



**Draft Guidelines of Good Practice  
on Third Party Access  
for LNG System Operators (GGPLNG) -  
An ERGEG Public Consultation Paper**

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## 1 Scope and Objectives of the GGPLNG

The GGPLNG concern Third Party Access (TPA) to LNG facilities in accordance with Article 18 of the European Directive 2003/55/EC which establishes the implementation of a regulated TPA (rTPA) system to LNG facilities based on published tariffs whereby at least the tariff methodologies are approved by the regulatory authority prior to their entry into force. A first step towards establishing common rules for access to rTPA LNG facilities was made with the adoption of two framework documents at the 5<sup>th</sup> Madrid Forum in 2002: *Recommendations on Guidelines for Good Practice in relation to TPA services, tariffication, balancing, etc.*<sup>1</sup> and *Guidelines on calculation methodologies and transparency requirements with regard to available capacities of gas transmission, LNG and storage facilities*<sup>2</sup>. Several access regimes have since been adopted: the rTPA and different modalities of exemptions, all of them lawful systems addressed to promote investment on LNG infrastructures and competition in gas markets.

*(Some of this provision could be incorporated in the cover note when sending for consultation)*

The GGPLNG do not go beyond the Directive 2003/55/EC in creating or restricting TPA rights. The GGPLNG are intended as possible input from ERGEG for an amendment of Regulation 1775/2005 and its annexes. Before the approval of the modification of the Regulation this could serve as non binding guidelines. For this reason, the paper is structured according to the said EU Regulation, and does not repeat what is already stated in the Regulation. In addition to the present proposal, ERGEG may have additional comments on the LNG provisions contained in the EC's 3<sup>rd</sup> package.

When a provision already existed in an approved document, the authors used the already approved wording as much as possible. The main sources used in drafting these guidelines are:

- the existing annex of Regulation 1775/2005;
- the Directive 2003/55/EC, especially the terms defined in article 2;
- *The Guidelines for Good TPA Practice for Storage System Operators (GGPSSO)*<sup>3</sup>, adopted by the Joint Working Group of the European Gas Regulatory Forum (Madrid Forum) of 23 March 2005; and
- the two CEER papers presented at the 5<sup>th</sup> Madrid Forum in 2002, as mentioned above.

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<sup>1</sup> The text explicitly refers to LNG facilities in § 3.1.

<sup>2</sup> This text was not approved by Gas Transmission Europe (GTE): cfr Conclusions of the Forum, § 15.

<sup>3</sup> [http://www.ceer-eu.org/portal/page/portal/ERGEG\\_HOME/ERGEG\\_DOCS/ERGEG\\_DOCUMENTS\\_NEW/GAS\\_FOCUS\\_GROUP/GGPSSO\\_2005-03-23\\_FINAL.PDF](http://www.ceer-eu.org/portal/page/portal/ERGEG_HOME/ERGEG_DOCS/ERGEG_DOCUMENTS_NEW/GAS_FOCUS_GROUP/GGPSSO_2005-03-23_FINAL.PDF)

Also, the advise of an independent consultant relating to LNG was sought to assess to what extent existing access rules to LNG facilities are working or could be improved, and if there is a need for harmonisation for both regulatory practice and operational rules, the main objectives being to provide recommendations designed to ensure that LNG contribute to an increasingly competitive and secure European gas market.

The GGPLNG do not mention implementation dates. This will be discussed after the formal consultation procedure. Should they be endorsed as an amendment to Regulation 1775/2005, the amended regulation will have to specify the implementation date. According to article 10 of the Regulation 1775/2005, the regulatory authorities must ensure compliance with this Regulation and its Annexes.

These Guidelines apply to LNG facilities insofar as they are subject to the requirements of the Regulation 1775/2005.

According to article 10 of Regulation 1775/2005/CE, the regulatory authorities of the Member States established under Article 25 of Directive 2003/55/EC shall ensure compliance with the Regulation and its Guidelines adopted pursuant to Article 9 of the Regulation.

## 2 Definitions

1. The definitions of Regulation 1775/2005 apply to these Guidelines<sup>4</sup>. The terms listed below will be used in these Guidelines in the sense defined as follows:

LNG	Liquefied Natural Gas;
LSO	LNG System Operator;
standard bundled LNG service	a bundled service offered by a LSO consisting of a right to berth an LNG carrier during a certain window of time, the unloading of the LNG, a temporal LNG storage capacity, and a regasification service with the corresponding send-out capacity;
terminal user	a customer or a potential customer of the LSO;
NRA	National Regulatory Authority;
unloading window	the period of time during which the terminal user has access to the infrastructure needed to unload the LNG from the cargo to the LNG facility;
regasification	the process of vaporizing LNG in order to send out natural gas in the downstream system;
ship vetting	consists in an in-depth assessment process of an LNG ship quality and suitability for carrying and unloading LNG;
LNG facility	definition in article 2.11 of Directive 2003/55/EC.

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<sup>4</sup> Definition of "capacity" in the Regulation as a flow (expressed in Nm<sup>3</sup>/h) do not reflect the fact that in LNG we are speaking about capacity for both storage (in volume units) and regasification (flow). This difference could imply some modification of the GGPLNG or the Regulation as proposed in the 3<sup>rd</sup> package. Page 25 of the proposal for a Regulation amending Regulation 1775/2005, point (2) (b) 2.

### 3 Tariffs for access to the system

2. The tariff structure of the LSO shall:
  - a. be transparent, take into account the need for system integrity (including improvements) and reflect actual costs incurred, insofar as such costs correspond to those of an efficient and structurally comparable LSO and are transparent, whilst including appropriate return on investments, and where appropriate taking account of the benchmarking of tariffs by the regulatory authorities<sup>5</sup>.
  - b. be applied in a non-discriminatory manner;
  - c. facilitate efficient commercialisation and incentivise efficient use of the system;
  - d. be reviewed on a regular basis taking into account developments in the market, without prejudice to long term regulated tariffs. The frequency of this periodical review should strike a balance between the effective reflectivity of the costs and the market need for tariff stability;
  - e. contain an appropriated split between capacity and commodity charges.
3. The tariff regime shall:
  - a. contain a detailed description of its objectives and priorities;
  - b. contain cost-reflective capacity and commodity charges;
  - c. contain the methodology for the calculation of tariffs and LSO revenues;
  - d. specify the allocation of the extra revenues from congestion in case of market based capacity allocation;
  - e. specify the competent authority for tariff setting, and for appeal; and
  - f. provide indications on the publication of tariffs.
4. The costs associated with adjusting the gas quality of incoming LNG, in order for it to meet the grid specifications, must be paid for by the users of these services. The costs shall consider equipment investments, as well as the likely pattern of use of quality conversion facilities, together with long term contracts that support the operation of the facility.

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<sup>5</sup> Tariffs, or the methodologies used to calculate them, applied by LSO and approved by the regulatory authorities pursuant to Article 25(2) of Directive 2003/55/EC, as well as tariffs published pursuant to Article 18 (1) of that Directive,.

## 4 TPA services

### 4.1 Roles and responsibilities

#### 5. The LSOs shall:

- a. operate and maintain, in coordination with terminal users and interconnected system operators under economic conditions, secure, reliable and efficient LNG facilities with due regard to the environment<sup>6</sup>; in particular, they shall guarantee the contracted firm services and they shall maintain system integrity;
- b. offer all the available capacity not excluded from TPA pursuant to the Directive 2003/55/EC to (potential) network users, including own affiliated companies, under published and equivalent contractual terms and conditions supportive of competition and trade, according to transparent TPA rules set or approved by the relevant national authority;
- c. offer bundled and not bundled services aiming at accommodating market demand, taking into account the technical capacities of the LNG facility and congestion management procedures;
- d. provide the downstream system operators with the necessary information, in due time and with enough details, to ensure that the transport and storage of natural gas may take place in a compatible manner with the secure and efficient operation of the interconnected system;
- e. make relevant information public, in particular data on the use and availability services, in a time frame compatible with the LNG facility users' reasonable commercial needs<sup>7</sup>;
- f. preserve the confidential information; when information concerning the operation or development of the LNG facility is disclosed, it should be done in a non-discriminatory way, especially with regard to any affiliated company;
- g. establish and implement rules on the use of services offered aimed at facilitating competitive and efficient use of the LNG facility, in particular to discourage capacity hoarding; maximise the use of available capacity and offer unused capacity; and
- h. put relevant IT system in place that could be easily accessed by the terminal users via agreed interfaces. Through this system, terminal users should be able to access information about the LNG facility. Access to information concerning infrastructures connected to the LNG terminal will be facilitated.

#### 6. The LSOs, to be able to operate their terminal, can ask the terminal users, inter alia, to:

- a. provide the LSO with all the necessary data required to carry out its duties, as specified in the access contract and/or terminal code; especially their nomination program and/or requests for scheduling, as well as information about any circumstances that may result in the divergence from any nomination or re-

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<sup>6</sup>Directive 2003/55/EC, Article 8.1.

<sup>7</sup>Page 31 of the proposal for a Regulation amending Regulation 1775/2005, point (6) 1. (c).

- nomination;
- b. ensure that the LNG unloaded into the LNG facility complies with the quality specifications applicable at the terminal and accept gas emitted from the LNG facility as long as it is in accordance with prevailing contractual specifications, technical rules and procedures;
  - c. refrain from distorting or preventing competition on the LNG, gas or capacity markets, for example through capacity hoarding; this provision does not preclude or impact the rules and principles of national and Community competition law; and
  - d. put the relevant IT system in place to be able to communicate with the LSO using the IT system mentioned in § 5h herein. These IT systems should not be so costly or complex to set up and operate as to create a barrier to entry.
7. Penalties may be established to ensure that the LSOs and the terminal users respect their contractual obligations:
- a. the LSO may be exposed to penalties (such as compensation payment to the terminal users) in the event that it fails to fulfil contractual obligations, as set out in the terminal code/contract; and
  - b. the terminal user may be exposed to penalties (such as overrun and scheduling charges) as an incentive to ensure they nominate and use capacity consistently with the capacity rights they have procured either on the primary or secondary market.
8. Where they are established, penalties shall:
- a. be proportionate and designed in a non-discriminatory and transparent manner, based on objective criteria;
  - b. not hamper the entry of new participants into the market; and
  - c. be cost-reflective as much as possible, whilst providing incentives for the appropriate use of capacity.

## 4.2 Necessary TPA services

9. The LSO shall offer a menu of services on the primary market:
- a. For Standard bundled LNG services, they shall:
    - contain the temporary LNG storage and regasification capacity required to withdraw the shipment etc.
    - be defined after consultation, according to §10a herein, especially concerning the flexibility included; and
    - be defined on the basis of the expected vessel size.
  - b. For not bundled services, the LSO offers separate services, if available and consistent with the arrangements related to the standard bundled LNG services, such as:
    - reception capacity, comprising ship berthing and unloading;
    - LNG storage capacity; and
    - Regasification/send-out.

The offer of not bundled services should not act as a barrier to entry or as an



obstacle to the efficient use of the terminal's capacity by reducing the amount of standard bundled services offered at the terminal;

- c. In addition to services offered according to 9b, at least the following services could be offered separately, without prejudice of offering them also in a bundled way:
  - loading of LNG trucks;
  - gas quality conversion;
  - ship cooling; and
  - ship loading or transfer of LNG between ships.
- d. Long-term and short-term services.
- e. Firm and interruptible services. The offer of interruptible services should not reduce the amount of the firm services.

10. The services offered by LSOs and the terminal code shall:

- a. be developed with proper consultation to terminal users and other market participants, supervised by NRAs, in order to accommodate as much as feasible the market demands; such consultations shall be published with all relevant documents on the website, and not be limited to negotiations with existing capacity holders or terminal users that have applied for capacity; this consultation is made without prejudice to the NRAs powers to approve or to set the service conditions and the terminal code; and
- b. take into account the LNG facility's technical constraints and the economically efficient use of the LNG infrastructure. Any limit on the services offered, on the grounds of these criteria, should be made public and be duly substantiated.

11. The LSO shall use electronic communication means to provide adequate data to terminal users and simplify transactions by allowing on-line screen-based (re-)nominations, short-term capacity booking and transfer of capacity rights among users. The LSO shall answer to terminal users' applications and 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<sup>8</sup>.

12. Each service shall be described with sufficient detail in order to avoid any misunderstanding, for instance, concerning the priority access to any service (e.g. regasification) in case of conflicting nominations from capacity holders, without prejudice to terminal users in swapping capacity rights.

13. The terminal code shall describe the tolerance levels applicable to each separate service and the treatment of any overrun.

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<sup>8</sup> Page 31 of the proposal for a Regulation amending Regulation 1775/2005, point (6) 1. (c).

### **4.3 Other requirements to assure proper TPA services:**

#### **4.3.1 Cooperation with interconnected system operators**

14. LSOs shall cooperate with interconnected system operators who aim to ensure interoperability between systems. Therefore, LSOs shall make reasonable endeavours to:
- a. offer services that are compatible with the use of the interconnected gas transportation systems and facilitate access through cooperation with the Transmission System Operator (TSO)<sup>9</sup>. The consistent definitions would include duration of access contracts, quality requirements, tolerance values, thermal year, and any other needed for the efficient operation and for the maintenance of the system integrity;
  - b. render operational procedures compatible with those of interconnected TSOs;
  - c. ensure, in coordination with TSOs, well-matched timing of the procedures for capacity subscription in the LNG facility and in the transmission system. Users of released standard bundled LNG services at short notice should obtain compatible responses concerning their access to the downstream transport systems;
  - d. ensure consistency between relevant LNG facility's arrangements and the balancing requirements of the interconnected transmission system; and
  - e. cooperate with the interconnected TSO to ensure that the nominations related to send-out of the LNG facility would not need to be repeated in the downstream transmission network.

#### **4.3.2 Maintenance and disruptions**

15. LSOs shall cooperate with interconnected system operators in coordination with the maintenance of their respective facilities in order to minimise any disruption of services to system users and in order to ensure equal benefits with respect to security of supply.
16. The LSO shall publish at least once a year for one year or more by a predetermined deadline all planned maintenance periods that might affect terminal users' rights and corresponding operational information with adequate advanced notice. This shall include publishing on a prompt and non-discriminatory basis any changes to planned maintenance periods and notification of unplanned maintenance, as soon as that information becomes available to the LSO. During the maintenance period, the LSO shall publish regularly updated information on the details of and expected duration and effect of the maintenance.
17. The LSO shall maintain and make available upon request, to the relevant national regulatory authority and/or to those affected by any disruption, information concerning the maintenance and disruptions that have occurred.

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<sup>9</sup> Page 30 of the proposal for a Regulation amending Regulation 1775/2005, point (6) 1. (b).

18. Should difficulties in meeting contractual delivery obligations arise due to system integrity reasons, LSOs should notify terminal users and seek a non-discriminatory solution without delay.

#### 4.3.3 Confidentiality and impartiality

19. LSOs should take steps to put in place appropriate NRA approved arrangements ensuring that:
- a. confidential information remains confidential; and
  - b. no commercially sensitive information, available to the LSO, concerning its business shall be passed to other parts of any affiliate of the company in advance of being provided to all market participants; staff working for any affiliate business (e.g. supply) must not have access to information which could be commercially advantageous, such as details on terminal users, and is not made available to all market parties. Where the LSO is part of a vertically integrated undertaking, it shall establish a compliance programme, which sets out measures taken to ensure that discriminatory conduct is excluded, and it should ensure that observance of it is adequately monitored. The programme shall set out the specific obligations of employees to meet this objective. An annual report, setting out the measures taken, shall be submitted by the person or body responsible for monitoring the compliance programme to the NRA and this shall be published.
20. The code of conduct established to guarantee non-discrimination and confidentiality shall, at the very least:
- a. include procedures that the LSOs employees must follow in their contacts with terminal users, either actual or potential; in particular, how to deal with the questions and files of actual or potential users;
  - b. ensure organisational independence of the Compliance Officer with respect to functions other than LSO, and with respect to the shareholders; the Compliance Officer may not participate in company structures of an integrated natural gas undertaking or be responsible, either directly or indirectly, for the day-to-day operation of the production, distribution and supply of natural gas; appropriate measures must be taken to ensure that the professional interests of the Compliance Officer are taken into account in a manner that ensures he is capable of acting independently;
  - c. include procedures to follow in cases where infringement of the compliance monitoring programme, whether intentional or unintentional, is detected (including notifications and possible indemnities to interested parties); and
  - d. include an obligation to report any breach of the code of conduct to regulatory authorities..
21. If supply and LNG activity are part of an integrated company, regardless of the internal structure of the company, it shall be incumbent upon the companies concerned to prove an effective establishment of firewalls between the LSO and the natural gas supply branch of the vertically integrated company, at the request of the NRA,.

Cost effective solutions should be implemented to ensure that the LSO and the supply business are not located in the same place. The LSO and the supply business should be located in separate buildings, provided such a measure is proportionate.

#### 4.3.4 Other operational requirements

22. The LSOs will have in place and publicise scheduling procedures for cargoes unloading. These should include at least:
- a. the contractually binding notice periods for using the services (scheduling program, (re)nominations); and
  - b. the priority rules in case of conflicting nominations by capacity holders.

LSOs will reasonably endeavour to cooperate with each other when putting in place their scheduling procedures to facilitate capacity trading and interoperability between European terminals, in order to make them appropriately compatible. They will take into account specificities of each terminal and market.

23. The LSO has the duty to send-out gas that meets the quality requirements set in the terminal code, and that is compatible with the requirements on the downstream system. It checks that the quality of the LNG off-loaded meets the requirements of the LNG facility. If consultations with users show that there is a need for it and that shippers are willing to pay for the services, the LSO should endeavour to accept off-spec gas, making sure that the rights of the other terminal users are safe, and that any additional costs arising from this acceptance are targeted to the originator.
24. In order to guarantee a non-discriminatory procedure for ship access to LNG facilities, the Terminal Code shall:
- a. establish the ship approval procedures on the basis of professional recommendations;
  - b. provide a detailed description of the conditions for docking and unloading;
  - c. establish a standard of service to define if a vetted ship is compatible with the LNG facility;
  - d. ensure the LSO actively pursues agreements with other LSOs in order to exempt a ship from certain vetting procedures when it is already accepted by another LSO; and
  - e. establish clearly the liabilities in case of incidents; the responsibilities must be balanced and reciprocal.
25. The LSO shall describe the applicable rules with regard to both contractual and extra-contractual liability, in such a manner that the liabilities of the LSO and the terminal user are well balanced, and reciprocal where relevant. These rules shall consider with sufficient detail the following issues: direct and indirect damages, corporal and material damages, liability caps, force majeure, consequences of wrong gas quality, etc.

## 5 Capacity allocation and Congestion Management

### 5.1 Capacity Calculation

26. The calculation methodology of available capacity should be transparent, shall be published on the LSO's website, shall be approved by the NRA and shall consider separately each service, at least the services mentioned in § 9b herein.
27. In calculating the available capacities, the maximum LNG facility capacity shall be made available to the market participants, taking into account system integrity and operation<sup>10</sup>, security of supply standards and the constraints imposed by the downstream network. The calculation of regasification capacity shall take into account the need for back-up units during the planned maintenance or a breakdown.

### 5.2 Principles underlying Capacity Allocation Mechanisms and Congestion Management procedures

28. Capacity allocation mechanisms and congestion management procedures shall facilitate the development of competition and liquid trading of capacity, and shall be compatible with the functioning of the wider market including spot markets and trading hubs, while being flexible and capable of adapting to evolving market circumstances<sup>11</sup>, subject to the market consultation (referred in § 10a herein) and NRA approval.
29. These mechanisms and procedures shall neither hamper the entry of new market participants nor create undue barriers to market entry. They shall not prevent market participants, including new market entrants and companies with a small market share, from competing effectively. Neither shall they impose thresholds on the amount of booked capacity, or long durations for the service contracts, unless these requirements are approved by the NRA.
30. These mechanisms and procedures shall provide appropriate signals for efficient and maximum use of capacity to foster investment in new infrastructure<sup>12</sup>.
31. Non discriminatory, transparent, market-based solutions shall be applied, to allocate any primary or secondary capacity. Alternative solutions such as pro-rata mechanisms or 'first-committed-first-served' may be considered if they ensure equivalence in terms of non-discriminatory and competitive access.
32. In order to maximise the use of the LNG facility, according to §9b herein, the LSO might allocate the standard bundled LNG services with a priority upon not bundled services.

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<sup>10</sup> Page 32 of the proposal for a Regulation amending Regulation 1775/2005, point (8) 1.

<sup>11</sup> Page 32 of the proposal for a Regulation amending Regulation 1775/2005, point (8) 2. (b).

<sup>12</sup> Page 32 of the proposal for a Regulation amending Regulation 1775/2005, point (8) 2. (a).

33. Priority rights may be granted to the downstream TSO for system integrity reasons only, subject to NRA approval.
34. If the LSO denies a capacity, which was marked as available, or if it grants more capacity to a terminal user than what appeared to be available, it shall duly motivate his decision to the NRA.
35. If the LSO denies a firm capacity because it exceeds the published available firm capacity, this can be considered as a duly substantiation of refusal. This requires that the regulator has approved the calculation method of the published available capacities, and that congestion management rules have been applied. The terminal user retains the possibility of appeal to the NRA on any decision of the LSO.

### **5.3 Congestion Management**

36. The procedures established by the LSO to make available unused capacity will never prevent, but instead encourage the holder of capacity to offer his unused capacity on the secondary market at a reasonable price. These procedures shall be described in the terminal code, after approval by the NRA.
37. Whenever the initial holder of a capacity is considered no more able to use it, the LSO shall offer the corresponding capacity to the market as firm capacity.

#### **5.3.1 Reallocation of unused capacity**

38. At least in the event that no short term capacity is available on the primary market and that contracted capacity goes unused, this capacity will be made available on the primary market on a short term basis:
  - a. For a particular unloading window to be considered unused because the holder of the capacity has not confirmed its effective use according to article 2.4 of the Regulation, the notice period (as referred to in § 22 herein) must be long enough to allow for another shipper to organise a shipment and short enough to allow capacity holder to determine which capacity it is not using. Together with the scheduling procedures, it must be submitted to consultation according to § 10a herein. The notice period shall be defined by the NRA based on the opinion of existing capacity holders and other market participants in the public consultation.
  - b. When a particular standard bundled LNG service is considered unused, it will be offered as firm to the market. Once it is no longer possible to buy and nominate an unused standard bundled LNG service, its components can be offered separately as firm services.

#### **5.3.2 Release of systematically underutilised capacity**

39. In the event of systematic underutilisation of capacity, if the NRA considers it appropriate and taking into account global market conditions, the following mechanism applies:
  - a. The holder of capacity can lose its capacity rights, partially or completely, without prejudice of other requisites established by the NRA, for a given period or for the

remaining term, when three circumstances converge:

- systematic underutilisation of (part of) the allocated capacity;
  - contractual congestion on the LNG facility; and
  - the capacity owner has not sold or offered in due time and at a reasonable price its unused capacity and is unable to justify satisfactorily its behaviour.
- b. the procedure describes the respective roles of the LSO, the NRA or any other authority in taking the decision to withdraw capacity; the way the terminal user concerned are consulted, the appeal procedures and the criteria employed to identify systematic underutilisation of capacity;
- c. any method applied to re-allocate unused capacity will be transparent and non-discriminatory, according to the principles set out under section 5.2;
- d. once the capacity is transferred to another user, the initial holder, which is no longer entitled to nominate, must no longer pay for the corresponding capacity, without prejudice for possible fees related to the release mechanism itself.

## 6 Transparency Requirements

40. LSOs shall always disclose the information required in a meaningful, quantifiably clear and easily accessible way and on a non-discriminatory basis. It should be presented in a clear and consistent format, on a standardised, readily accessible and user-friendly platform that is updated regularly and shall contain the definition of key terms. It shall be disclosed at least in English<sup>13</sup>.
41. The following operational information shall be published by the LSO in a user-friendly standardised manner, for a given LNG facility, in energy units or/and volume units, according to interoperability criteria:
- a. A terminal code describing all applicable rules and procedures, in particular the provisions required by the present GGPLNG; this includes at least: the main standard conditions for each service outlining the rights and responsibilities of the LSO and every terminal user, capacity allocation mechanisms, congestion management and re-utilisation provisions, auction terms where applicable and rules applicable for capacity trade on the secondary market, standard procedures for measuring LNG volumes consigned at the LNG facility and gas redelivered to the network, the ship approval (according to § 24 herein), and gas quality requirements.
  - b. For the services provided, contracted and available LNG facility capacity (firm and interruptible when applicable)<sup>14</sup>. This information must be provided on a numerical basis on a regular and rolling basis, separately for the different services referred to in § 9 herein. Also they shall make public the amount of gas in storage, inflows and outflows. The information shall be updated at least every day<sup>15</sup>.
  - c. The evolution of the contracted capacity, over a period until the expiry of the last contract; this information should take into account the expiry date of all contracts and be updated each time a service of more than one month duration is contracted.
  - d. Short-term available capacity and/or spot services<sup>16</sup>, which should be updated with required periodicity.
  - e. Historical maximum and minimum monthly capacity utilisation rates and annual average flows at all relevant points for the past three years on a rolling basis, up to the immediately preceding month.
  - f. Appropriate instruments to make bookings on short-term basis.
  - g. Maps indicating the location of its LNG facility, a description of its infrastructures and the connecting points of the LNG facility with downstream infrastructure.

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<sup>13</sup> Page 33 of the proposal for a Regulation amending Regulation 1775/2005, point (10) 3.

<sup>14</sup> Page 33 of the proposal for a Regulation amending Regulation 1775/2005, point (10) 2.

<sup>15</sup> Page 33 of the proposal for a Regulation amending Regulation 1775/2005, point (10) 4.

<sup>16</sup> This was previously stated in the Guidelines on calculation methodologies and transparency requirements with regard to available capacities of gas transmission, LNG and storage facilities, which were approved in the conclusions of the 5th Madrid Forum on February 2002.



42. The following commercial terms should be published by the LSO on the Internet:
- a. Tariffs and tariff methodologies for each service offered shall be published ex ante; the tariff methodology specifies the overall regulatory involvement in tariff setting and includes, subject to the NRA's decision, inter alia, the definition of the regulatory asset base, the asset valuation, the depreciation principles applied, the methodology followed to calculate the rate of return and current value, the incentive schemes, and the indexation of tariffs or principles for tariff variations;
  - b. The rules and the charges applicable to penalties from terminal users and compensation payments from the LSO to terminal users, if applicable;
  - c. User-friendly instruments for calculating charges for a specific service (e.g. a tariff calculator); and
  - d. Standard service contracts and other relevant documents.
43. Terminal users shall be advised about the type of circumstances that could affect the availability of contracted capacity. The potential risks that could affect the level of firmness in firm capacity rights (e.g. unforeseen demand during maintenance periods, late arrival of cargo due to force majeure events, etc) shall be identified and made public for the users. The determinants of interruption of interruptible services must also be described.
44. Non-confidential information must be provided promptly and on the same time scale to all users and on a non discriminatory basis.
45. The terminal users shall not be charged for information requests and transactions associated with their contracts according to standard rules and procedures.

## 7 Trading of capacity rights

46. The LSO shall treat equally the capacity acquired on the secondary market (incl. Over-The-Counter) and the capacity already held by the terminal user, as long as it is compatible with the kind of services available on the primary market.
47. Once there is a market demand, LSOs shall provide cost-reflective services (such as an electronic platform or bulletin board) to facilitate:
- a. secondary capacity trading and associated transfer of capacity rights between the terminal users; and
  - b. selling or swapping of LNG in storage among terminal users.

## 8 Responding to this public consultation

EREG is in a process of drafting Guidelines for Good TPA Practice for LNG System Operators (GGPLNG). As usual, ERGEG has organised a formal public consultation process based on a version of GGPLNG agreed by ERGEG for this purpose.

EREG has prepared a questionnaire which examines in more detail some key aspects of the GGPLNG. The questionnaire picks up some questions proposed by the aforementioned agents, as well as including the questions presented in the July meetings, with the aim to collect the opinion of every interested party.

According to Regulation 1775/2005, and considering the EC proposal for amending it, the questionnaire is divided in six parts:

- General questions regarding GGPLNG scope, implementation efforts etc.
- Tariffs for the access to the system;
- TPA services;
- Capacity allocation and congestion management;
- Transparency requirements; and
- Trading of capacity rights.

Answers should be received by **23 January 2008** and should be sent by email to [GGPLNG@ergereg.org](mailto:GGPLNG@ergereg.org)

Any question to the document or the questionnaire should in the first instance be directed to:

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Tel: +32 2 788 73 30  
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EREG considers important the input from consultation respondents on the following questions. This doesn't imply that respondents have to limit their comments to these issues. Additional comments to GGPLNG are welcome.

### **General questions**

- I. The GGPLNG aim is to boost effective, appropriately homogeneous and non-discriminatory, third party access to European LNG terminals without being detrimental to new investments. How could TPA/harmonisation and investment be conciliated?
- II. The GGPLNG aims at facilitating harmonisation of services, procedures, conditions... in order to foster interoperability and facilitate access to regulated LNG facilities. To what extent is harmonisation of regulated access procedures convenient/possible? Which areas should be harmonised (i.e. transparency, network code procedures, balancing rules etc.)? Is the current degree of detail and prescriptiveness of the GGPLNG considered adequate? Is the need for common EU-wide requirements adequately balanced against the need for flexible rules?
- III. Considering the voluntary character of the GGPLNG it would be interesting to know what transitional effects you think the GGPLNG implementation could cause, and what could the implementation cost be in your particular case. Are you going to get benefits (commercial, decrease of management cost etc.) with the GGPLNG application?
- IV. The GGPLNG do not apply to terminals exempted under Article 22 of Directive 2003/55/EC. In your view, could there be any value for regulators to use some recommendations in the GGPLNG as an input when adopting individual exemption decisions (for example, as approval requirements when granting a conditional exemption). If yes, please explain why and with regard to which aspects of the GGPLNG (e.g., services definition, transparency obligations etc.)?

### **Tariffs for access to the system**

#### §2.c herein

- V. The GGPLNG establish that tariff structure should be reviewed on a regular basis. Would the GGPLNG fix a minimum and/or maximum frequency for such a review? Which frequency(ies) should be the appropriate?

## TPA services

### §9 herein

- VI. The GGPLNG assume that there may be benefits for the liquidity of the capacity market and for the system efficiency in offering not bundled and interruptible services in addition to bundled and firm services<sup>17</sup>. Do market players agree with this statement? What could be your interest in offering/contracting not bundled services and/or interruptible capacity? What type of services should be offered as no-bundled? What type of services should be offered as interruptible? Should the GGPLNG be more/less prescriptive on these issues?
- VII. The GGPLNG recommend that standard bundled services are defined after market consultation, especially concerning the flexibility included. In line with that, they emphasise the importance of taking into account the LNG facility's technical constraints. Do you agree with this approach? Would a more prescriptive approach regarding the parameters for the definition of standard bundled services and their flexibility be feasible and/or more appropriate?
- VIII. According to the proposed GGPLNG, the LSO shall offer on the primary market long-term and short-term services at LNG facilities. Do you consider, from a TPA perspective, that any further guidance can/should be given with regard to a balance between long and short term services?

### §10 to §13 herein

- IX. Requests have been made during the July pre-consultation with stakeholders for specific standardised regasification contracts (e.g. front month contract) that aim to facilitate the trading of the regasified LNG on natural gas markets. What type of standardised services could be offered by the LSOs? To what extent would these services be compatible with technical constraints (e.g. available storage capacity), the efficient operation of each terminal and innovation in the offering of terminal services? How prescriptive should the GGPLNG be about standardised contracts?
- X. Considering that harmonised network codes should take into account specificities of each terminal, which issues could be common and under which conditions?

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<sup>17</sup> As 'regasification/send-out' is closely linked to the transmission business, it seems easy to conceive an interruptible regasification service. This means that a terminal user (with LNG in storage) could see a part of its regasification capacity interrupted/reduced, e.g. because the TSO needs to use this send-out capacity for operational purposes. Some LSOs calculate the available regasification capacity taking into account an N-1 principle: the total firm capacity corresponding to N-1 vaporizers working. It could seem logical to offer the capacity of vaporizer N on an interruptible basis.

An 'interruptible bundled capacity' could mean that the nomination to use this bundled service could be rejected, e.g. because the bundled service was offered under a 'use-it-or-lose-it' mechanism, while the initial capacity holder keeps the right to renominate his slot. This would seem to reduce the economic value of the slot. Finally, interruptible LNG storage is comparable with interruptible underground storage for natural gas: this concept is possible but it seems to be rarely applied.

§11 herein

- XI. Electronic communication tools seem to be the most suitable means for the LSOs to exchange information with the terminal users. What type of platform could be needed? What services should be available on it (e.g. secondary market, nominations, etc.)? Should a simplified system based, for example, on fax transmission be envisaged in certain cases and, if so, when?
- XII. Even though several platforms already exist and software could be copied to a certain extent, the development of electronic communication tools represents a certain cost. Do you think the cost/benefit ratio would be acceptable?

§ 22 herein

- XIII. The GGPLNG consider the cooperation between LSOs when putting in place compatible scheduling procedures in order to facilitate capacity trading and interoperability between European terminals. Do you think that such a harmonisation of scheduling procedures is desirable? Would it be necessary and proportionate to introduce some minimum harmonisation of these procedures within the GGPLNG to facilitate capacity trading and interoperability between European terminals? What requirements can be envisaged?

**Capacity allocation and congestion management**§ 31 to § 37 herein

- XIV. The GGPLNG propose some concrete solutions in order to implement the very general principles laid down in Regulation 1775/2005 (Articles 5.3. and 5.4). Comments on these issues would be most welcome:
- Non discriminatory allocation rules for primary and secondary capacity are necessary to promote competition. The GGPLNG propose market-based solutions and other alternative mechanism as pro-rata or first-come-first-serve procedures. Should a reference to specific subscription procedures be included? Is there any other procedure that the GGPLNG should take into account?
  - Regarding congestion management, is the development of a secondary capacity market sufficient to optimise the utilisation of the terminal capacity?; and
  - Should the GGPLNG be more or less prescriptive regarding procedures to manage congestion in the terminals?
- XV. Reference is made to capacity that the holder is no longer able to use. An obvious example is the case of (unbundled) regasification capacity owned by a shipper who has no more gas in storage. What are the other cases where capacity could be categorised as no longer usable? Who must decide when a capacity holder is considered as no longer able to use the capacity?
- XVI. Regarding the allocation of capacity, the GGPLNG stipulate that the LSO might allocate the standard bundled LNG services with a priority upon not bundled services in order to maximise the use of the LNG facility. In your view, under what circumstances would it be appropriate to give such a priority to bundled services?

§ 38 and § 39 herein

- XVII. The GGPLNG tries to assure the optimum utilisation of the terminal and to avoid capacity hoarding by promoting capacity reallocations when appropriate. How can the balance be struck between the promotion of the secondary market of capacity and the protection of primary capacity holder's interests?
- XVIII. The GGPLNG distinguish between punctually unused capacity and systematically underutilised capacity:
- The definition of unused capacity refers to a deadline by which the capacity holder must nominate its use. This concept is defined in Regulation 1775/2005, art. 2.4. Do market players agree with the definition of unused capacity? Is a more or less detailed definition needed? What conditions/circumstances should be taken into account when assessing whether capacity is effectively used or not?
  - Is there a need to distinguish between punctually unused capacity and systematically underutilised capacity as states the current draft of the GGPLNG? Is the proposed split between reallocation of unused capacity and release of underutilised capacity a good approach?
  - Is it satisfactory to empower the NRA to evaluate if there has been systematic underutilisation of capacity or should the concept of 'systematic underutilisation' be described more accurately in the GGPLNG, by specifying the criteria to be used?
- XIX. Is it necessary to impose detailed congestion management mechanisms as proposed in these GGPLNG, or should the GGPLNG content themselves a set of general principles? Are the solutions proposed in the GGPLNG adaptable to the varying, present and future, situations?

§ 38 herein

- XX. Setting the right deadline or notice period is considered as a key factor for the congestion management procedures. Comments on this issue would be welcome.
- Should the GGPLNG include more or less detailed/prescriptive provisions on deadline/notice periods regarding unused capacity?
  - What circumstances should be taken into account by the LSO/NRA when determining/approving notice periods. Is there a single specific deadline/notice period appropriate for all solutions? If so, what could it be?
  - Is the NRA the most appropriate party to define the deadline or notice period? Otherwise, who should be responsible for setting the deadline/notice periods?

§ 39 herein

- XXI. The GGPLNG establish the principles to release underutilised capacity, setting some detailed circumstances where this may happen and assigning responsibilities to NRAs. Should the GGPLNG be more or less prescriptive on this issue? Do the circumstances set out in the GGPLNG cover all present and future circumstances where underutilised capacity should be released? Would a less constraint mechanism be preferable?

### **Transparency requirements**

#### § 41 herein

- XXII. The GGPLNG try to summarise the most important operational and commercial information to be published by the LSOs. What other types of information should the LSOs provide to the market to improve the transparency and the efficiency of the market?
- XXIII. In your view, are there other points regarding transparency that should be addressed in the GGPLNG?

### **Trading of capacity rights**

#### § 47 and §48

- XXIV. Opinions have been expressed that in some markets, organised trading of capacity rights might not be necessary, or that the benefits this trading provide to LNG terminal users could be reached by other means. Is an organised secondary capacity market in the terminal useless, useful or necessary? Should the GGPLNG recommend the creation of a secondary market for capacity or should this be left to each LSO or NRA's appraisal?
- XXV. Considering a need for a secondary capacity market in the terminal, what features would be needed for an efficient functioning of this market? Comments on this issue would be welcome, i.e.:
- How crucial is contracts' standardisation for the development of secondary market?
  - Should contracted capacity that has not been nominated be offered on the secondary market by the LSO if the capacity owner does not do it?;
  - What is your interest in the offer/demand of not bundled capacities on the secondary market (e.g., berthing capacity, storage capacity etc.)? Have you encountered obstacles regarding this that would justify developing more specific rules about the trading of not bundled LNG services in the GGPLNG?