

## GUIDELINES FOR CREATING A NATURAL GAS SUPPLY AUTHORISATION REQUEST FILE

*« This document is a translation. In case of doubt, the Dutch or French version prevails. »*

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## 1 Have the provisions for supply authorisations come into effect?

1. Given:

- 1° Article 11 of the Law of 29 April 1999 on the organisation of the gas market and the fiscal status of electricity producers (hereinafter called “the Law of 29 April 1999”) which added articles 15/3 and 15/4 to the Law of 12 April 1965 on the transmission of gaseous and other products by pipelines (hereinafter called the “Gas Law”)
- 2° Article 2 of the Royal Decree of 21 September 2000 setting the effective date of certain provisions of the Law of 29 April 1999 on the organisation of the gas market and the fiscal status of electricity producers
- 3° The Royal Decree of 12 June 2001 on the general supply conditions of natural gas and the conditions for granting authorisations for the supply of natural gas (hereinafter called “the Royal Decree of 12 June 2001”) in execution of Article 15/4 of the Gas Law
- 4° Article 2 of the Royal Decree of 12 September 2001 setting the effective date of certain provisions of Articles 3, 9, 11, 12, 19, 20, 21, 27 and 28 of the Law of 29 April 1999 on the organisation of the gas market and the fiscal status of electricity producers
- 5° The modifications subsequently made to the Gas Law, notably by the Law of 1 June 2005 modifying the Law of 12 April 1965 on the transmission of gaseous and other products by pipelines

it must be concluded that the provisions requiring a supply authorisation have come into effect.

## 2 What does “supply” mean?

2. According to Article 1, 14° of the Gas Law:

“Supply of natural gas” means: the **sale**, including the resale, of natural gas and LNG to customers.”

“Customer” is defined as follows in Article 1, 22° of the Gas Law:

“Customer”: any end-customer, distribution company or supply company”.

These two definitions are complemented by the definition contained in Article 1, 15° of the Gas Law:

“Supply company”: any individual or company that supplies natural gas”.

### 3 What does “regular supply” mean?

3. Article 15/3 of the Gas Law stipulates that:

“The **regular** supply of natural gas to customers in Belgium is governed by the prior granting of an individual authorisation by the Minister unless carried out by a distribution company via its own distribution network.”

The definition in effect is from Article 1, 7° of the Royal Decree of 12 June 2001 is:

“Regular supply”: any supply provided for more than three months.

In addition, we also refer to a text fragment from the explanatory statement of the draft law on the modification of the Law of 12 April 1965 on the transmission of gaseous and other products by pipelines<sup>1</sup>. The third sentence of Article 11 states that:

“Of course, only regular supply activities and not individual supply operations require an authorisation”.

It should be noted in this respect that the Dutch word “geregelde” was replaced with the word “gebruikelijk” in Article 4 of the Law of 16 July 2001 (*Moniteur Belge*, 20 July 2001).

The phrase “regular supply” must therefore be understood as an activity which is carried out for a period of more than three months. This definition encompasses supply contracts which exceed three months and short-term supply agreements spread over a period of more than three months.

The CREG has decided on this interpretation to avoid deliberate fragmentation of supply over periods which are consistently less than three months. The CREG will not accept that supply companies attempt to negate their obligation to obtain a supply authorisation in this way.

### 4 Who is required to have a supply authorisation?

4. The scope of application of the Gas Law is specified in Article 2, Paragraph 2 of the Gas Law:

“The supply of natural gas is governed by the prescriptions of the present law if it is intended for distribution companies or for end-customers whose take-up of natural gas at each supply point is consistently at least one million m<sup>3</sup> per year.”

The CREG believes that this scope of application must be taken into account when interpreting Article 15/3 of the Gas Law which stipulates that:

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<sup>1</sup> Draft law modifying the Law of 12 April 1965 on the transmission of gaseous and other products by pipelines, *Doc. Parl. Chamber 1998-1999*, N° 2025/1, 14.

“The regular supply of natural gas to customers in Belgium is governed by the prior granting of an individual authorisation delivered by the Minister unless carried out by a distribution company via its own distribution network”.

The definitions in effect are taken from article 1 of the Gas Law:

12° “Gas distribution”: the activity, excluding supply, intended to provide gas via local pipeline networks to customers located within the territory of one or more specific municipalities

13° “Distribution company”: any individual or company distributing gas”

22° “Customer”: any end-customer, distribution company or supply company”

The CREG has already insisted in the past<sup>2</sup> on the fact that the scope of application intended by Article 2, Paragraph 2 of the Gas Law on the supply of natural gas is narrower than that of the supply authorisations of Article 15/3 of the Gas Law. The CREG notes, in addition, that no jurisprudence has yet been published about this contradiction.

As a result, the CREG will not reject any supply authorisation requests based on Article 2, Paragraph 2 of the Gas Law or on the basis of Article 15/3 of the Gas Law. In other words, the CREG will examine all requests to ensure that they meet the granting criteria listed in the Royal Decree of 12 June 2001 which must be met in order to obtain a supply authorisation.

The CREG will, however, not check if the suppliers of supply companies have a supply authorisation.

It is clear, however, that anyone wishing to sell natural gas on a regular basis (see point 3) to:

1° Supply one, or several, distribution companies established in Belgium, or

2° Supply one, or several, end-customers established in Belgium who consistently take-up at least one million m<sup>3</sup> of natural gas a year at each supply point

must hold an individual supply authorisation, with the exception of distribution companies supplying their own distribution networks.

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<sup>2</sup> Opinion C 2000/009-D of 6 July 2000 relating to the “draft Royal Decree relating to the general conditions for supply of natural gas and the conditions for the award of authorisations for natural gas supply,” Paragraph 6.

#### **4.1 COMMENT 1: TRADING AND THE SPOT MARKET**

5. “Natural gas trading” means the trading of natural gas without delivery to an end-customer. For example, this is the case of the Zeebrugge Hub where a number of buyers and sellers trade natural gas. According to the definitions of the Gas Law given above, these sales perfectly meet the definition of natural gas supply. However, this activity only requires a supply authorisation when a sale is made to an end-customer or to a distribution company established in Belgium which is active on the Hub on its own behalf.

Consequently, this means that a trader selling gas to an end-customer or to a distribution company on the hub does not need a supply authorisation if they can prove that the end-customer (or end-customer department), or the distribution company, will not, under any circumstances, use the gas purchased on the hub for its own consumption in Belgium.

#### **4.2 COMMENT 2: NOT EVERYONE CAN REQUEST A SUPPLY AUTHORISATION**

6. Article 4 of the Royal Decree of 12 June 2001 stipulates that the supply authorisation must be requested by an individual or company established in one of the Member States of the European Union. The CREG will, however, examine requests from individuals and companies established in a Member State of the European Economic Area (EEA) in line with the provision of Article 4 of the Royal Decree of 2 April 2003 on authorisations to supply electricity granted to intermediaries and on the rules of conduct applicable to them.

### **5 Must authorisation be requested separately for each supply operation?**

7. No. The holder of a supply authorisation is entitled to provide unlimited supplies.

As indicated in Article 12 of the Royal Decree of 12 June 2001, the supply authorisation is granted for five years. All individual supply operations carried out by a supply company during this period must be reported to the CREG. The annual activity report described in Article 20 of the Royal Decree of 12 June 2001 is an example of this. The CREG is entitled to request additional information at any time in application of Article 15/16 of the Gas Law.

## 6 Can a company in the process of being created request a supply authorisation?

8. Article 4 of the Royal Decree of 12 June 2001 on natural gas stipulates that:

“The supply authorisation must be requested by an individual or company legally established in a Member State of the European Union.”

Further on, however, Article 6, 1° of the same Royal Decree also provides the option of attaching to the request the draft statutes of the future company rather than the actual statutes.

From this it must be concluded that a company in the process of being created can introduce an authorisation supply request.

Can an existing company make a request in the name of a company being created?

There is nothing preventing this. In compliance with the Company Code<sup>3</sup>, the requestor will be held fully responsible for all activities carried out before the effective creation date of the company being established. The initial requestor will continue to have civil liability even if the company being formed is never in fact established.

However, for this type of request, the CREG will check if other conditions should be present on the supply authorisation so that definitive information (status, financial and management structure, technical expertise, etc.) is provided to the CREG at the time the new company is created.

## 7 To whom must the request be addressed and how many copies are required?

9. Article 15/14, Paragraph 2, second indent, 4° of the Gas Law as modified by Article 35, 1° of the above-mentioned Law of 1 June 2005 stipulates that, within the framework of its responsibilities, the CREG:

“Will provide an opinion to the Energy Administration on requests for the delivery of supply authorisations by virtue of Article 15/3 and will verify that the conditions of these authorisations are met”.

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<sup>3</sup> Article 60 of the Company Code stipulates that: “Unless there is an agreement to the contrary, anyone entering into a commitment, for any reason whatsoever, in the name of a company being formed before it has acquired legal status will be held personally and jointly responsible, unless the company files the document described in Article 68 within two years after the commitment was made and it assumes the commitment within two months of the above-mentioned filing. In the latter case, the commitment will be considered to have been entered into by the company from the start.”

According to the CREG, this modification implies that requests for natural gas supply authorisations must be addressed to the Energy Administration rather than to the CREG. The Royal Decree of 12 June 2001 has, however, not yet been modified in order to take into account Article 15/14, Paragraph 2, second indent, 4° of the Gas Law which has already come into effect. This may be a source of legal uncertainty about whether or not the Royal Decree of 12 June 2001 should be applied in its current state while waiting for it to be modified in light of Article 15/14, Paragraph 2, indent 4° of the Gas Law, as modified, or if it should be applied *mutatis mutandis* in order to already put into practice Article 15/14, Paragraph 2, second indent, 4° of the Gas Law. Given that neither the Minister nor the Energy Administration have indicated to the CREG in any way whatsoever their wish that requests for supply authorisations be addressed to the Energy Administration while waiting for modification of the Royal Decree of 12 June 2001, and given that it cannot be ascertained from the phrase “Opinion to the Energy Administration” that the CREG should no longer receive requests, the CREG believes that it is best to follow the procedure defined in the Royal Decree of 12 June 2001 while waiting for it to be modified.

10. Requests should be addressed to the CREG by registered letter with proof of receipt, and more precisely to:

CREG  
Attention Mr Andreas Tirez  
Director of Technical Market Operations  
Rue de l'Industrie 26-28  
1040 Brussels

Requests must be signed and dated by the requestor or their proxy. The proxy of the person(s) signing the request, that is, the documents attesting to the competence to sign of the signatories of the request, must be presented. The company's statutes, an excerpt of the *Moniteur Belge*, or a written proxy can be presented as proof.

11. The request must be presented by the requestor in five copies. If required, the CREG will request additional copies.

## 8 What must be included in the request?

12. The file contents are described in Article 6, in conjunction with Article 3 of the Royal Decree of 12 June 2001. The following is a reminder to which additional comments may be attached:

### 8.1 BASIC FILE CONTENTS

#### 8.1.1 Requestor identity

13. A supply authorisation can be requested by an individual or a company legally established in a Member State of the European Union.

## 8.1.2 Requestor address

14. This is the complete address of the requestor and, if applicable, of the location of operations in Belgium.

## 8.1.3 Company statutes

15. Company statutes when the requestor is an existing company or draft statutes when the requestor is a company in the process of being created. If the requestor is an existing company, the request file must contain an excerpt from the register of companies in which the requestor is registered and, if the company is located in Belgium, the company's registration number.

As indicated in Point 6, a company in the process of being created can make a request as long as its draft statutes are added to its file. It is desirable that the supply authorisation requests that definitive statutes be forwarded as soon as the new company is formed. If the new company information differs from that originally provided, a check will be carried out to determine whether revisions should be made or if the existing supply authorisations should be revoked in compliance with Article 24, Paragraph 2 of the Royal Decree of 12 June 2001.

## 8.2 PROOF THAT THE CRITERIA FOR GRANTING A SUPPLY AUTHORISATION HAVE BEEN MET

16. The requestor must always bear in mind that the information they include in their request file must enable the CREG to assess whether or not they will be able to meet their commitments and obligations.

A requestor who is already active as a supply company (in another country) can refer to these existing activities for this purpose. Requestors who do not yet have any activities as a supply company or requestors who are introducing a request in the name of a company being created must meet the same criteria. The latter must, therefore, mention the measures they intend to implement in order to meet the obligations that will come into effect as soon as they make their first delivery.

The following items are either examples of the requestor's technical information or of his company information that will enable the CREG to verify that the requestor meets the criteria listed in Article 3 of the Royal Decree of 12 June 2001:

1° The requestor must prove that they are adequately equipped to:

a) ensure that obligations related to the use of the transmission grid of a transport company are met;

### Comments:

Experience acquired in Belgium or in another country in using a transmission grid for either gas transmission or transit purposes is relevant to fulfilling these criteria. Information on contracts signed and the volumes transported will be useful as complementary information. Requestors who use the services of an experienced third party must provide the contractual framework in which these services are provided.

b) meet financial obligations towards natural gas suppliers, customers and the authorities;



## Comments:

At a minimum, the requestor must provide relevant balance sheets and annual statements for the prior three years or, if the request is being made in the name of a company being created, its financial plan, which must be filed with a notary. Requestors who have a third-party guarantee must provide the contractual framework in which the guarantee has been provided.

c) adhere to the code of good conduct;

## Comments:

In application of Article 15/5undecies, § 1er, juncto article 15/14, §2, second alinea, 1° and fourth alinea and article 15/4 juncto article 15/14, §2, third alinea of the law of 12 april 1965 with regard to gas transportation via pipelines (hereinafter, r “the Gas Law”), the Royal Decree of 23 December 2010 on good conduct in matters of access to natural gas transmission grids (hereinafter, “the code of good conduct”) was published in the *Moniteur Belge* of 5 January 2011. This code of good conduct mainly describes the relations between the transmission company and the network user. Most of the obligations it contains for network users are also an essential element of the contractual relations between them and the transmission company. Compliance with these obligations is the focus of the criterion found in Point 3 of these guidelines.

One provision of the code of good conduct is, however, not included in the field of relations between the transmission company and the network user. This is the obligation, described in Article 11 §2 of the code of good conduct, for requestors to reserve only as much and not more capacity as they will need to fulfil their delivery and supply contracts and the obligation to offer any temporary excess capacity or capacity it no longer needs to the secondary market. This obligation is intended to prevent contractual congestion in the network and control is implemented in compliance with Article 14, 15 and 16 of the code of good conduct.

To demonstrate that they have the means required to comply with the code of good conduct, the requestor can make reference to similar experience acquired in another country and/or make a good faith statement that they will be able to comply with the current code and any future modifications to it.

d) ensure that public service obligations are met.

## Comments:

With respect to public service obligations, the following should be taken into account when these instructions are updated: the Royal Decree of 23 October 2002 on public service obligations in the natural gas market (hereinafter, the Royal Decree of 23 October 2002) and the Royal Decree of 24 March 2003 setting the procedures for the federal contribution to finance certain public service obligations and costs tied to the regulation and supervision of the natural gas market (hereinafter, the Royal Decree of 24 March 2003) as modified by the Royal Decree of 8 July 2003<sup>4</sup> and the Royal Decree of 22 December 2003 setting the procedures for financing the real net cost of the application of maximum prices for the supply of natural gas to protected residential customers (hereinafter, the

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<sup>4</sup> Royal Decree of 8 July 2003 modifying the Royal Decree of 24 March 2003 creating a federal contribution to finance certain public service obligations and costs tied to the regulation and supervision of the natural gas market and Royal Decree of 23 October 2002 on public service obligations in the natural gas market (MB 6/08/2003).

Royal Decree of 22 December 2003). Current obligations are limited to the payment of a contribution in the form of a rate supplement which must be paid to a CREG account.

To demonstrate that they have means adequate to meet public service obligations, the requestor can refer to similar experience acquired in another country and/or make a good faith statement that they are able to meet current obligations and any future modifications to them.

2. In order to ensure that the supply of natural gas to the customers of the requestor of a supply authorisation and the use of the transmission grid of a transport company are carried out safely, reliably, effectively and reasonably, the requestor of the supply authorisation must also have:

a) sufficient and adequate technical means;

Comments:

The CREG will check in particular that the requestor has adequate IT and telecommunications systems to enable the exchange of all data needed by the transport company to transport natural gas effectively.

b) sufficient staff with work experience at a natural gas company;

Comments:

To verify that this criterion has been met, the CREG will expect to receive information on the total number of employees working for the requestor (current situation and future evolution) as well as on the number and the qualification of the employees that will carry out the services essential to a supply company, that is, for dispatching, accounting, invoicing and sales activities. If required, the requestor must provide all data needed to assess their experience.

c) A management structure and an administrative and accounting organisation which must be appropriate for the activities that will be carried out. For this purpose, the requestor must also have a department reachable at all times to ensure, among others, balance between the supply of natural gas at entry and supply points and compliance with natural gas specifications as a network user.

Comments:

The requestor must, at a minimum, provide an organisation chart of their organisation and of the services in question as well as the contact information of dispatchers reachable 24/24 (e-mail and telephone number). Models or drafts of invoices and various types of supply contracts written in compliance with the provisions of Article 17 of the Royal Decree of 12 June 2001 will provide additional proof that the requestor meets the criteria. Requestors who turn to third parties to ensure that service is available at all times, that there is balance between natural gas supplies at entry and supply points and compliance with natural gas specifications, must provide the organisational diagram and contractual framework in which these services are provided. Finally, the requestor must also indicate in which language dispatchers can communicate with the Belgian network manager, if required.

3. The requestor of a supply authorisation must have adequate natural gas capacity, transmission capacity, and maximum hourly flow capacity to ensure supply of natural gas to their customers in compliance with contracts signed and/or to be signed with their clients and to meet public service obligations.

Comments:

This last condition is not an issue for existing supply companies but is one for those which have not yet delivered or contracted for supplies. However, these requestors must also mention, at the time of their request, the source of their gas and will have to provide information on gas quantities and transport.

However, in order to demonstrate that they will be able to reserve sufficient transmission capacity and enough capacity at a maximum hourly flow rate to ensure supply, they must also check that there is transmission capacity remaining for additional or existing supply at the entry point at which they intend to enter the interconnected Belgian network. This can be done simply through the Belgian transport company without having to contract for a transport capacity reservation to do so. Proof of hub membership is sufficient if a gas hub is proposed as the supply point.

4. Requestors of an authorisation to supply natural gas to an ineligible distribution company and for the needs of the ineligible customers of the latter must have sufficient experience in this type of natural gas supply with associated public service obligations.

Comments:

The market has been fully liberalised since 1 January 2007. As a result, this last point is no longer applicable.

### **8.3 THE SITE THE REQUESTOR INTENDS TO SUPPLY AND THE RELATED TRANSPORT AUTHORISATION WHEN SUPPLY IS PROVIDED BY DIRECT GAS PIPELINE**

## 8.4 PROOF OF PAYMENT

17. Proof of payment for the file examination fee, which amounts to 1,500.00 euros. This fee will not be refunded if the CREG returns a negative opinion or if the request is rejected. The fee must be paid to:

1° the CREG on account number 679-0020271-95, rue de l'Industrie 26-38, 1040 Brussels;

2° Using international bank payment references:

La Poste Financière  
WTC – Tower II  
Chaussée d'Anvers 59  
B-1100 Brussels

IBAN BE76-6790-0202-7195  
BIC PCHQBEBB

International transfer fees are paid by the requestor so that exactly the exact sum of 1,500.00 euros is credited to the CREG account;

3° with the statement “request for supply authorisation from...” followed by the identity of the requestor of the supply authorisation.

The fee will not be refunded if the CREG returns a negative opinion or if the request is rejected.

## 9 How does the request procedure unfold

# — CREG —

