

DRAFT GUIDELINES OF GOOD PRACTICE ON THIRD PARTY ACCESS FOR LNG SYSTEM OPERATORS (GGPLNG) – AN ERGEG PUBLIC CONSULTATION PAPER

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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/harmonization and investment be conciliated?**

The objectives of the TPA harmonization should be related with the establishment of similar regulatory frameworks in the different markets whilst respecting their specific characteristics.

NRA's have a crucial role in identifying the specific necessities of the market which they regulate in terms of new infra-structures such as terminals, but also storage or transport pipelines.

Thus, TPA rules can be similar in the various countries, in terms of conditions for market access and tariffs structures, but having different tariff levels, at least in the short to medium term, if this is necessary to promote new investments.

In fact, specific situations in each regional or national market may require specific rules on what concerns non-regulated terminal development, incentives to the usage by small operators, to promote market opening and competition, or interfacing with transmission grid operators and overall gas system management, to avoid or resolve grid and/or terminal congestions.

The development of new infra-structures, namely LNG terminals, under "Article 22" exemptions, as long as monitored by NRA's should therefore be considered as a valid contribution for market development.

II. The GGPLNG aims at facilitating harmonization of services, procedures, conditions... in order to foster interoperability and facilitate access to regulated LNG facilities. To what extent is harmonization of regulated access procedures convenient / possible? Which areas should be harmonized (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?

From the point of view of LNG facilities users, harmonization of regulated access procedures, when possible, is convenient and may promote the integration between the different regional markets since it simplifies and facilitates the access to different markets.

When possible, areas that should be harmonized could be the balancing rules, some network code procedures, such as contracting procedures and nominations rules, and schedules for publication of relevant information, including available capacity.

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 costs, etc.) with the GGPLNG application?

In the particular case of the Iberian Peninsula, strongly dependent on LNG supplies - 67% of total supplies in 2006 - currently there are two quite different realities:

- The Spanish market, where rules for access to LNG terminals are very tight and foresee the application of heavy penalties, forcing terminal users to incur in daily transactions in the secondary market;
- The Portuguese market where market opening started on 2007, only for power plants, and since January 2008 for major clients with consumptions higher than 1 million m3 per year.

Although access tariffs to the LNG terminal and general contractual access conditions have already been published there is still a large number of documents, namely the rules for the calculation of the terminal's capacity and respective allocation between users, that are still under a "consultation to the users" phase. Nevertheless, according to the major guidelines established in the regulation already published, there will be no firm capacity booking/contracting.

As a result, in the recent public consultation regarding the development of the Iberian Gas Market (MIBGAS) promoted by the two involved NRA's, a comment made by the generality of all relevant market agents, was the necessity of harmonization of access rules to the infra-structures, including LNG terminals.

In this sense, we think that the GGPLNG could be of good use, since they can be considered as a reference for the harmonization of access rules to LNG terminals in both countries.

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, explain why and with regard to which aspects of the GGPLNG (e.g., services definition, transparency obligations etc.)?

The exemption under Article 22 of Directive 2003/55/EC of the application of TPA rules to new infra-structures, namely LNG terminals, must already comply with a group of specifications established in that same Directive. Moreover, if it is true that TPA rules may be necessary for the opening of the markets and introduction of competition, it should not be neglected that the exemption mechanisms are also a way to encourage market stakeholders, who are not in a dominant position, to invest in the development of new infra-structures to boost that competition.

Thus, the use of some recommendations in the GGPLNG for the evaluation of exemption applications by the regulators may be positive, to ensure that all decisions are taken under a common set of guidelines, but should not result in the addition of complexity and of other vectors of evaluation to the ones already established in Directive 2003/55/EC.

Tariffs for access to the system:

Q V. The GGPLNG establish that tariff structure should be reviewed on a regular basis but also that the “frequency of this periodical review should strike a balance between the effective reflectivity of the costs and the market need for tariff stability”.

Moreover, we believe that tariff structure and respective revision depend on the characteristics of the specific natural gas market, namely, market size and maturity, degree of market opening, number of agents, incumbent’s market share and market’s dependency of LNG.

In this sense, we think that the GGPLNG should not fix a minimum and/or maximum frequency for tariffs structure review. Regarding the appropriate frequency for the revisions, regulatory periods of 3 to 4 years should be adequate to permit the balance between stability and effective cost integration.

One may also note that in regional systems heavily dependent on LNG for its supply, as it is the case in the Iberian Peninsula, with seven LNG terminals, tariffs may also be designed to create incentives to a more balanced repartition of imports between the several terminals, as to eliminate the effect of distance to major sources and congestion in terminals nearer to said major sources.

Finally, in our opinion all tariffs structure revision processes should be well-known, transparent, easy and predictable in order to achieve a regulatory stability and that all users undertake their business decisions under a coherent framework.

TPA services:

Q VI. As ERGEG proposed in the document, offering not bundled and interruptible services in addition to bundled and firm services may have benefits in terms of increasing the liquidity of the capacity market. Furthermore, this type of services can help facility users in their activity management.

In our opinion the objective should be to reach a balance between the services offered in an integrated and an unbundled way, increasing the flexibility available to users for the management of their activity and also improving the efficiency of the use of the facilities.

Q VII. The LNG facilities's technical constraints have to be taken into account when services are defined. Related with that, it is very important to establish a clear and adequate method to calculate the capacity of each facility and to insure that this information is available for all users.

Q VIII. Further guidance with regard to a balance between long and short term services at LNG facilities should be provided by NRA's according to the specific characteristics of the different markets (number of agents, number of facilities, surplus/deficit of capacity, etc).

For example, in the Spanish Gas System the TPA rules establish that facilities operators have to reserve a 25 per cent of the capacity for short term contracts (duration shorter than 2 years).

Q. IX. GGPLNG should set the necessity of establishment of standardised contracts whenever possible, without specifying the terms of the said contracts nor the services for which they should be available. These further specifications should be a responsibility of NRA's.

Q X. Issues that are not directly affected by the terminals specific characteristics, namely dates for capacity publication and booking, nomination rules, balancing mechanisms, etc.

Q XI. Referring to the electronic communication tools, we think, as the document also points out, that it would be the most suitable mean to exchange information. Currently, in the Spanish gas system there is a platform called SL-ATR which is used to exchange information between the LSO´s and the users. Agents who participate in this platform have a digital certificate to verify their identity.

Regarding the ways of communication, in our opinion, electronic communications should be the method of choice for exchanging information but contingency protocols for situations when that communication is not possible, establishing alternative ways to communicate (for example, e-mail) should also be established.

Q XII. In order to get an adequate framework for all agents to participate in the gas sector, and with the objective to get a competitive market it should be established a good, easy, clear and transparent communication system. Obviously, the cost factor has to be considered but always linked with the benefits derivate from the use of good communication tools. This system could be based in the platforms currently in place in the European gas market.

Q. XIII. Harmonisation of scheduling procedures between terminals is desirable once it simplifies the access to different infra-structures, promoting the integration between the various markets.

Capacity allocation and congestion management:

Q XIV. Referring to non discriminatory allocation rules for primary and secondary capacity, the solutions foreseen in the GGPLNG seem to be sufficiently broad.

As ERGEG mentions in the GGPLNG, there are different alternative mechanisms to allocate capacity. But in the process of deciding which of them is better in our opinion firstly the capacity of facilities should be allocated in consonance with the market share of the users, always ensuring capacity for new participants. If the capacity of a facility is only allocated using market based solutions, big agents could hoard all capacity, creating a discriminatory situation for small agents.

On the other hand, further specification may result in incompatibility with the specificities of the various regional markets. For example, in Portugal the framework legislation establishes that the take or pay contracts entered into by the incumbent prior to its publication (in 2006) should have access guaranteed to the LNG terminal in Sines.

Referring to congestion management, the development of a secondary capacity market may be complemented with the implementation of capacity auction schemes or the possibility of contracting interruptible capacity, to optimize the utilization of the terminals capacity.

The development of capacity auction schemes, already foreseen in the Portuguese legislation and regulation on market opening and organization, should nevertheless ensure that the congestion situations that lead to the auction are real and not a result of poor nominations/reservations and that the auction revenues are applied in the resolution of the congestion problems.

The GGPLNG should refer to all possible measures available to manage congestions.

Q XV. The decision on whether a capacity holder is considered as no longer able to use the capacity should belong to the “Technical System Manager” upon consultation with the specific capacity holder. Furthermore, it would be convenient that these cases are reported to the NRAs, once they are the supervision agents of the gas systems.

Q XVI. Circumstances under which it would be appropriate to give priority to the allocation of standard bundled LNG services could be, for instance, the case where the bundled services are designed to promote market opening and to facilitate the access of new/small operators to the LNG terminal

The bundled services, in markets strongly dependent on LNG imports or in markets where liberalization is just starting could be designed to provide newcomers with competitive ways to enter the market.

In other cases, if a system has deficit of capacity, it would be better to give priority to bundled services too because it would increase the efficiency of the system through the use of more services provider by the plants.

In spite of that, it is very important that this circumstance or possible priority should be known in advanced by participants, with enough time to take decisions with all information available and in a stable/predictable framework.

Q XVII. By ensuring that primary capacity holders who follow all the booking/nomination procedures and that have supply contracts that justify the maintenance of the contracted capacity, can keep it, releasing it to the market on a temporary basis as interruptible capacity whenever their supply contracts do not justify its use.

With the purpose of promoting the secondary market, in our point of view it would be necessary to give incentives to primary capacity holder's to participate in the secondary market.

Q XVIII. Article 2.4 of Regulation 1775/2005 defines "unused capacity" as "firm capacity which a network user has acquired under a transportation contract but which that user has not nominated by the deadline specified in the contract".

This definition is not compatible with the present natural gas markets reality, specially the ones where the weight of natural gas consumed by combined cycle power plants is very significant, like the cases of both the Portuguese and the Spanish markets.

In fact, the volatility of the combined cycle power plants production diagrams combined with the high consumptions they can reach, lead to necessity of contracting significant volumes in terms of capacity, that are used in an irregular basis.

Therefore, the decision on whether the capacity booked by a certain agent is unused or not, should be evaluated on a case by case basis.

Q XIX. Being guidelines, the general principles established in the document should be sufficient and should be complemented under the national specific set of regulations for the various markets.

Q XX. Referring to the provisions on deadline/notice periods regarding unused capacity, the rules established in the GGPLNG seem to be adequate, once they already foresee that more detailed provisions should be established by NRA's after consultation with market stakeholders.

NRA's should define the deadline or notice period after consultation with the various stakeholders.

Q XXI. In Order to reach an European single gas market, we considerer that a minimum level of harmonization is needed, setting guidance principles for the identification of unused capacity. In this way, the principles established in the GGPLNG for the release of underutilized capacity seem adequate and sufficient to be presented as general rules. Apart from that, and taking into account the specific characteristics of each national/regional market, more details (development of general principles) should be established by NRA's, but always with the objective of promoting competition and efficiency in the markets.

Transparency requirements:

Q XXII. The list of operational and commercial information foreseen by the GGPLNG seems adequate to the purpose of improving transparency and efficiency.

Q XXIII. Points on transparency already covered are sufficient for the purpose intended: to establish guidelines to be followed in the development of national specific access rules to LNG terminals.

Trading of capacity rights:

Q XXIV. More important than insuring the existence of and organized secondary market in LNG terminals is to guarantee that small agents are not forced to trade capacity in the secondary market to avoid the application of severe penalties by the LSOs and/or that the tariffs/penalties system implemented do not reinforce the incumbent's market power.

Q XXV. Regarding contract´ standardisation for the development of the secondary market, they would be important but not crucial. The Secondary market has to respond to the needs of the users or agents who participate in the market and depending on the characteristics of each market the solution should be able to be different.

In our opinion the secondary market is a very good instrument to increase efficiency of the system but in order to get that it is necessary to give incentives to the agents to participate in it and to get that this market gives the correct economic signals to all users.

Finally, about rules or regulation, it is good to establish a clear and good general framework to create the secondary market, but it would always be necessary to take into account the characteristics of each particular market and its users. It is important to avoid that specific rules limit the incentives to participate in these markets.