



Gas LNG Europe

Brussels, 23 January 2008

Ref. no.: 08GLE022

GLE general comments on

Draft Guidelines for Good Third Party Access for LNG System Operators (GGPLNG) – An ERGEG Public Consultation Paper

Dear Sir/ Madam,

GLE welcomes the opportunity to respond to the draft GGPLNG and GLE members have developed both a general response in this letter with additional detailed comments (Ref. No.08GLE021) included against each consultation question laid out in the attachment. GLE notes that the general comments and the detailed comments together form the integral response of GLE on the ERGEG public consultation.

GLE General Response

Importance of LNG

LNG has an important place in European Energy Policy in terms of security of supply, supply diversification and enhancement of competition. In that broad context, GLE has already expressed its support to CEER/ERGEG initiatives exploring whether or not, or the extent to which, development of guidelines for access to LNG terminals at a European level is appropriate. The adoption by LNG terminals of some basic rules could result in a positive contribution to the development of effective competition and the internal gas market.

GLE also considers that the appropriateness of any regulatory measure should be assessed against the particular market environment and regulatory framework in which they are to be applied. GLE would like to remark that GGPLNG should take into account the technical characteristics of existing Terminals and the specific business models applied in order to avoid any detrimental situation or distortion of the market and technically inapplicable requirements.

Process Scope and Objectives

GLE is concerned that the process ERGEG is pursuing for the GGPLNG is undefined. Section 1 of ERGEG's consultation document states "*These Guidelines apply to LNG facilities insofar as they are subject to the requirements of the Regulation 1775/2005*". GLE points out that the current Regulation 1775 does not apply (at all) to LSOs and any GGPLNG could therefore only be voluntary; furthermore any GGPLNG introduced ahead of the proposed changes to Regulation must be fully consistent with, and not extend beyond, the proposed Regulation. GLE notes that ERGEG's public consultation on the GGPLNG has come some three months after the release of the 3rd Package including the proposed amended Regulation.

Finally the GGPLNG (as implied by its title) should be limited to guidelines for LSOs, but in several respects it appears the GGPLNG are being used as a vehicle to develop the powers of NRA's. This is inappropriate as the powers of NRA's are described in the Directive and changes to those powers may only be amended by legislation involving the appropriate due process.

GLE questions the value of introducing voluntary guidelines which are unlikely to be adopted whilst uncertainty remains on the scope of any amended Regulation. It is also not clear to what extent ERGEG has taken into account the proposals included in the 3rd Package. Throughout the consultation document, numerous references are made to the proposal for a Regulation amending Regulation 1775/2005, e.g. in footnotes 7, 8, 9, 10, 11, 12, 13, 14 and 15. However, the consultation document notes that:

“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 3rd package.”¹

Any GGPLNG produced on the strength of ERGEG's consultation must be seen to be taking into account the current form of Regulation applied in each Member State as well as the technical characteristics and specific business models of existing Terminals as there is no sense in producing a “common” document which for regulatory, contractual or technical reasons could not in fact be implemented by all. In GLE's view these features must if taken into account by ERGEG, necessarily limit the scope and objectives for the GGPLNG. Implementation by all will be best served through a document which is realistic, recognises the market forces already in play and enables parties, including NRA's in each relevant Member State, to be able to quickly agree the basis and schedule for implementation.

Most importantly perhaps, GLE believes that the TPA obligation cannot be specified (in terms of market products and services) beyond the most general of principles if it is to ensure common implementation whilst also permitting adaptation of products and services in an evolving LNG market. It is GLE's view currently that the amendment proposed to Regulation 1775/2005 would not produce the same level of market inflexibility as would result were the GGPLNG included in its current form.

Harmonisation: What Place in Regulatory Priorities for the Internal Market?

ERGEG gives the impression that it believes the requirements for TPA and harmonisation are inseparable (“TPA/harmonisation”). GLE sees the risk that over emphasis on harmonisation in European LNG could produce negative effects in the development of business models in the LNG sector not suitable to the market needs. LNG terminals are operating in a Global LNG Market where available regasification capacity increasingly exceeds that of LNG production capacity. Business models may vary considerably; in some LNG terminals compete with each other in others not. The services and market products that are offered must be allowed to evolve to meet the market needs.

If European LNG terminals appear “attractive” to LNG suppliers they are likely to be making a more significant contribution to the supply efficiency of the internal gas market. LSO's (in conjunction with existing capacity holders) will wish to ensure that TPA can operate so that available LNG supplies can be best matched to available capacity. This is the same as saying that the nature of products and services being offered to a competitive LNG supply market should not be so unduly constrained as to arbitrarily exclude any terminal destination as a choice for a potential LNG supplier.

Hence GLE believes that TPA should not be specified (harmonised) beyond the level of general principles in order to allow development of products and services by each operator and/or its primary capacity users. For instance GLE believes that each LSO should be able to

¹ Underline added.

offer a standard bundled firm service that fits his existing contractual, technical and regulatory position, whereas some may be able/want to offer unbundled and interruptible products.

GLE of course continues to support efforts to outline certain common operational area (including confidentiality, roles and responsibilities), definitions and procedures (including terminology used) – it is in this area where there may be benefits that LSO's can bring in linking upstream and downstream markets and improving efficiency of communication. GLE also supports the inclusion of certain transparency provisions in the GGPLNG.

Implications of More or Less Prescription

GLE believes that less prescription increases the chance for common implementation and increases the chance that the regulatory environment will be viewed by investors and other stakeholders as stable and rational. In GLE's view the key characteristics of an appropriate set of guidelines will include the following:

- They are already implemented or are capable of being implemented efficiently (in time and cost terms) by LSO's.
- They confirm a commonly agreed approach for efficient operation of facilities,
- They present no threat to existing contractual rights or business model.

Over-harmonisation would have the effect of differing implementation (scope, costs, timing) among GLE members depending on the business model, regulatory framework and technical characteristics of their facilities. The adoption of any guidelines, in our judgement, implies incremental costs for LSOs which would need to be recovered from terminal users, ultimately in some cases from the end consumer.

Application of GGPLNG to Exempt Terminal LSO's

GLE agrees that GGPLNG do not apply to LNG terminals exempted under Art. 22 of Directive 2003/55/EC. Regulatory authorities, at a European level, may only take the five criteria detailed under Article 22 of the Directive into account when granting an exemption.

If further clarification on the five criteria are to be developed, GLE will comment on their adequacy regardless their relationship with the GGPLNG, if any.