Aghetti, Mr Jean-Christophe Le Duigou, Mr Emmanuel Rodriguez and Mrs Marie-Solange Tissier, commissioners.

This present deliberation is made in reference to article 37-1 of law No 2000-108 dated 10 February 2000.

Having regard to Law No. 2000-108 of 10 February 2000 on the modernisation and development of public service in electricity, in particular, Article 37-1;

Having regard to Law No 2003-8 of 3 January 2003 on electricity and gas markets and on public service in energy, in particular Articles 2, 6, 7 and 16;

Having regard to Decree No 2004-251 of 19 March 2004 on public service obligations in the natural gas sector, in particular Headings II and V therein;

Having regard to the commitments formally submitted by GDF SUEZ, GRTgaz and Elengy within the framework of the COMP/B-1/39.316 proceeding, published on 21 October 2009;

Having regard to the decision of the European Commission of 3 December 2009;

Having regard to the prefectural decree of 25 August 2010 authorising the operation without restriction of the Fos Cavaou LNG terminal pending the administrative regularisation of its situation;

After deliberating thereon, the Energy Regulation Commission (CRE) made the following decision:

1. Background and purpose

1.1. Background

The Société du Terminal Méthanier de Fos Cavaou (STMFC) which is 71.98% owned by Elengy, a subsidiary of GDF SUEZ and 28.02% owned by Total Gaz Electricité Holding France, a subsidiary of TOTAL, sells capacities from the Fos Cavaou LNG terminal (Fos-sur-Mer). The regasification capacity of the terminal is 8.25 Gm³ per year.

On 29 June 2009, the administrative tribunal of Marseilles canceled the prefectural decree of 15 December 2003 authorising the operation of the Fos Cavaou LNG terminal.

The prefectural decree of 6 October 2009 authorised provisional operation limiting the terminal's send-out to 206 Mcm per month and off-loading to an average of two cargoes per month. Since the commissioning of the terminal on 1 April 2010, gas send-out from the terminal on the network has been limited to 20% of the initially planned nominal send-out capacity. In compliance with this decree, a new operation authorisation request was filed with the Bouches-du-Rhône Préfecture at the end of June 2010. A prefectural decree of 25 August 2010 has authorised full operation on a provisional basis of the Fos Cavaou LNG terminal, pending definitive regularisation of its administrative situation.

In its deliberation of 15 December 2003, the CRE recommends that at least 10% of the terminal's capacities, i.e. 0.825 Gm³ per year, which is the equivalent of 10 unloading slots per year, be reserved for short-term contracts. In its decision of 16 May 2007 relating to the initial allocations of short-term capacities on the Fos Cavaou terminal, the CRE recommends that capacities available on the terminal be allocated in such a manner as to promote the development of competition for end customers in the south of France.

GDF SUEZ came to an agreement with STMFC that a capacity of 0.175 Gm³ per year, i.e. two unloading slots per year, which must be released on the market by GDF SUEZ under its commitments vis-à-vis the European Commission¹, be sold together with the 0.825 Gm³ of capacity mentioned above.

Against this backdrop, STMFC plans to sell a capacity of 1 Gm³ per year in the form of short-term contracts as from 1 January 2011, i.e. the equivalent of 12 unloading slots per year, thereby setting up a regular supply.

1.2. Purpose

The purpose of this deliberation is to define the allocation rules for firm regasification capacities sold by STMFC.

2. STMFC proposal

Preliminary information on the sale of these capacities was announced on the STMFC website on 3 September 2010.

The terms of sale proposed by STMFC to the CRE on 4 October 2010 are outlined below.

2.1. The product proposed for sale

Firm regasification capacities are sold in two lots of 1 Gm³ per year from 1 January 2011 to 31 December 2011 and from 1 January 2012 to 31 December 2012 respectively. Each lot is undividable and corresponds to an unloaded annual quantity of 12 TWh associated with unloading slots distributed regularly over the year. Interested companies will have to select either the "continuous service" or the "uniform service".

2.2. The qualification process

The qualification process involves the provision by interested companies of a guarantee of 1 million euros, replaced by the guarantee defined in the contract if the company concerned is allocated capacity. Interested companies must also provide, where applicable, a power of attorney as well as a commitment to sign a contract for access to the terminal if capacity is allocated to them.

2.3. The allocation process

After capacity requests are received and validated, they are ranked according to the following criteria:

First, interested companies which have not signed a contract for access to the Fos Cavaou LNG terminal with STMFC at the time of the present allocation are given priority. Then, among companies so categorised, those whose request concerns both lots proposed for sale are given priority over those whose request concerns only one of the two lots proposed. Lastly, among these companies, those who have selected the continuous service are given priority over those which have chosen the uniform service.

If, in spite of the application of these priority criteria, STMFC still cannot decide between interested companies, then an independently supervised draw will then be organised. Due to the potential use of a draw, affiliated companies must designate one of their companies to qualify during the allocation process.

¹ Commitments proposed by GDF SUEZ on 21 October 2009 to the European Commission relating to the COMP/B-1/39.316 case made binding on 3 December 2009.

If the sale of capacity for the year 2011 is unsuccessful, STMFC will sell on a "first come - first served" basis 10 unloading slots distributed regularly over the year, each one corresponding to a capacity of 1 TWh. In this case, the two unloading slots integrated into the initial sale of the 1 Gm³ lots per year out of GDF SUEZ capacity portfolio as part of its commitments, will be directly sold by GDF SUEZ so as to prevent STMFC from bearing the loss of income if these slots were not sold.

If the sale of capacity for the year 2012 is unsuccessful, STMFC will extend until 1 July 2011 the sale of capacity of 1 Gm³ per year on a "first come – first served" basis in order to maximise the probability of selling this unit capacity. If, as at that date these capacities remain unsold, STMFC will sell 10 unloading slots on a "first come – first served" basis under the conditions described in the previous paragraph. Furthermore, a residual capacity corresponding to two unloading slots will be proposed for sale directly by GDF SUEZ.

2.4. Timetable proposed

- 8 October 2010: publication by STMFC of the information memorandum specifying the terms of sale for these capacities;
- 14 October 2010: public presentation meeting of the sale process;
- 5 November 2010 at 12 noon (Paris time): end of the qualification period;
- from 8 November at 12 noon to 10 November at 12 noon (Paris time): request submission period
- 15 November 2010: publication of allocation results;
- 20 December 2010: deadline for signing access contracts.

3. CRE consultation and analysis

3.1. Consultation conducted by CRE

Between 27 September and 1 October 2010, the CRE conducted a consultation on the main characteristics of the draft sale rules envisaged by STMFC.

The CRE received 8 contributions:

- 6 from shippers;
- 2 from industrial clients or associations representing them.

3.2. CRE analysis

3.2.1 Sale of capacities for a two-year period

STMFC plans to sell capacities for a period of two years starting 1 January 2011 and ending 31 December 2012.

All of the contributors agree with the sale for a two-year period of regasification capacities. They believe that aligning the sale period with the period of validity of the tariff in effect (three years from the date of commissioning of the terminal) will increase visibility.

The CRE shares this view and considers that the sale of capacities for a period limited to two years is appropriate.

3.2.2 Sale of capacities in undividable lots of 1 Gm³ per year

STMFC plans to sell capacities in two annual undividable lots of 1 Gm³ per year for the 2011 and 2012 calendar years. Interested companies can therefore make a request for only one of the two calendar years or for both.

The positions expressed by contributors are divided. Some believe that a volume of 1 Gm³ per year enables subscribers to have continuous service on the terminal, and that this volume is appropriate considering the experience of the first sale of short-term capacities. Others consider however, that the volume of 1 Gm³ per year is too high for new subscribers or for industrial clients and thus limits the opening up of the terminal to new shippers.

In light of the experience of past sales, the CRE is of the view that priority must be given to the sale of a minimum unit volume of 1 Gm³ per year in order to enable shippers that so desire, to organise a regular supply thanks to continuous service. Prioritising in this way means that the market can be offered a product enabling a regular supply of LNG before, if such is the case, proposing independent unloading slots for which booking might be fragmented if there is any unsold capacity. This sale method also contributes to the security of supply for the south of France.

The CRE is in favour of giving priority to the sale of undividable lots of 1 Gm³ per year.

3.2.3 Sale of capacities per calendar year and management of unsold capacities

STMFC plans to sell lots of annual capacity with starting dates set for 1 January 2011 and 1 January 2012. Furthermore, it intends to sell any capacities available at the end of the sale period in lots of 1 Gm³ per year, on a "first come - first served" basis in the form of unloading slots regularly distributed over the year.

Half of the contributors agree with this proposal by STMFC, considering that the calendar year is the most suitable period in terms of the operational running of the terminal. The other half believes that starting the sale of capacities from 1 January 2011 is premature because this date does not enable them to prepare their decision and the logistics of the corresponding supply chain.

The CRE considers that the sale of capacities by calendar year will facilitate, for all users of the terminal, the annual scheduling procedure which contractually covers this same period. Moreover, proposing the sale of capacities from 1 January 2011 does not exclude the possibility for shippers of booking capacities starting at a later date if there is any unsold capacity.

In light of the foregoing, the CRE agrees with the sale of capacities from 1 January 2011 based on periods corresponding to calendar years and the terms of sale for any unsold capacities as proposed by STMFC (see section 2.3 above).

3.2.4 Establishment of a high-priority criterion for companies that are not clients of the terminal

In keeping with the rules implemented during the sale of short-term capacities in 2007, STMFC plans to give the highest priority for capacity allocation to companies that are not clients of the terminal.

The CRE considers that the allocation of capacities on the Fos Cavaou terminal following GDF SUEZ commitments to the European Commission, is different to the preceding capacity subscriptions and should not penalise its beneficiaries *a posteriori*.

Almost all contributors agreed with the proposal to give the highest priority to requests from shippers that are not clients of the terminal including shippers who became clients following GDF SUEZ commitments. This provision appears to correspond with an opening up of the market to competition.

Consequently, the CRE wishes to modify the rule proposed by STMFC, so that it applies not only to interested companies that are not clients of the terminal, but also to companies which have become clients of the terminal through the resale by GDF SUEZ of a portion of its capacities as part of its commitments. Such a measure is consistent with the objective set in the CRE's decision of 16 May 2007, relating to the first allocation of short-term capacities on the Fos Cavaou LNG terminal which consists of giving "new shippers the opportunity of direct access to a gas supply source in the South of France, in order to help open up the end-users market for natural gas."

3.2.5 Priority criteria taking into account the length of requests and the type of service subscription

After applying the priority criterion described above, STMFC will then give priority to requests made for two years over requests for one year, then among requests for the same duration, it will give preference to shippers that have selected “continuous” service rather than the “uniform” service. Lastly, STMFC proposes an independently supervised draw as a last resort to decide between any requests for which a decision could not be made by applying the preceding criteria.

Most contributors agree with the priority criteria proposed by STMFC. Some contributors however consider that the second criteria envisaging higher priority to be given to requests for continuous service favoured larger shippers compared to more modestly-sized shippers.

The CRE is in favour of the application of these priority criteria aimed, for the duration criterion, at maximising the capacity sold while giving preference to longer commitments, and for the service criterion, at enabling improved use of the terminal’s capacities while limiting the probability of resorting to a draw. Indeed, the presence of too many “uniform” service unloading slots could lead to operational difficulties in terms of the distribution of emissions, and may also reduce the possibility of proposing additional “short-term band” or “spot” slots on the Fos Cavaou terminal.

4. CRE’s decision

The CRE approves the rules relating to the allocation of regasification capacities submitted to it by STMFC on 4 October 2010 under the reserve that STMFC makes the following amendment:

Section 7.2 of the Information Memorandum: the priority rule described in stage 1 is deleted and replaced by “Stage 1: Qualified Tenderers that do not have an Access Contract (for the Fos Cavaou LNG terminal) which is valid at the time of the Sale as well as Qualified Tenderers that have an Access Contract following the allocation of capacity resulting from the sale of capacity by GDF SUEZ pursuant to the commitments made to the European Commission, shall be given priority”.

This deliberation will be published in the *Journal Officiel* (Official Journal) of the French Republic.

Paris, 7 October 2010

On behalf of the French Energy Regulation Commission,
The Chairman,

Philippe de Ladoucette