

Deliberation of the French Energy Regulatory Commission (Commission de régulation de l'énergie) of 4 February 2010 on the allocation of capacity commercialised by GRTgaz and Elengy within the framework of GDF Suez's commitments

Participants: Philippe de Ladoucette, Chairman, Michel Lapeyre, Vice-Chairman, Maurice Meda, Vice-Chairman Jean-Paul Aghetti, Eric Dyevre and Emmanuel Rodriguez Commissioners.

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

Having regard to the Law No 2003-08 of 3 January 2003 on electricity and gas markets and on public service in energy, in particular the Articles 2, 6, 7 and 16;

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

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

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

After deliberation, the *Commission de régulation de l'énergie* decides as follows:

1. Background and subject of this deliberation

1.1. GDF Suez's commitments

On 21 October 2009, according to Article 9 of Council Regulation (EC) No 1/2003, GDF Suez, GRTgaz and Elengy submitted commitments to the European Commission aimed at addressing the Commission's legal competition concerns laid out in its notice launching an official proceeding on 16 May 2008 and its preliminary assessment of 22 June 2009, as a result of the inquiry relating to Case COMP/B-1/39.316.

On 3 December 2009, the European Commission adopted a decision making legally-binding the commitments proposed by GDF Suez aiming at reducing its share of firm long-term reservations of natural gas import capacities in France. The effective date of these commitments is 7 December 2009.

Under the terms and conditions of these commitments, GDF Suez must:

- hold less than 50% of its long-term H-gas entry capacity (one-year capacity or more), at the latest on 1 October 2014, and for a duration of 10 years:
 - in the GRTgaz North zone;
 - in the area including the GRTgaz South zone and TIGF zone;
 - in France;
- undertake a substantial release of long-term entry capacity onto the market in France as of 1 October 2010.

These commitments constitute a major step towards opening-up the natural gas market in France. Limiting GDF Suez's share of long-term entry capacity to 50% in France and releasing the associated transmission capacity in Germany, Belgium and on the Interconnector pipe, are both intended to

facilitate access for alternative suppliers to the French market and foster competition for the end-consumer's benefit.

1.2. Scope of this deliberation

The scope of this deliberation, in accordance with the Article 37-1 of the Law No 2000-108 of 10 February 2000 modified, is to specify the rules proposed by GRTgaz and Elengy to allocate the firm capacities released to the market pursuant to the release of import capacities as of 1 October 2010 in accordance to the commitments taken by GDF Suez.

To prepare its deliberation, CRE attended the consultation meetings and consulted stakeholders according to the arrangements described hereunder.

1.2.1. Capacity commercialised by GRTgaz

GRTgaz is commercialising the following capacity released by GDF Suez:

- **on the H-gas entry point of Obergailbach:** 80 GWh per day from 1 October 2010 until 30 September 2027 which is broken down into two categories:
 - 30 GWh per day entitling shippers to equivalent upstream capacity from GDF Suez on the Waidhaus entry point and on the Medelsheim exit point located on German territory;
 - 50 GWh per day entitling shippers to equivalent upstream capacity from GDF Suez at the exit point of Medelsheim from the Net Connect Germany market located on German territory;
- **on the H-gas entry point of Taisnières H:** 10 GWh per day from 1 October 2010 until 30 September 2026.

The capacity booked by a shipper at Taisnières H will entitle him to equivalent upstream capacity from GDF Suez:

- either on the “Zeebrugge IZT” entry point and the Blaregnies exit point located on Belgian territory until 30 September 2025;
- or 1) on the “Zeebrugge IZT” entry point and the Blaregnies exit point located on Belgian territory until 30 September 2025, or 2) on the Interconnector pipeline at the entry point “NBP Exit” and at the “Zeebrugge IZT” exit point on British and Belgian territories until 30 September 2018.

1.2.2. Capacity commercialised by Elengy

Elengy is commercialising the following capacity released by GDF Suez on the LNG terminal of Montoir-de-Bretagne:

- 1 Bcm per year, i.e. the equivalent of 12 unloading windows spaced evenly over the year, from 1 October 2010 until 31 December 2035 (**lot A**);
- an additional 1 Bcm per year will be commercialised by Elengy from 1 October 2011 until 31 December 2035 (**lot B**) as confirmed by GDF Suez in its letter of 3 February 2010.

Both lots A and B will be commercialised simultaneously.

2. Consultation work and proposal by GRTgaz

2.1. Consultation work

The drafting of the commercialisation rules proposed by GRTgaz to CRE on 7 January 2010 was carried out in the framework of two consultation meetings on 11 December 2009 and 6 January 2010. These meetings allowed the various stakeholders to contribute to the composition of the rules by suggesting improvements.

During both consultation meetings, the exchanges primarily addressed:

- the commercialisation method and the associated timetable: some shippers voiced the desire to have an assessment on the possibility of successive allocations per entry point in order to maximise the visibility for participants as the process unfolded;
- the allocation priority criterion taking the duration of the requests into account was the subject of a number of exchanges which opposed the advantage of long-term bookings allowing the most to be made of GDF Suez's commitment on the associated release of upstream capacity in France to the willingness of many participants to have capacities on shorter durations;
- the introduction of a minimum acceptance threshold: some shippers talked about the risk of an excessive split of allocated capacity in the event of significant demand, in particular on the Taisnières entry point;
- the desire of some shippers to have visibility on the conditions for the release on the market of capacity that might remain unsold at the end of this commercialisation;
- CRE presented at the first consultation meeting the possibility of giving less priority, all things being equal elsewhere, to the requests of shippers having booked significant long-term firm capacity on the entry points defined in the commitments.

2.2. GRTgaz's proposal

GRTgaz's proposal defines the following rules for submitting requests and for allocation priorities:

- authorised participants:
 - all the shippers (except GDF Suez and affiliated companies) holding a supply license in France as at 17 February 2010;
 - the affiliated companies must designate a leading subscriber;
- nature of requests:
 - a shipper has the right to submit one or several requests on each of the entry points;
 - the requests must start on 1 October 2010, have a duration of a multiple of one year and involve a capacity in MWh per day flat over the considered period;
 - the capacity requests are limited to the available capacity on each entry point considered as well as on the associated upstream capacity;
 - with regards to the Obergailbach entry point, the capacity requests must state the desired associated upstream route.

At the end of the process, the shipper to whom entry capacity has been allocated may exercise its right to book corresponding upstream capacity from GDF Suez.

- Main prioritisation principles as proposed by GRTgaz¹:
 - only the request(s) of the leading subscriber will be given priority where affiliated companies are concerned;
 - the requests with the longest durations will be given priority, provided that the requests relating to durations equal to or exceeding 10 years will have the same priority;
 - in the event of demand exceeding offered capacity on one entry point or one route, a pro rata rule will be applied to the last-priority requests.

¹ Only the general principles are described in this paragraph; the full details of the subscription and allocation rules can be found in GRTgaz's proposal published on 7 January 2010.

In addition, GRTgaz plans to implement two optional mechanisms which, if chosen, would allow participants to maximize their allocation in the event that their request was only partly fulfilled:

- the “allocation profile” option which allows the participant to access remainder capacity which may be available for some years after the pro rata rule is applied;
- the “flexible route” option, for upstream capacity to the Obergailbach entry point, allowing the participant whose request was only partly fulfilled on one route to have access to remainder capacity on the other route.

3. Consultation work and Elengy’s proposal

3.1. Consultation work

The drafting of the commercialisation rules proposed by Elengy to CRE on 7 January 2010 was carried out in the framework of a consultation meeting on 15 January 2010. This meeting allowed the various stakeholders to acquaint themselves with the proposed rules and give feedback.

During this meeting, the exchanges primarily addressed:

- the capacity commercialisation timetable (to end 7 March 2010 at the latest as laid out in the commitments), which, according to many shippers was judged too short to build an LNG supply chain;
- the allocation priority criterion favouring the longest subscription offers, which under Elengy’s commitments, does not provide for implementing a subscription duration threshold beyond which requests would be considered equivalent; as a reminder, the commitments regarding the allocation procedure give preference to the longest subscription offers.
- the commercialisation of potentially unsold capacity: some shippers voiced the desire to have visibility on the arrangements for the release on the market of capacity that might remain unsold at the end of this commercialisation.

3.2. Elengy’s proposal

Elengy’s proposal defines the following rules for submitting requests and for allocation priorities:

- authorised participants:
 - all the qualified participants as at 26 February 2010 (except GDF Suez and its affiliated companies). Qualification assumes in particular the payment of a fixed financial guarantee of a million Euros (€1m) linked to the one-off commercialisation operation;
 - the affiliated companies must designate a leading subscriber.
- nature of requests:
 - a subscription request is comprised of a maximum of one capacity profile for each lot (A or B);
 - each profile starts on 1 October 2010 for lot A and on 1 October 2011 for lot B;
 - each profile ends on 31 December of a year between 2011 and 2035 for lot A (respectively between 2012 and 2035 for lot B);
 - each profile covers a flat volume of 11.75 TWh per year on each of the lots;
 - each profile states the desired “Uniform” or “Continuous” send-out service;
 - each profile related to lot A can include the indication to use the profile for lot B if lot A is not granted.

- allocation criteria in descending order of priority:
 - for each of the lots, the profiles with the longest durations have priority;
 - for those of an equal duration, the “Continuous Service” profile has priority over the “Uniform Service”;
 - the profile relating to lot B for shippers already granted of lot A, on a similar duration and service basis, will be given less priority over lot B than the other profiles;
 - lots will be drawn under the supervision of a bailiff in the event of profiles having the same level of priority.

4. Consultation and analysis by CRE

4.1 CRE’s public consultation

Between 15 and 25 January 2010, in addition to the work carried out in consultation meetings, a public consultation was held by CRE on the commercialisation rules proposed by GRTgaz and Elengy.

The CRE received 14 answers:

- 9 from shippers;
- 2 from an association of industrial clients and from an association of shippers;
- 3 from gas infrastructure operators.

Alongside the questions formulated by CRE in the technical consultation document, the participants expressed dissatisfaction with two main issues, which according to some were likely to lead to the operation’s failure:

- the very tight timetable of commercialisation as stated in the commitments, which puts pressure on the decision-making process within the participating companies;
- the high level of uncertainty concerning the conditions governing the sale or sublet of upstream capacity by GDF Suez, regarding in particular transmission capacities between Zeebrugge and Taisnières.

These concerns should be addressed directly to GDF Suez, through the trustee designated by the European Commission within the framework of the commitments.

Concerning GRTgaz’s arrangements for the commercialisation of capacities:

- the principle of successive allocations improving shippers’ visibility was largely welcomed by the respondents;
- some shippers expressed concerns on giving priority to the longest subscription offers while introducing a duration threshold (10 years within GRTgaz’s proposal) beyond which the requests would have the same priority. Amongst them, some shippers considered that a 5-year threshold instead of a 10-year threshold would allow a greater diversity of shippers;
- the introduction of a lesser priority to shippers holding significant long-term capacity was supported by a majority of the respondents;
- the introduction of a minimum acceptance threshold to prevent the risk of excessive split of capacity was unanimously approved by shippers for the Taisnières entry point.

Concerning the capacity commercialised by Elengy:

- the answers were divided on the prioritisation criterion which gives preference, on an equal duration basis, to the “Continuous Service” requests over “Uniform Service” requests.
- the majority of the respondents preferred the principle which led to encouraging the allocation of lots A and B to different shippers.

4.2 Analysis of CRE

4.2.1 Analysis of GRTgaz’s proposal

4.2.1.1 Commercialisation method

The rules proposed by GRTgaz give a deadline for the submission of offers concerning all the commercialised capacity, taking in account the duration given to carry out the commercialisation of capacity. The date is set on 26 February 2010.

At the consultation meeting on 11 December 2009, some shippers expressed an interest in successive allocations per entry point, allowing them to determine their subscription requests on a given entry point as the process unfolded, depending on the result(s) of the previous allocations.

During its hearing, GRTgaz reasserted the need, in order to comply with the commitments, to finalise the capacity commercialisation at the latest on 7 March 2010.

CRE considers that the implementation of a timetable which both upholds the commitments and allows better visibility for shippers through a system of successive sales is likely to improve the commercialisation procedure for GRTgaz.

A commercialisation timetable agreed with GRTgaz which met these two aims was presented by CRE to the market players in its public consultation. The conclusion drawn from the various answers is that the great majority of respondents are favourable to the principle of successive sales of capacity. While deploring the short commercialisation timeframe owing to the allocation deadline of 7 March 2010 laid out in the commitments, the large majority of participants support the implementation of CRE's timetable.

Alongside the actual commercialisation method, a large majority of shippers criticised the high level of uncertainty surrounding the conditions of access to upstream capacity made available by GDF Suez, in particular concerning the transmission capacities between Zeebrugge and Taisnières.

4.2.1.2 The priority criterion taking duration into account

Similar to the arrangements applied at GRTgaz's previous open seasons, the rules proposed provide that requests of a longer duration are given priority, having stated that the requests equal to or exceeding 10 years are given the same priority.

The results of the public consultation reveal that a majority of the answers favour the priority criterion taking the duration of requests into account. Concerning the duration criterion, the majority of respondents expressed their concerns about a commercialisation process favouring durations equal or superior to 10 years, considering the difficulties met by shippers to commit on long-term capacities under such a tight calendar. Several respondents considered that 5-years or more requests should have the same priority level.

CRE considers that the allocation rules should give to as many shippers as possible access to import capacities to France. Considering the constrained timetable of commercialisation complying GDF Suez's commitments and considering that commercialised capacity is already existing, the duration threshold concerning this priority criterion should be reduced to 5 years.

4.2.1.3 Shippers holding a substantial share of long-term firm capacities

In order to promote access by new entrants, CRE proposed at the consultation meeting and in the public consultation, to introduce a criterion giving less priority to shippers holding a substantial share of long-term capacity on the entry points targeted by the commitments.

In reply to the public consultation, a large majority of respondents was in favour of the introduction of the criterion proposed by CRE. Some of them underline that the implementation of such a criterion would encourage the development of competition on French territory, by favouring the access of new entrants.

CRE considers that reduction, from 10 years to 5 years, of the duration threshold beyond which requests are considered as equivalent (Cf. 4.2.1.2) is likely to limit the risk that a limited number of shippers subscribe, on the long term, the main part of the capacity.

As a result, CRE does not consider necessary to implement this criterion of lesser priority.

4.2.1.4 Minimum acceptance threshold

During the two consultation meetings, some shippers talked about the risk of an excessive split of allocated capacities in the event of significant demand, in particular on the Taisnières entry point.

Similar to what was implemented within the framework of the France/Spain open season, CRE collected market opinion on the introduction of a minimum acceptance threshold in the procedure proposed by GRTgaz. The principle would be the following: if participants so wish, they can determine for each subscription request a minimum threshold of MWh per day below which they do not want to be allocated gas.

The large majority of respondents at the public consultation voted in favour of the introduction of such a mechanism, in particular on the Taisnières entry point where, for one, the risk of excessive split seems most likely given the limited envelope of commercialised capacity at this point, and two, the common practice on upstream wholesale markets is to trade minimal standardized gas quantities called "lots" of about 750 MWh per day (at 0€).

CRE considers that the introduction of an acceptance threshold, in the framework of GDF Suez's commitments, is likely to improve the commercialisation procedure of GRTgaz by giving shippers the guarantee of being allocated capacity which reflects their minimum requirements. However, the consequence of implementing such a mechanism is that a limited fraction of the commercialised capacity might not be allocated in some cases. By construction, the level of potential non-allocated capacity owing to this mechanism is lower than the highest minimum acceptance threshold chosen by the participants.

CRE is favourable to a minimum acceptance threshold if this does not lead to over-complicating the allocation process. As a consequence and taking into account the information above:

- this mechanism will only be applied at the Taisnières entry point;
- the minimum acceptance threshold will be, at the highest, equal to 750 MWh per day (at 0€);

The introduction of a minimum acceptance threshold makes it necessary to modify the allocation rules proposed by GRTgaz in order to optimize the allocation of capacities at Taisnières (see 5.1.1.3).

4.2.1.5 Commercialisation of potentially unsold capacity

In the event where the capacities commercialised within the framework of this procedure remain unsold, GRTgaz proposes to release them back onto the market in accordance with the terms and conditions laid down in the transmission contract (Article 7.2 of the General Terms and Conditions of GRTgaz' transmission contract¹).

The unsold capacities would firstly be available with a longer advance notice, for durations superior or equal to one year on a "first come, first served" basis, then with a shorter advance notice, during an open subscription period, for durations inferior or equal to one year, provided that these capacities will not be associated to access rights to book corresponding capacities upstream.

The answers to the public consultation are divided on this question. Most of those which did not favour this proposition suggest implementing measures which are incompatible with the commitments.

CRE considers that implementing the existing rules is likely to give better visibility and simplify the commercialisation of potentially unsold capacities at the end of this operation.

¹ http://www.grtgaz.com/fileadmin/user_upload/Acheminement/Documents/EN/acheminement_contrat-annexe1_en.pdf

4.2.2 Analysis of Elengy's proposal

4.2.2.1 Commercialisation timetable

The procedure proposed by Elengy requires from shippers to be qualified before submitting any offer. In order to meet the deadlines set out in the commitments, the deadline for qualification is 26 February 2010 and the deadline for submitting binding requests is 3 March 2010. The notification of allocations is planned on 5 March 2010.

In response to the public consultation, the majority of players believe that the timeframe for the commercialisation of regasification capacities on the Montoir-de-Bretagne terminal is too short to build an LNG supply chain. However, with regard to the commercialisation deadline set at 7 March 2010 by the commitments, half of the respondents voted in favour of the timetable submitted by Elengy.

CRE believes that the timetable proposed by Elengy is satisfactory.

4.2.2.2 Prioritisation regarding the nature of the service requested

Elengy has proposed, as a second priority criterion, to favour the "Continuous Service" profiles as against the "Uniform Service" profiles.

The presence of too many "Uniform Service" unloading slots would lead to operational difficulties in terms of sharing send-out volumes and would reduce the possibility of offering additional "short-term band" or "spot" slots on the Montoir-de-Bretagne terminal.

The responses to the public consultation are relatively mixed on this point.

CRE considers that this allocation rule is, on one hand, likely to allow a better use of the terminal's capacities, and on the other, limit the probability to resort to lottery.

CRE is favourable to the allocation rule which gives preference to "Continuous Service" requests.

4.2.2.3 Diversification criterion for the allocation of lot B

With regard to the allocation of lot B (1 Bcm per year as of 1 October 2011), Elengy has proposed, before resorting to lottery, to apply a third prioritisation principle aiming at favouring a diversity of shippers on the terminal.

This criterion provides for lesser priority to be given to a profile of a shipper allocated the lot A as against requests from other shippers, on a similar subscription duration and service basis.

The majority of participants replying to the public consultation voted in favour of this criterion.

CRE considers that applying the diversification criterion proposed by Elengy could prevent having to resort to lottery, while increasing the probability for a second shipper to benefit from the capacity proposed within the framework of this operation. CRE is therefore favourable to this criterion.

4.2.2.4 Commercialisation of potentially unsold capacity

In a scenario where commercialised capacities are unbooked within the framework of this procedure, Elengy provides for capacities to be made available on a "first come, first served" basis in accordance with the terms and conditions in force.

The majority of players is favourable to applying the allocation rules in force published by Elengy.

CRE considers that the implementation of the existing rules is likely to give better visibility and simplify the commercialisation of potentially unsold capacities at the end of this operation.

5. Upstream capacities to the French networks

During the consultation meetings or in their answers to the public consultation, a majority of shippers raised concerns about the lack of visibility on the conditions of sale or sublet of upstream capacities by GDF Suez, regarding in particular transmission capacities upstream of Taisnières entry point. CRE considers that this lack of information is detrimental to the commercialisation procedure and to the attractiveness of offered products. GDF Suez must bring to the shippers all needed information at the consultation meeting planned by GRTgaz on 8 February 2010.

6. Decision of CRE

6.1. Decision regarding the rules proposed by GRTgaz

CRE makes the following modifications and technical corrections to the rules regarding the allocation of transmission capacities commercialised within the framework of GDF Suez commitments which were submitted by GRTgaz on 7 January 2010.

6.1.1 Modifications to be made on proposed rules

6.1.1.1 Commercialisation in two successive phases

The commercialisation timetable must be modified as follows:

- requests to book capacities at Obergailbach to be received at the latest on 15 February 2010 and allocations communicated to shippers at the latest on 22 February 2010;
- requests to book capacities at Taisnières to be received at the latest on 26 February 2010.

6.1.1.2 Reduction to 5 years of the duration beyond which all requests are given the same priority

The commercialisation procedure, Article 9, must specify that an equivalent level of priority will be given to all the requests with a duration equal or superior to 5 years.

6.1.1.3 Introduction of a minimum acceptance threshold at the Taisnières entry point

A minimum acceptance threshold at the Taisnières entry point as described at 4.2.1.4 must be introduced. This threshold will be, at the highest, equal to 750 MWh per day 0(à 0°C).

The introduction of this mechanism requires a modification to the allocation rules proposed by GRTgaz as follows:

1. For a given level of priority, if the sum of the demands exceeds the remaining capacity to be allocated, a pro rata rule is applied to the requested capacities.
2. The requests which, once the pro rata is applied, are higher than their minimum acceptance threshold, are declared allocated.
3. In the event that some non-allocated capacity remains at the end of the previous stage, the requests for which the minimum acceptance threshold has not been met are then subject to a lottery under the supervision of a bailiff. The winning requests are allocated successively up their acceptance threshold depending on the remaining capacity available. The winning requests which do not meet their minimum acceptance threshold are definitively discarded. The process continues until the requests are met or the offered capacity on is allocated.

4. Any remaining non-allocated capacities at the end of the previous stage are made available at the following priority level.

The process described above will be implemented at Taisnières entry point at the first and the third steps described in the Article 11 of GRTgaz's proposal.

6.2.1 Technical corrections on the proposed rules

The corrections requested by CRE are as follows:

Article 6, fourth point: the obligation described must be applied to the sum of requests of each participant and not to individual requests.

Article 7: for clarification purposes, it is necessary to state the time zone concerned for the subscription deadlines.

Article 11, second stage: a precise reference to the application of the pro rata rule is necessary.

Article 14: it is necessary to erase the reference to the concept of "rights-of-use".

Article 15, third and seventh stages: a precise reference to the application of the pro rata rule is necessary.

6.2. Decision regarding the rules proposed by Elengy

CRE makes the following technical corrections to the rules regarding the allocation of regasification capacity commercialised within the framework of GDF Suez commitments which were submitted by Elengy on 7 January 2010:

Point 4.1.1: the reference to the number of annual minimum and maximum unloading operations should be erased.

Point 7.1: a limit hour for qualification must be specified the 26 February 2010 as well as the time zone.

Point 7.1.4: a definition of "related parties" must be given.

Point 7.2: a limit hour of submission must be specified on 3 March 2010 as well as the associated time zone.

This deliberation will be published in the "*Journal Officiel*" of the French Republic.

Done in Paris, 4th February 2010

For the *Commission de régulation de l'énergie*

Chairman,

Philippe de Ladoucette