Dear Sirs,

Essent and ConocoPhillips, partners in the Eemshaven LNG regasification project, are pleased to respond jointly to the questions posed in the “Information and consultation document regarding LNG regulation and exemption” of February 2006, and not as separate companies. In order to ensure clear communication with our English speaking partner, we will answer the questions in the above-mentioned document in English.

2. The Netherlands’ Gas Market

2.3 Impact of LNG on the Dutch Gas Market

*Question 1*
*Deelt u bovenstaande analyse? Zo nee, op welke punten deelt u de analyse niet en waarom?*

*Do you agree with the above analysis? If not, which points do you disagree with and why?*

In broad outline we agree with your analysis of the impact that LNG may have on the Netherlands’ gas market. In particular we concur with your observations regarding the positive influence of LNG on security of supply and the liquidity of the TTF market, and the fact that the establishment of LNG terminals will lead to supply diversification and an
increase in Dutch importation capacity. The following comments are offered for your consideration.

We agree that an LNG regasification terminal, depending on its technical scope, and in particular the capacity of storage tanks and gas vaporisors, can create a certain amount of delivery flexibility and thereby contribute to the overall flexibility in the system. However, we point out that the primary drivers for developing a regasification terminal are likely to be the delivery of base load volumes of gas into the marketplace and hence flexibility from such terminal could be limited.

We expect that DTe will ensure that the Dutch TSO will comply with the recently agreed EASEE gas standards and provide for any necessary quality conversion capacity in order to deal with the additional amount of import gas.

We believe that the consultation document puts too much emphasis on the Netherlands as the geographic scope of the market, neglecting its European and even global dimensions. The Atlantic Basin LNG market is evolving and, at some point in time, a unified global price setting may be achieved. This will eventually cause the EU gas market to coalesce around a price that correlates with that in the US. As such the EU internal market could further integrate, leading to more interconnectedness and liquidity in the EU.

**Question 2**

*Naast mogelijke positieve invloeden, welke negatieve bijwerkingen van LNG ziet u, op zowel de mededinging als de leveringszekerheid?*

*Alongside possible positive influences, which negative side-effects of LNG both on competition and security of supply can you think of?*

In our view, provided that the parties that have capacity rights to the terminal do not have dominant market power in the gas market, the LNG terminal will be unambiguously good, both for competition and for security of supply.

**2.4 Possible Locations for the Construction of LNG Terminals**

**Question 3**

*Wat vindt u van de observatie dat er een beperkt aantal locaties is voor de bouw van LNG terminals?*

*What do you think of the observation that there is a limited number of locations for the construction of LNG terminals?*
In our view the observation that there is a limited number of locations for the construction of LNG terminals in the Netherlands must be put in the correct perspective.

First of all, we believe that by concentrating only on locations in the Netherlands, too little attention is paid to the European aspects of the gas market. Indeed, The Netherlands' gas infrastructure is very well connected with neighboring countries where other regasification terminals have been established (Zeebrugge, Belgium, Isle of Grain, UK) or are being planned (South Hook and Dragon, UK and Wilhelmshaven, Germany).

But even from a more limited perspective, the proposition that there are only 4 locations in the Netherlands that are suitable for the construction of an LNG terminal, is debatable. The reasons for the limited number of locations mentioned in the consultation document, such as busy shipping lanes, population proximity and channel depth also apply in varying degrees to locations that are currently being developed, which demonstrates that solutions to the problems that they may pose can be, and are being, found.

Finally, it would appear that (potential) throughput capacity is far more important than the number of locations. In this regard it is relevant to note that the four locations mentioned in the consultation document (paragraph 26) have the capability to import at least 56 bcm/a of LNG, which is slightly more than the Netherlands' average annual consumption of gas.

**Question 4**

*Wat vindt u van de observatie dat de totale import capaciteit van deze 4 locaties relatief groot is ten opzichte van het binnenlands gebruik?*

*What do you think of the observation that the total import capacity of these 4 locations is relatively large in relation to domestic gas use?*

In our view, the observation -again- concentrates too much on the Dutch dimensions of the gas market. This is not in line with the ambitions of the Netherlands’ government to ensure a central role for The Netherlands as (one of) Europe’s major gas trading hubs (see also: consultation document, paragraph 61).

The partners are of the opinion that North West Europe as a whole and the Netherlands in particular are not critically dependent on LNG and will not be so for a medium long period. This point was also made by the Energy Council in its report to the Minister of Economic
Affairs. Therefore the additional gas sources can only bring more liquidity to the market and will leave the Netherlands very well placed for additional gas supplies.

The amount of import capacity relative to domestic gas use is of minor importance if you take into consideration that the gas infrastructure of all EU Member States and beyond is interconnected and that this will further improve in the mid and long term due to strong support from EU authorities to increase cross border capacity and the development of regional trading hubs.

4. Foreign examples

Question 5
What do you think of the observation that the three above-mentioned criteria will be the determining factors for the regulatory regime?

Although we see that the three criteria set out in the consultation document can play a role in determining the nature and scope of the relevant regulatory regime, we have a number of comments in this regard.

First of all, we note that all three criteria have a European dimension that should be taken into account more explicitly.

Furthermore, we agree that a dependence on LNG may, at least theoretically, be a valid issue to consider when developing a regulatory regime. One can imagine that an isolated area with no domestic production or connection to gas grids, but with LNG regasification options, would place a high burden on its regulatory regime. In Europe, however, such areas have never existed. In any case The Netherlands, having secure surplus production and high interconnection with gas grids outside the Netherlands, is in our view well situated to apply a (much) lighter burden on such regime.

As regards the number of possible locations for constructing LNG terminals one could argue, with reference to the theoretical isolated area described above, that this is an important criterion to consider. We reiterate, however, that in this context the (potential) importation capacity would appear to be more important than the number of locations.

Finally we are of the opinion that the relationship between LNG and the transmission network(s) through which the regasified LNG will be transported has perhaps not received the attention it deserves in this consultation document.

5. Significance for the Regulation and the Exemption

5.1 The Meaning of the Unique Characteristics of the Netherlands

Question 6
What do you think of the reasoning that the limited number of locations for LNG terminals in the Netherlands leads to the necessity to regulate third party access?

As set out above, we believe that the alleged limited number of locations for LNG terminals in the Netherlands does not necessarily lead to a (strict) regulation of third party access to such terminals. In summary we take the position:
- that the consultation document under-estimates the capacity of the LNG terminals already envisaged;
- that the number of locations is perhaps less limited than is expressed in the document;
- that this reasoning disregards the European dimension of the gas market.

Question 7
What would you think if a uniform method of tariff calculation is not prescribed? Which kinds of tariff-calculation methods do you consider to be suitable for LNG terminals?

We see no need to prescribe a uniform method of tariff calculation. We agree with the description of the way the DTe and the Ministry of Economic Affairs (“MEA”) intend to apply article 13 of the Dutch Gas Act with regard to the method of tariff calculation as set out in the consultation document, paragraph 6.6 (Pricing).

5.2 The Meaning of the View of the Ministry of Economic Affairs

Question 8
What do you think of the conclusion that regulation needs to be set up such as to prevent capacity hoarding?

We agree with the conclusion that capacity hoarding must be prevented. A transparent UIOLI system can be instrumental in this regard. We believe that all capacity owners will be aligned on this issue, since - provided that they do not have dominant market power - it will not be in their interest to have unused capacity with a view to their return on investment. We are not in favor of a system of fines surrounding UIOLI mechanisms, if only because the details of the context within which these systems will function are, at present, unclear. Essent and ConocoPhillips would be in favor of continuing the dialogue about the development of a UIOLI system. In this regard we also wish to draw your attention to the regime evolving in the UK, where fines do not apply.

Question 9

What kind of information do you deem important for the stimulation of the gas market? What do you consider to be a reasonable publication period?

The kind of information that needs to be published to stimulate the gas market could include:
- information about terminal and operator, including contact details;
- technical information about the terminal (e.g. berth size, gas quality, discharge rates);
- available capacity;
- general UIOLI terms.

As regards the publication period, this will depend on what can reasonably be expected of the original users of the capacity. If a cargo of LNG is no longer expected (e.g. due to diversion of the cargo) this may entail that certain capacity will remain unused. Such an event may occur either long or shortly before the capacity was intended to be used depending –for instance- on the geographical proximity of the LNG supply source.

6. Proposed Regulatory Regime

6.2 General

Question 10
We agree with the principle that investors make the final decision regarding any extension of capacity. If the market indicates that there is a need for more capacity in an LNG terminal than planned, this might be a stimulus for further investments either in an existing installation or for an entire new installation (on the same or another location).

In the meantime the principle of third party access applies: under existing TPA regulation the operator of an installation is entitled to deny access if there is no capacity available.

When the demand for capacity exceeds the originally planned capacity –which may be the case in an open season– we understand that an investor has the option to either increase the capacity of the relevant LNG terminal or to allocate pro rata the capacity among the interested parties based on the individual demand of such parties. The partners are not convinced that the proposed mechanisms would prevent artificial over-booking. A capacity expansion based on artificial overbooking does not seem realistic, and a pro rata apportionment of capacity based on artificial over-booking would only seem to stimulate the over-booking as such and, in case of an LNG terminal, may not work out well. The allocated capacity may very well not suit the business needs of the interested party. A booking system based on firm commitments linked to a principle of first come first served or an auction based system may be more viable.

**Question 12**
What is your opinion on a maximum duration for long term contracts? If yes, what do you see as an acceptable duration and why?

We are of the opinion that a long term contract should be able to have a duration of (at least) 20 years. We further point out that there will very likely be an important if not crucial connection between the (long) term of capacity contracts and the financing terms and conditions that the partners will be able to receive from financial institutions in relation to their (major) investments.

Question 13

What do you think of the assumption that an LNG terminal will not be financed with special means and that a terminal has a break even period of approximately 15 years?

The partners cannot underwrite the starting point that an LNG terminal will not be financed with special means. In our view, the European Commission’s Trans European Networks policy, which also relates to LNG terminals, illustrates its support for this kind of financing. In case an LNG regaseification terminal is financed partly with for example government subsidies or via loans backed by government guarantees, the break-even period can be proportionally decreased.

The partners are of the opinion that the assumption that an LNG terminal will have a break even period of approximately 15 years is far too general to serve as the basis for regulatory measures or related policy. We note that none of the premises underlying this assumption have been set out in the consultation document. In general we point out that break-even calculations are based on many assumptions and depend on many factors which are not the same for each terminal in the Netherlands. Finally we note that some of the exemptions that have been granted in the UK and Italy for periods of 25 years are likely to have been granted in part because the relevant investments have break even periods of around 25 years.

In our view a key issue in financing an LNG terminal is that the risk associated with such financing must be acceptable both to the partners providing equity and the external parties involved in debt financing. An exemption period shorter than the financing period will leave a period of risk which will mean that the project is either not capable of being financed or
that the cost of financing increases substantially, potentially making the project uneconomic. In this regard we point out that DG TREN in its explanatory note regarding TPA exemptions states that "As a guideline it is considered that the exemption should not be significantly longer than the period during which the project is expected to ‘break even’".\(^2\) Unless the price of the terminal is socialized and hence paid through other regulated charges, there is no hope of any party accepting 15 years as a payback period. The risks involved would be such that there is a not immaterial chance that the terminal would never pay back.

### 6.4 Secondary Market

**Question 14**

*Wat vindt u van een systeem waarbij niet gebruikte capaciteit verplicht doorverhandeld moet worden? Aan welke eisen zou een dergelijk systeem moeten voldoen? Wat vindt u een redelijke periode voor het bevestigen van capaciteit?*

*What is your opinion on a system in which it is compulsory to sell unused capacity? Which demands should such a system meet? What, in your opinion, do you deem a reasonable period for confirming capacity?*

In general, we are positive towards a system in which it would be compulsory to sell unused capacity.

The partners want to make a distinction between secondary capacity and unused capacity which would fall under the use-it-or-lose-it (“UIOLI”) regulation. In case of secondary capacity that will work at a longer notice period, the owner is in control of the capacity and can foresee that it will not have a use for it. In case of UIOLI the owner envisaged using the capacity but ultimately could not; in this instance the terminal operator has the obligation to sell this capacity to the market. UIOLI capacity will be available on short notice within the usual nomination periods.

We are monitoring developments in the United Kingdom and are studying the Fluxys system at the moment. Again we emphasis that there is no experience with these systems and that the industry as well as the regulator are on the learning curve. We promote general discussion on how to develop a secondary market and UIOLI principles and in any case want to avoid a complex system which is not workable. We need a pragmatic system and we believe that counts for every terminal operator and potential capacity buyer. The

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\(^2\) DG TREN, "Exemptions from certain provisions of the third party access regime", 30 January 2004, p.7.
regulation must be designed on the markets wishes and comply with practical barriers and conditions.

**Question 15**

*Wat vindt u van de voorgestelde wijze waarop de secundaire markt vorm gegeven wordt?*

*What do you think of the proposed way in which the secondary market is being shaped?*

We kindly refer to our answer of question 14.

**Question 16**

*Kunt u zich vinden in de gedachte van een centrale secundaire markt, en waarom?*

*Do you agree with the idea of a centralized secondary market and why?*

The idea of a central secondary market is a good aspiration but we expect this to be a long term aspiration.

6.5 Short term Capacity

**Question 17**

*Wat vindt u van het voorstel dat een deel van de capaciteit gereserveerd dient te worden voor korte-termijncontracten Zo ja, wat vindt u een redelijk percentage? En bent u het eens dat korte termijn contracten worden gedefinieerd als contracten met een looptijd korter dan of gelijk aan één jaar?*

*What do you think of the proposal that a part of the capacity should be reserved for short term contracts? If you agree, what do you deem a reasonable percentage? And do you agree that short term contracts will be defined as contracts with a duration shorter than or equal to one year?*

Practice proves that investors have a strong preference for long term contracts which, from a finance perspective, give more certainty than short term contracts. Apart from that short term capacity could lead to a high risk premium calculation in the tariffs a terminal operator has to set.

6.6 Pricing

**Question 18**
Wat vindt u van de voorgestelde regulering, waarbij veilen een optie is voor de allocatie van korte termijn capaciteit?

What do you think of the proposed regulation, in which auctioning is an option for the allocation of short-term capacity?

We kindly refer to our answer of question 17.

6.7 Supply of Information

Question 19

Wat vindt u van de voorgestelde regelgeving ten aanzien van het publiek maken van informatie omtrent voorwaarden, tarieven, en capaciteitsplanning?

What do you think to the proposed rules regarding the publication of information regarding conditions, tariffs, and capacity planning?

We are of the opinion that the proposed rules fit well into the proposed regulatory regime and we take comfort from your comments on the way in which you intend to handle commercially sensitive information.

7. Proposal for Investments with Exemptions

Criterion A.

Question 20

Wat vindt u van het voorstel om criterium A op deze wijze te toetsen?

What do you think of the proposal to test criterion A in this manner?

We are of the opinion that the scope for assessing the competition element in this criterion should be Europe or at least North West Europe. The relevant market for the supply of gas via LNG cannot be restricted to the Netherlands, because countries are well connected and this will be improved in the following years.

The partners would welcome a clarification from the MEA and DTe on the relevant product markets. Do they consider all segments mentioned as separate products markets or not? How do LNG installations fit in, in those markets?

We question the sentence: “when evaluating the exemption on TPA what shall be looked at is which part of the capacity remains available for third parties”. In case a TPA exemption is requested for 100%, in principle, provided the exemption is granted, no capacity is available for third parties unless offered via the UIOLI regime. Nevertheless, the
introduction of a fully exempted LNG installation will in general be beneficial to competition.

We support the other analysis and requirements made by DTe and the Ministry to assess this competition criterion. With regard to security of supply (NB: “voorzieningszekerheid” and not “leveringszekerheid”), the partners agree with the MEA and the DTe that the European market as a whole should be observed.

Take or Pay contracts are common practice in the LNG market, just as “destination clauses”. These requirements are imposed by upstream suppliers that have a dominant position, especially with regard to the destination of their supplies.

**Criterion B.**

*Question 21*

*Wat vindt u van het voorstel om criterium B op deze wijze te toetsen?*  
*What do you think of the proposal to test criterion B in this manner?*

We note that the DTe and the MEA, in determining whether criterion B has been met, will examine the consequences an exemption may have for the price risk, the volume risk and the financing risk. We would, however, appreciate a clarification on what exactly DTe and the MEA mean by these terms.

**Criterion C.**

*Question 22*

*Wat vindt u van het voorstel om criterium C op deze wijze te toetsen?*  
*What do you think of the proposal to test criterion C in this manner?*

The partners feel that the way in which DTe and the MEA have phrased this criterion in the consultation document is not entirely correct. The Dutch Gas Act, in article 18h, states -in essence- that the owner of the LNG terminal infrastructure may not be the same person or legal entity as the manager of the gas grid to which the infrastructure will be connected. The type(s) of legal entities (“rechtsvorm”) and the relationship between the two entities in a specific corporate structure, if any, are mentioned in paragraph 102 of the consultation document but they are not relevant.

**Criterion D.**
Question 23

What do you think of the proposal to test criterion D in this manner?

The partners feel that the way in which DTe and the MEA have phrased this criterion in the consultation document is not entirely correct. The Dutch Gas Act, in article 18h, states -in essence- that tariffs must be charged to the users of the relevant infrastructure. The Gas Act does not state that these tariffs must relate to booked capacity as stated in the consultation document, paragraph 104.

We further point out that the consultation document erroneously mentions that article 13 of the Gas Act prescribes that the tariffs must, on an annual basis, be made available to the Board of the NMa for approval. What the Gas Act does state, in article 13, section 3, is that the method of tariff calculation must, on an annual basis, be made available to the Board of the NMa for approval.

Although it is understandable that DTe and/or the MEA may, in certain circumstances require information about the tariffs themselves and the way they are dealt with in long term contracts, we would suggest -in view of the commercially sensitive nature of these tariffs- that it should be sufficient to oblige LNG companies to submit these to DTe and/or the MEA upon request. We point out that the UK regulator Ofgem, has accepted an arrangement along these lines.

Criterion E.

Question 24

What do you think of the proposal to test criterion E in this manner?

For the sake of clarity, we draw your attention to the fact that criterion E relates to the exemption (and not the investment) not being detrimental to competition (as para. 106 of the consultation document suggests).

In paragraph 107 of the consultation document, the MEA and the DTe discuss a number of separate markets, while the Gas Act and the Gas Directive refer to the internal gas market as a whole. Even if separate markets may be identified, the final sentence of this paragraph ignores the observations of the MEA and the DTe in paragraph 89 that a small negative effect on one segment may be possible if it is negligible.
Yours sincerely,

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