



GEODE Position Paper on ERGEG Public Consultation Paper of 11 December 2007

Draft Guidelines of Good Practice on Third Party Access for LNG System Operators

The European Regulatory Group for Electricity and Gas (ERGEG) has presented a Draft of Guidelines of Good Practice on Third Party Access for LNG System Operators (GGPLNG). GEODE welcomes the opportunity to contribute to the consultation.

I. Introduction

GEODE is strongly convinced that liquefied natural gas (LNG) will play an essential role in guaranteeing a secure and competitive internal gas market in the future. In some member states, LNG already contributes significantly to security of supply and competition. GEODE strongly believes that (further) steps need to be taken to ensure that all market players are enabled to benefit from the integration of LNG in the European energy markets. The access rules to LNG facilities decide whether or not companies are able to participate in LNG trade. The drafts GGPLNG are welcomed by GEODE as important contribution to make sure that LNG facilities are efficiently used and that access rules are truly objective and non-discriminatory.

II. ERGEG Consultation Questions

In the following, GEODE would like to comment on some of the issues and questions raised by ERGEG:

1) General questions

First of all, GEODE would like to draw ERGEG's attention to the fact that according to the provisions of the Gas Directive LNG terminals used for storage are not inevitable subject to regulated TPA (rTPA). Instead, member states may choose either a negotiated or a regulated access regime for this part of LNG terminals. In many cases, the distinction between parts of LNG terminals used for regasification (rTPA) and those solely used for the purpose of storage remains unclear. In countries where access to storage facilities is to be granted on contractual basis, the different legal frameworks might lead to controversies about the applicable access regime. GEODE considers it necessary to clarify the conditions under which LNG storage facilities are used for regasification and therefore subject to the requirements of rTPA.

Regardless of that, the draft GGPLNG generally covers all the relevant subjects in the context of access to LNG terminals. GEODE considers the draft guidelines neither over-detailed nor too prescriptive. On the other hand, market players as well as (national) regulatory authorities will benefit from (rather) prescriptive guidelines since the access rules remain to be developed/improved in many member states. On the other hand, the draft GGPLNG leave an adequate scope of attestation guaranteeing flexibility for LNG system operators (LSO) in the implementation of access rules.

As far as the potential benefits and costs of implementation of the GGPLNG are concerned, GEODE is not able to give precise information because none of the GEODE members operates such a facility. However, given the fact that the GGPLNG will lead to an increase of harmonisation in access rules and therefore to a decrease of management costs, operators of LNG facilities will certainly benefit from broad application of the guidelines.

Last not least, GEODE is convinced that the possibility to exempt new LNG terminals according to the principles of Article 22 of Directive 2003/55/EC is sufficient to guarantee that third party access does not discourage new investments. In this respect, GEODE believes that the GGPLNG do not provide a relevant input for the decision whether to exempt a particular project or not. This "If"-decision has to be made primarily according to the state of competition in the Member State. However, the GGPLNG can be of importance when it comes to the decision to which extent an exemption is granted. If the LSO is partially obliged to grant access to its facility, it might be allowed to implement different tariff systems for access or to offer different types of services compared to LNG facilities already in place. In this case, the GGPLNG might serve as a benchmark for regulatory decisions on the conditions of the individual exemption.

2) Tariffs for access to the system

GEODE underlines the importance of transparent and non-discriminatory tariffs for access to LNG facilities. Given the fact that according to Article 18 of Directive 2003/55/EC the tariffs, or the methodologies used to calculate them, applied by the LSO must be approved by the regulatory authorities, there is no particular need to establish guidelines on the regular review of tariff structure. When proposing a certain tariff (structure), the LSO will in most cases take into account the relevant market developments. Otherwise, the proposal is subject to revision by the national regulatory authority.

3) TPA services

As regards the types of TPA services, the GGPLNG shall make sure that LSO offer enough bundled services on a firm basis. In an emerging LNG market, the access to all services in the LNG production chain is a prerequisite for the entry of market players. The availability of other services, including interruptible capacity, is welcomed by GEODE, especially considering that those services might be requested more often once a well-functioning LNG market has been established. For example, market players might be interested in contracting LNG storage capacity when there is a lack of demand for regasified natural gas. Especially if the tariffs for LNG storage are lower than the tariffs for underground storage of natural gas, this not bundled service is an attractive option.¹ GEODE suggests that not bundled services shall be offered by LSO upon request. To ensure that long-term services do not act as a barrier to the use of the LNG terminal, the provision concerning long-term services should be drafted similar to § 9 lit. b. This is of particular importance when LNG services are acquired by an affiliated company.

GEODE also welcomes the guidelines concerning electronic communication (§ 11) and LSO cooperation (§ 22). The best way to facilitate and foster the usage of LNG facilities is the creation of a web-based trading platform allowing interested parties to get all relevant information (e.g. information on tariffs and types of services being offered, available capacities, etc.).

4) Capacity allocation and congestion management

In general, the guidelines on capacity allocation mechanisms and congestion management procedures are appropriate to promote competition and a maximum usage of LNG facilities. GEODE in particular welcomes § 29, expressing that capacity allocation mechanisms and procedures shall not prevent new market entrants and companies with a small market share from competing effectively with established and larger gas undertakings. With regard to

¹ It has to be noted that in those cases LNG storage facilities are used for storage purposes rather than regasification. Therefore, access to storage capacity might be granted on contractual basis in the sense of Art. 19 of Directive 2003/55/EC.

emerging nature of LNG markets in many Member States, LSO shall (not: might) allocate the standard bundled services with a priority upon not bundled services (see § 32). GEODE also welcomes that the GGPLNG promote to offer unused capacity on the secondary market and distinguish between unused and systematically underutilised capacity. However, the GGPLNG should explicitly define “systematic underutilisation of capacity”, i.e. under which circumstances capacity has to be considered as systematically underutilised. Alternatively, the term might be defined by the LSO provided that the definition is subject to approval of the relevant national regulatory authority which shall appropriately take into account the technical characteristics of the LNG facility.

5) Transparency requirements

GEODE shares the view that guidelines on transparency requirements are necessary for initializing competition. GEODE therefore strongly supports §§ 40 to 45. As conflicts between the principles of confidentiality and transparency might arise, GEODE would like to stress that LSOs must not use the sensibility of certain data as a general excuse for not meeting the transparency requirements. Regulatory supervision plays a key role in reacting to such arguments. Therefore, the relevant national regulatory authority should be given a clear mandate to examine if the denial of disclosure of information is conclusive and – consequently – justified.

GEODE welcomes that information on contracted and available LNG facility capacity shall be updated at least every day. GEODE also welcomes the obligation to publish maps indicating the location of the LNG facility and to describe its infrastructures and connection with downstream infrastructure.

6) Trading of capacity rights

GEODE would like to emphasize the importance of trading of capacity rights and considers secondary markets as a useful mean to guarantee maximum usage of a LNG facility. Therefore, guidelines on the creation as well as the organisation of secondary markets should be incorporated in the final GGPLNG. Furthermore, the operation of secondary markets should be simplified by introducing standardized contracts supervised by the relevant national regulatory authority.

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