

# Public consultation

12 April 2013,

## Public consultation by the Energy Regulatory Commission (CRE) concerning the information published by the operators of French LNG terminals and their users

The supply of gas for the South of France is mainly ensured by the Fos Tonkin and Fos Cavaou Liquefied natural gas (LNG) terminals located at Fos-sur-Mer, as well as by the North-South link forming part of the GRTgaz network. The firm capacity of this link is limited to 230 GWh/d. It is supplemented by 220 GWh/d of interruptible capacity, the availability of which, in summer, mainly depends on the send-out level from the Montoir-de-Bretagne terminal on the transmission network.

The send-out levels from the three French LNG terminals in service on the transmission networks constitute a determining factor for the balance between the gas supply and demand and, therefore, for the prices in the South of France. These send-out levels directly depend on the programmes for the use of the terminals (unloading or reloading of LNG) planned by the shippers who contracted regasification capacities at the terminals.

The usage rate for French and European terminals has dropped sharply since 2011 in light of market conditions which are leading to numerous shipments of LNG being rerouted to Asia, where they are sold at higher prices than on the European market. From 2011 to 2012, send-out from French LNG terminals to the transmission network fell by 19 % at Fos and by 44 % at Montoir.

Moreover, the recent development of interconnections with Spain has enabled the creation of entry capacities in the TIGF zone. For the same reasons as the ones mentioned above, connections between the TIGF network and Spain are currently being used at their maximum capacity levels for exporting to Spain. These flows enable the Spanish market to replace part of its LNG supplies with less costly imports of gas via gas pipelines.

The North-South link is consequently experiencing major congestion in terms of capacity levels, due to the combined effect of low rates of use of the terminals of Fos Tonkin, Fos Cavaou and Montoir-de-Bretagne, as well as high export levels from France to Spain.

This congestion led to a substantial increase in market prices in the South of France. During the summer of 2012, the price spread between the North and South hubs (*Point d'échange de gaz*, PEG) on the French spot market increased greatly, and exceeded the level of € 6/MWh on several occasions.

In a context where send-out levels on the networks of LNG terminals are a determining component of price formation in the South PEG, CRE would like to gather the opinions of market actors on the information published by the operators of LNG terminals and their users.

Concerned parties are invited to answer the questions listed at the end of this document no later than 13 May 2013.

## 1. The transparency obligations placed on LNG terminal operators

### 1.1 The obligations stemming from regulation (EC) n°715/2009

Regulation (EC) No. 715/2009 of 13 July 2009 concerning access conditions to natural gas transmission networks imposes various transparency requirements directly applicable to LNG terminal operators.

Article 15, section 1 c) of the Regulation stipulates that operators of LNG facilities “*make relevant information public, in particular data on the use and availability of services, in a time-frame compatible with the LNG [...] facility users' reasonable commercial needs, subject to the monitoring of such publication by the national regulatory authority*”.

Furthermore, Article 19, section 2 of this Regulation states that “*For the services provided, LNG [...] system operators shall make public information on [...] LNG facility capacities on a numerical basis [...] and in a user-friendly standardised manner.*”

Lastly, Article 19, section 4 adds that: “*LNG [...] system operators shall make public the amount of gas in each [...] LNG facility, [...], inflows and outflows, and the available [...] LNG facility capacities. That information shall also be communicated to the transmission system operator, which shall make it public on an aggregated level per system or subsystem defined by the relevant points. The information shall be updated at least daily.*”

### 1.2 The obligations stemming from the decision relating to the use tariff ATTM4 of LNG terminals

The ATTM4 tariff decision, which has been in force since 1st April 2013, requires shippers to communicate (on the 20th day of month  $m$ ) to LNG terminal operators their best projection of unloading operations for the period running from month  $m+1$  to  $m+3$ . The programme supplied by the shippers constitutes a commitment for the month  $m+1$ , but is indicative for the months  $m+2$  to  $m+3$ .

The LNG terminal operators are required to publish the projected quarterly programme for the months  $m+1$  to  $m+3$  on the 25th day of month  $m$ . Furthermore, the operators publish the available capacities, taking into account those capacities that are reserved but which are not scheduled by users for the months  $m+1$  to  $m+3$ . This information is updated at the start of the second week of month  $m+1$ .

Furthermore, the operators publish the annual unloading operations programme on their websites. This document, which is completed at the end of year  $n-1$  for year  $n$ , is aimed at planning and co-ordinating all the projected unloading dates over year  $n$  for all the capacity subscribers. This document does not constitute a commitment regarding the actual use of the unloading windows positioned, and it is not updated during the year. This programme does however continue to be published by the operators on their websites for information purposes.

## 2. The obligations stemming from the “REMIT” regulation for shippers

Article 4 of European Regulation (EU) No. 1227/2011 of 25 October 2011 (called “REMIT”) concerning wholesale energy market integrity and transparency, which came into force on 28 December 2011, requires market participants to publish any inside information that they “*possess in respect of [a] business or facilities which the market participant concerned, or its parent undertaking or related undertaking, owns or controls or for whose operational matters that market participant or undertaking is responsible, either in whole or in part.*”

“*Inside information*” is defined in Article 2 of REMIT as being “*information of a precise nature which has not been made public, which relates, directly or indirectly, to one or more wholesale energy products and which, if it were made public, would be likely to significantly affect the prices of those wholesale energy products.*” This article specifies that what is understood by the term “*information*” is in particular information “*which is required to be made public in accordance with Regulation [...] (EC) No. 715/2009*” and information “*relating to the capacity and use of LNG facilities, including planned or unplanned unavailability of these facilities*”.

In accordance with Article 2, section 7 of REMIT, the obligation described above is imposed on “market participants”, who are defined as being “*any person [...] who enters into transactions, including the placing of orders to trade, in one or more wholesale energy markets*”.

It is therefore the responsibility of the users of LNG terminals, who are market participants as defined in REMIT, to publish information relating to the use of LNG facilities, when it is of a specific nature and it is likely to have a significant influence on wholesale prices if it were to be made public. On the contrary, for their part, LNG terminal operators are not considered to be “market participants” as defined in REMIT, if they do not carry out any operations on wholesale markets. Thus the obligation to publish inside information that they may have does not formally apply to the latter.

However, concerning the publication of information relating to the use of LNG terminals, in the second edition of its guidance on the application de REMIT<sup>1</sup>, ACER considers that LNG terminal operators are the parties who are best placed to publish relevant information according to Article 4 of REMIT.

Consequently, ACER considers as a good practice the action for LNG terminal operators to facilitate the publication of inside information in accordance with Article 4, section 1 of REMIT, even if they do not enter into transactions on wholesale energy markets.

Likewise, and by way of providing examples of information that may constitute inside information, ACER mentions the information that must be published pursuant to Regulation 715 for gas and 714 for electricity. ACER notes that the transparency obligations in relation to power markets rely on a threshold for electricity facilities which is set at 100 MW, above and beyond which the information must be published and may constitute inside information. ACER notes that such a threshold has not been defined for the gas market, and moreover holds that currently it is not possible to define a single threshold at European level given the differences between the various national gas markets in terms of size, structure and liquidity. Consequently, ACER recommends that national regulators set an indicative threshold for publishing information for the gas market, after market consultation.

### **3. Preliminary analysis and changes envisaged by CRE**

#### ***3.1. There is insufficient transparency regarding the use of LNG terminals in light of the current context of the gas market in the South of France***

The LNG unloading operations scheduled on the LNG terminals are subject to multiple changes depending on market opportunities and unforeseen events occurring in the supply chain. It turns out that these changes, which are known about in advance by a limited number of actors, are likely to bring about major changes to the LNG terminals’ send-out programmes which, under certain conditions, may have a significant impact on wholesale market prices.

Within the context of the recent tensions regarding supply conditions in the South of France and in light of the role played by LNG in supplying this market zone, CRE observes that gas send-out from French LNG terminals have an impact on price setting at the South PEG. In this regard, CRE holds that at this stage, the level of transparency required by Regulation 715 and ATTM4 is currently insufficient and that certain items of information concerning the use of LNG terminals are likely to constitute inside information according to REMIT.

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<sup>1</sup> See the following link (point 3.4 “Market participant”):

<http://www.acer.europa.eu/remit/Documents/2nd%20edition%20of%20ACER%20Guidance%20on%20the%20application%20of%20REMIT.pdf>

### 3.1.1. Implementation of the transparency obligations by the terminal operators

The publications by Elengy and Fosmax LNG concerning the quantities of LNG held in stock and concerning the actual send-out do comply with the regulatory obligation referred to insofar as this information is updated on a daily basis. However, the data on incoming flows (unloading programmes) and the planned send-out (nominated outflows) are only updated twice monthly based on the monthly programmes regarding use of the terminals. Thus:

- When the terminal operators are informed of a change relating to the shippers' programmes, this change is only published in the next update, and the delay involved may range up to approximately fifteen days ;
- The projected dates for unloading windows for the months subsequent to  $m+3$  come from the annual programme and consequently must not be confused with the unloading projections made over shorter timespans ( $m+1$  to  $m+3$ ).

Furthermore, CRE notes that the publications relating to the number of landings at the terminals are not sufficiently detailed. Indeed, the information relating to the unloading and loading operations featured in the quarterly programmes of users of the terminals is currently published on an aggregated basis. As this information firstly has consequences for the number of slots available for reserving and, secondly, has a determining influence on the volumes in stock and the outflows from the terminal, it seems necessary to publish the numbers of loading and unloading operations featured in the quarterly programme separately.

### 3.1.2. Implementation of the obligations stemming from REMIT

CRE notes that certain actors have set up publication platforms on their websites for compliance with REMIT obligations, but that the information currently being published is rather limited.

CRE also notes that, at this stage, the LNG terminal operators have not set up a system, for their users, which could facilitate the publication of information characterised as inside information.

## **3.2. Envisaged changes**

Concerning setting a threshold for defining information likely to characterise inside information, CRE proposes, considering the French LNG market, the equivalent of an unloading or reloading shipment of 50,000 m<sup>3</sup> at a terminal, as an appropriate threshold. Thus, any information relating to a decision to load/unload an LNG cargo at a French terminal that exceeds this threshold should be published.

Additionally, CRE envisages recommending to shippers that they communicate to operators their best projections regarding use of the terminals as soon as they have knowledge of them, whether the related programmes are contractual commitments or indicative ones, and, in particular, any change in their unloading and reloading programmes above and beyond the threshold proposed above.

In addition to publication of the unloading operations programme for months  $m+1$  to  $m+3$  after finalisation at the earliest, and no later than the 25th of month  $m$ , CRE envisages asking terminal operators to:

- Update the data regarding actual and projected use of the terminals on a daily basis, both for incoming flows (unloading and loading operations) and for send-out, based on the most recent information provided by the shippers. In addition, CRE holds that operators should ensure the same level of transparency concerning unloading and loading operations involving LNG tankers, with care being taken to clearly differentiate between the information published according to the type of service;
- Make a platform available to their customers enabling them to publish inside information that they possess, based on the model implemented by other European operators (for example in Great Britain) and based on the guidelines of ACER. The messages published would be done so on the initiative of the shippers, who alone would bear responsibility for the information published.

Moreover, CRE would like to provide a reminder that all the market participants are subject to the obligations stemming from REMIT and that assessment of the information that they hold according to the criteria for defining inside information set out in REMIT must take into account the particular

context of the gas market in the South of France.

#### 4. Questions

**Question 1: Do you concur with the analysis of CRE as far as the current level of transparency is concerned?**

**Question 2: Are you in favour of CRE's proposal regarding setting a transparency threshold that corresponds to a load of 50 000 m<sup>3</sup> for the LNG market?**

**Question 3: Are you in favour of the changes envisaged by CRE?**

**Question 4: Do you have any other comments or suggestions relative to the transparency of information published by the LNG terminal operators and their users?**

CRE calls on interested parties to forward their written contributions no later than 13 May 2013:

- Via e-mail to the following address: [dirgaz.cp5@cre.fr](mailto:dirgaz.cp5@cre.fr);
- By contributing directly to the CRE's website ([www.cre.fr](http://www.cre.fr)), in the section entitled "Documents/Public consultations";
- By post to the following street address: 15, rue Pasquier - F-75379 Paris Cedex 08;
- By contacting the Directorate of Infrastructures and Gas Networks: + 33 1 44 50 89 23;
- By requesting a hearing with the Commission.

A summary of the contributions will be published by CRE, subject to legal confidentiality.

In your reply, please indicate whether you want **confidentiality and/or anonymity to be guaranteed**. Interested parties are called on to reply to the following questions, providing supporting argumentation for their responses.