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Direct Dial: 020 7901 7389  
Email: [steve.smith@ofgem.gov.uk](mailto:steve.smith@ofgem.gov.uk)

13 October 2004

**Consultation on an application by South Hook LNG Terminal Company Ltd (SHTCL) (owned by Qatar Petroleum and ExxonMobil) under section 19C of the Gas Act 1986 for an exemption from section 19D of the Gas Act 1986**

**Background**

The new Gas and Electricity Directives<sup>1</sup> introduce a regulated third party access (RTPA) regime for interconnectors and LNG import terminals. The Directives allow exemption from RTPA to be given by the relevant regulatory authorities, subject to veto by the European Commission. With respect to gas storage facilities and LNG facilities (including LNG import terminals), the new Gas Directive was transposed into GB law with the coming into force of the Gas (Third Party Access) Regulations 2004 on 26 August 2004 which amended the Gas Act 1986. Ofgem therefore now has formal powers to grant exemption from the RTPA requirements for LNG import terminals, as set out in sections 19C and 19D of the Gas Act 1986.

**DTI/Ofgem exemption policy**

In June 2003, the Department of Trade and Industry (DTI) and Ofgem issued a joint consultation document providing initial views concerning the regulation of LNG facilities and interconnectors.<sup>2</sup> In November 2003, the DTI and Ofgem issued final views in relation to the new Directives and the resulting regulatory regime.<sup>3</sup> By and large, the final views document confirmed, and clarified, the position set out in the initial views document.

At the time DTI/Ofgem issued initial views in relation to the new Directives and the resulting regulatory regime there were several potential projects that would be moving to financial close prior to either or both, the Directives coming into force (3 August 2003) and the requirements of the Directives becoming transposed into GB law (26 August 2004). Project developers requested early guidance as to whether they could expect their particular project to be exempt from RTPA. Ofgem indicated in the initial views document and confirmed in the final views

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<sup>1</sup> Directive 2003/55/EC of the European Parliament and of the Council concerning common rules for the internal market in electricity and repealing Directive 96/92/EC; and Directive 2003/54/EC of the European Parliament and of the Council concerning common rules for the internal market in natural gas and repealing Directive 98/30/EC.

<sup>2</sup> 'LNG facilities and interconnectors, EU legislation and regulatory regime, DTI/Ofgem initial views', June 2003.

<sup>3</sup> 'LNG facilities and interconnectors, EU legislation and regulatory regime, DTI/Ofgem final views,' November 2003.

document that while Ofgem would be prepared to give such guidance, any guidance would need to be informed by consultation on a case-by-case basis. Any such consultation would be on the basis of a draft application for exemption prepared by the relevant infrastructure developer. Ofgem indicated that while Ofgem would aim to ensure, as far as possible, that any potential guidance that was issued gave an indication as to the likely regulatory treatment of particular infrastructure, any such guidance issued would necessarily be constrained by the fact that the legislative framework within which exemptions were to be granted was not yet finalised. In these documents, Ofgem stated that once legislative authority was granted to Ofgem in respect of the licensing and exemption of interconnectors and LNG facilities, Ofgem would expect to undertake a formal consultation process in respect of formal applications it receives for exemption.

### **Draft applications seeking guidance**

Ofgem received draft applications for exemption in respect of three projects, including one concerning the proposed South Hook LNG import terminal. In each case Ofgem consulted and issued preliminary decision documents on the informal exemption applications and these documents can be found on Ofgem's website.<sup>4</sup> The table below sets out some relevant dates relating to the three projects for which informal exemption applications were made, as well as a fourth project for which a formal application has now been made.

<b>Project</b>	<b>Owners</b>	<b>Date of Ofgem preliminary views letter</b>	<b>Date of European Commission preliminary views letter</b>	<b>Date formal application received</b>
Balgzand Bacton pipeline	N.V. Nederlandse Gasunie, Ruhrgas AG and Fluxys N.V.	24/11/03	30/01/04 and 14/05/04	Not yet received
South Hook LNG import terminal	Qatar Petroleum and Exxon Mobil	10/02/04 (attached in Appendix 1)	31/03/04	22/09/04
Dragon LNG import terminal	Petroplus, BG and Petronas	23/06/04	17/09/04	Not yet received
Isle of Grain LNG import terminal	National Grid Transco plc	N/A	N/A	12/08/04

In the case of each of the three projects for which informal exemption applications were made, Ofgem expressed the view that the application for exemption would be likely to meet each of the exemption criteria set out in the relevant EU legislation. Ofgem's views were submitted to the European Commission who indicated general support for Ofgem's position.

### **South Hook LNG Terminal Company Ltd formal application for exemption**

On 22 September 2004, SHTCL submitted to Ofgem a formal application under section 19C(2) of the Gas Act 1986 for exemption from RTPA for the proposed South Hook LNG import

<sup>4</sup> [www.ofgem.gov.uk](http://www.ofgem.gov.uk), under "Europe" area of work.

terminal at Milford Haven in Wales. SHTCL's formal application for exemption can be found on the Ofgem website.<sup>5</sup> The exemption requested applies to:

- the initial capacity of 10.5 billion cubic meters (bcm) per year for a duration of 25 years; and
- the expansion capacity of 10.5bcm per year for a duration of 25 years.

SHTCL's formal application updated information provided by Qatar Petroleum (QP) and ExxonMobil Qatargas (II) Limited (EM) in their informal application where relevant. One aspect of this new information that potentially could be material is that QP is in discussions with third parties (including Total) which it may invite, in due course, to participate in the QGII Project.<sup>6</sup> QP says that no such changes to participation have been finalised at this stage and, in any event, changes, if any, that may impact on the exemption arrangements will be discussed with Ofgem in advance of any decision to implement such changes.

### **Withdrawal of an exemption**

In all the documents published by the DTI and Ofgem on the granting of an exemption from RTPA, it has been highlighted that circumstances may arise in which it will no longer be appropriate for the exemption to remain in place. Generally, these grounds for revocation are that:

- (a) there is a material decrease in the degree to which the requirements of sub-sections 19C(7)(a), (c), (d) or (e) of the Gas Act 1986 are met with respect to the facility as the result of the direct action of the facility owner, facility operator, or throughputter;
- (b) the facility owner is declared bankrupt;
- (c) the facility owner is found to be in breach of the Competition Act 1998; or
- (d) there is merger or acquisition activity in relation to, or by the facility owner, that is detrimental to competition.

It is important to bear in mind that the analysis of the exemption request has been, and the subsequent review by the European Commission, will be undertaken on the basis of the facts put to Ofgem. Significant changes in this underlying data could represent grounds for review of the exemption.

That is not to say that an exemption will automatically be revoked should there be material changes in the nature of the South Hook LNG import terminal project. Rather, that it would be open to Ofgem to review the appropriateness of the exemption remaining in place in the event that any of the specified circumstances arise.

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<sup>5</sup> [www.ofgem.gov.uk](http://www.ofgem.gov.uk), under "Europe" area of work.

<sup>6</sup> This is a vertically integrated project intending to supply gas to the UK and the construction of the South Hook LNG import terminal forms part of this project.

## **Ofgem's view**

Ofgem has considered SHTCL's formal request for an exemption. Ofgem considers at this stage that the application has not materially changed from the draft application. Therefore, Ofgem maintains its previous view, outlined in the preliminary views letter to QP/EM and the final views document<sup>7</sup>, that all the criteria for the granting of an exemption have been satisfied. Therefore, Ofgem's view is that it would be appropriate to grant exemption. Ofgem proposes that the exemption will be for the entire capacity of the underlying contracts relating to both phases of the project.

It should be noted that Ofgem's views as to whether the exemption will not be detrimental to competition is dependent on SHTCL providing facilities for secondary trading and anti-hoarding mechanisms (i.e. Use-It-Or-Lose-It arrangements). In the event that SHTCL does not facilitate secondary trading and anti-hoarding mechanisms this may result in a material decrease in competition which potentially could result in the exemption being revoked. In addition, if Use-It-Or-Lose-It rules resulted in primary capacity being sterilised, this could also result in an exemption being revoked.

With respect to information disclosure requirements, Ofgem's current view is that SHTCL would only be required to disclose information consistent with other facility operators. Where such information disclosure impinged on commercial confidentiality, it would be for the facility operator to demonstrate that its disclosure would seriously and prejudicially affect their commercial interests.

For the avoidance of doubt, Ofgem's analysis has been carried out against the exemption criteria and is specific to the application for an exemption that Ofgem is considering. Any decision that Ofgem may make in relation to this application for an exemption does not preclude or impact in anyway on the operation of the Competition Act 1998 or the Enterprise Act 2002. Further, as the analysis contained in this document is in relation to a specific situation, the analysis may or may not necessarily be relevant to a consideration of any related issues that may arise, for example under the Gas Act 1986, the Competition Act 1998 or the Enterprise Act 2002.

## **Views invited**

This document presents Ofgem's views on SHTCL's formal exemption application. Ofgem would welcome any response to the views expressed in this document and on the draft exemption order contained in Appendix 2. Responses should be received by close of business 27 October 2004. All responses will normally be published on Ofgem's website and held in the Research and Information Centre. However, if respondents do not wish their response to be made public then they should clearly mark their response as confidential. Ofgem prefers to receive responses in an electronic form so they can be placed easily on the Ofgem website.

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<sup>7</sup> 'Qatar Petroleum and ExxonMobil, Draft Gas Directive Exemption Application for an LNG Terminal at Milford Haven, Final views', Ofgem, February 2004.

Responses should be addressed to:

Steve Smith  
Managing Director, Markets  
Office of Gas and Electricity Markets  
9 Millbank  
London  
SW1P 3GE

Electronic responses should be sent to [adam.higginson@ofgem.gov.uk](mailto:adam.higginson@ofgem.gov.uk)

### **Way forward**

Ofgem will consider responses received to this consultation on SHTCL's formal request for exemption. On the basis that no new material issues are raised Ofgem proposes to make a decision to grant an exemption to SHTCL. The European Commission has two months in which it can veto a decision by the relevant authority in a Member State to grant an exemption, or request that the regulatory authority amend its decision.<sup>8</sup> Providing that the European Commission does not veto the decision to issue an exemption, or request that Ofgem amends the proposed exemption order, the exemption order will be granted.

If you wish to discuss any aspect of this paper, Adam Higginson (telephone 020 7901 7432) would be pleased to help.

Yours sincerely



Steve Smith  
**Managing Director, Markets**

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<sup>8</sup> This two month period may be extended by one additional month where additional information is sought by the Commission.

## Appendix 1: Ofgem preliminary views letter to Qatar Petroleum and ExxonMobil



Mr Ian Trickle  
Europe Regulatory Advisor  
Exxon Mobil Gas Marketing  
St Catherine's House  
2 Kingsway  
PO Box 394  
London  
WC2B 5WG

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Direct Dial: 020 7901 7021  
Email: [kyran.hanks@ofgem.gov.uk](mailto:kyran.hanks@ofgem.gov.uk)

10 February 2004

### **Qatargas II LNG supply project: proposed UK LNG import terminal "South Hook" Informal application for exemption from regulated third party access**

Thank you for your letter, on behalf of Qatar Petroleum and ExxonMobil Qatargas (II) Limited (QP/EM), of 27 November 2003. You have asked for Ofgem's views in relation to your draft application for exemption from certain requirements of the Gas Directive with respect to the South Hook LNG import terminal.

#### **Process**

The Department of Trade & Industry (DTI) and Ofgem explained our approach to the regulation of interconnectors and LNG import terminals in our November 2003 final views<sup>9</sup> document. Inter alia, that document confirmed:

- ◆ the DTI's intention that Ofgem would be the relevant regulatory authority for new interconnectors and LNG import terminals;
- ◆ that Ofgem would be prepared to issue informal, non-binding, early guidance now to potential infrastructure developers as to the likely regulatory treatment of such infrastructure once the Gas Directive was transposed into UK law, likely to be July 2004; and
- ◆ a formal or legally binding exemption could not be awarded until Ofgem is given formal powers to do so.

We carried out an informal consultation in relation to your draft application in December 2003. Our views have taken into account the views of respondents where appropriate. We have also discussed the draft application with the European Commission and this letter has been copied to the Commission, as well as the DTI. To be clear, discussions with the European Commission

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<sup>9</sup> This final views document resulted from a consultation document issued in June 2003

should not be taken as any guide that the Commission agrees, or disagrees, with the views expressed by Ofgem in this letter. This letter is also included in Ofgem's final views on the QP/EM application, which will be published shortly.

QP/EM have provided answers to further questions from Ofgem. You have also provided a significant amount of information, on a confidential basis, explaining the underlying economics of the project.

### **Conditions relevant to Ofgem's view**

Before turning to the substance of your draft application, it is important to state the caveats that must be associated with our views. It was made clear in the DTI/Ofgem November 2003 final views document that we shall aim to ensure, as far as possible, that any potential guidance that is issued gives comfort as to the likely regulatory treatment of particular infrastructure. However, we also made clear that any such guidance issued would also be constrained to a significant extent by necessary legal caveats. Appendix 1 to this letter sets out the legal caveats associated with our views.

### **Exemption criteria**

We have approached your draft application as though the new Gas Directive was in force in UK law today. On that basis, our view as to the draft QP/EM application is as follows.

#### *(a) The investment must enhance competition in gas supply and enhance security of supply*

With respect to the enhancement of competition, you have included with your draft application a qualitative analysis of the UK market. Ofgem has considered and agrees with the analysis put forward by QP/EM.

You have also included a quantitative analysis of the effect on competition of the QP/EM project. In line with the structure suggested by Ofgem, you have considered the competitive effect on upstream, wholesale and downstream competition. You explain that QP will be a new entrant to the British market. Even on the narrowest measure, QP's upstream market share does not rise above 12%. As for EM, you say that:

- ◆ at the wholesale level, on the most conservative basis, EM's market share remains at current levels, and that in your view of the market, the market share of EM never rises above 5%; and
- ◆ at the upstream level, even on the most narrow market definition, at no level (including infrastructure) can EM's interests have an appreciable effect on competition.

You conclude that the QGII project enhances competition at the upstream and wholesale levels of the supply chain in Great Britain, and is not to the detriment of competition at any other level.

The current views of Ofgem are given below.

#### *Qatar Petroleum*

With respect to upstream competition, QP is a significant new entrant to the UK upstream market and thus can be seen as beneficial to competition. With respect to competition in the

wholesale market, QP appears as a significant new entrant through its 70% interest in the company which will be reselling gas out of the terminal to ExxonMobil.

As for downstream competition, it is clear that QP does not have significant downstream interests in the GB gas supply market. This position is not forecast to change as a result of the project. With respect to the market share of QP, Ofgem considers that the project will not have a negative effect on downstream competition. However, the presence of a competitive upstream sector is clearly important with respect to the supply of gas to UK customers. In that sense, the addition of a major new player in the upstream market is considered by Ofgem to result in an enhancement of downstream competition.

#### *ExxonMobil*

We have considered EM's position upstream. In our initial views document, we explained that when 30% of QP/EM volumes are attributed to ExxonMobil, its market share of upstream production is still forecast to decline compared to today. In this context, we would conclude that the South Hook project should increase upstream competition with respect to ExxonMobil, when compared to today, on the basis of the information available to us.

We have also considered ExxonMobil's interests in the Dutch gas market given the Gasunie contract to supply 8bcm / year of gas to Centrica from 2006 or 2007. You have explained that ExxonMobil owns 50% of N.V. Nederlandse Aardolie Maatschappij (NAM). The other 50% is owned by Royal Dutch / Shell and they are also the operator of NAM. NAM has an interest in a number of small fields as well as the Groningen gas field (in which it holds a 60% share). NAM in turn sells gas to Gasunie, which is itself 25% owned by ExxonMobil. Hence, in terms of upstream analysis, we have chosen to assume that 4bcm of gas could be allocated to ExxonMobil (accepting that this is the most conservative in terms of EM's interest in NAM). While this assumption increases the projected market share of EM, it is still the case that EM's market share is less than it currently is. On this basis, we conclude that upstream competition is enhanced.

We have considered EM's wholesale position. In the initial views document, we considered that QP should be considered as a new entrant to the wholesale market given its sales to EM. In respect of 30% of volumes, we considered that competition in the wholesale market would seem to be improved by the connection of the South Hook LNG terminal. We have not changed our view with respect to this analysis. Since the initial views consultation, we have considered a number of alternative scenarios including the effect on the wholesale market if 100% of the South Hook volumes were under the control of EM. This scenario, in our view, merited analysis given that EM will buy 100% of the volumes supplied by QGII through the terminal. If we assumed that the wholesale market included all sales and resales of gas (given that EM is not a significant trader) EM's proportion of the wholesale market, before and after the sale to EM, is still not significant. Alternatively, an even narrower assessment could be made on the assumption that the wholesale market is only physical. In that scenario, if we were to treat EM's purchase of the QGII volumes as the relevant transaction, the addition of 100% of the gas coming out of the South Hook terminal would result in an increase in EM's share of the wholesale market but not to a level that is detrimental to competition. In any event, Ofgem's view is that the level of wholesale liquidity should lead towards the first scenario.

While EM has stated that it does not control Gasunie we have, nevertheless, considered ExxonMobil's 25% interest in Gasunie. If the wholesale market is assumed to include all

reported volumes, this minority interest in Gasunie does not significantly change the position of EM. However, if only physical positions were taken into account, this would again result in an increase EM's share at the wholesale level but, again, not to a level that is detrimental to competition.

We have considered the downstream impact of the QP/EM project. EM has no significant supply volumes to customers. They are not proposing to supply the QP/EM gas directly to customers. On that basis, the effect on downstream market shares is neutral.

In the initial views consultation, we highlighted four areas that would need to be explored. First, we considered the extent to which the QP/EM contractual arrangements might, or might not, provide ExxonMobil with control over gas flows. We have not at this point seen the contracts proposed by QP/EM. As such, we have not yet concluded consideration with respect to this issue. However, we consider that EM can plausibly be assumed to have control over the gas that they are contracting to buy. Our analysis above therefore assigns 100% of the volumes to EM.

Second, we considered EM's interests in the Dutch market, given the Gasunie contract to supply gas to Centrica. Our conclusions (including extreme case analyses) are included in the analysis given above.

Third, we considered the extent of EM's joint ventures with Royal Dutch / Shell. You provided information with respect to these joint ventures. You explained that the joint operating agreement in existence between ExxonMobil and Royal Dutch / Shell applies to some jointly owned oil and gas fields. You explained that ExxonMobil and Royal Dutch / Shell market production from your UK interests separately, and as such, the operating agreement has no impact on EM's upstream oil and gas sales. These arrangements have been in place for a considerable period of time, and to date, there has been no evidence of any related issues arising in the UK. However, EM has expressed a willingness to provide further information that we intend to review. In addition, any subsequent collusive action by EM and Royal Dutch / Shell that relied, in part, on the use by EM of the South Hook terminal, would be subject to investigation under general competition law.

Fourth, we considered the proposed anti hoarding arrangements. At this point, such arrangements appear appropriate. However, we intend that failure of such arrangements to offer unused capacity to market would enable the exemption to be modified.

The DTI and Ofgem have explained that an open season for expressions of interest in the terminal would help to demonstrate that an infrastructure project did enhance competition in gas supply. The decision of QP/EM not to undertake an open season is a negative factor in our consideration of the QP/EM draft application.

Another aspect in our competition assessment is the ability of the project to significantly affect gas flows in the UK. As such, the project should also enhance competition with respect to transportation services provided by, and purchased by, Transco.

You will see that our competition analysis has been extensive. In summary however, Ofgem concludes that, in the round, the project should be considered as beneficial for competition.

The second part of this criterion relates to security of supply. Ofgem considers that the addition of a new source of gas (i.e. Qatar) should be beneficial for security of supply. In addition, the location of the gas (South Wales) should be beneficial for diversity of supply.

The criterion in the Gas Directive requires that competition and security of supply are enhanced by this project. At this stage, we envisage that the QP/EM application should meet the requirements of this criterion.

*b) The level of risk attached to the pipeline is such that the investment would not take place unless an exemption is granted*

You have explained that for the entire LNG project to be viable, it is essential that QP/EM can secure, in advance, long term terminal access. You have provided the views of your financial advisors that exemption from certain aspects of the Gas Directive is necessary to ensure such long term access. You also explain that an exemption is required for 100% of the capacity for 25 years.

We are content with the QP/EM view that the level of risk attached to the entire LNG project is significant. As explained in our initial views, it is not easy to envisage how risks associated with the project can be mitigated other than through some form of long term contractual support.

On the basis of the analysis provided by QP/EM, and its financial advisors, Royal Bank of Scotland, and Ofgem's preferred approach to entrepreneurial projects presented in our joint consultation with the DTI on the regulation of LNG and interconnectors, it appears appropriate to envisage that the level of risk attached to the terminal would merit an exemption.

*c) The infrastructure must be owned by a natural or legal person which is separate at least in terms of its legal form from the system operators in whose systems that infrastructure will be built*

It is clear that the South Hook terminal, QP, EM and the QP/EM companies are all separate from National Grid Transco. As such, we envisage that this criterion should be met.

*d) Charges are levied on users of that infrastructure*

QP/EM explained that it does propose to publish charges for third party, but not own, use. Ofgem considers that QP/EM should also publish charges for own use. QP/EM has agreed to this and on that basis, Ofgem would expect this criterion to be met.

*e) The exemption is not detrimental to the effective functioning of the internal gas market, or the efficient functioning of the regulated system to which the infrastructure is connected.*

You have explained that the QGII project will increase the supply of gas into Europe in general and the UK in particular, providing a reliable alternative to existing and projected sources of (mainly) piped gas. As such, existing continental European gas supplies will not be required for the UK, thereby increasing supply in other member states. You also explain that the contractual arrangements being negotiated by QP and EM will not contain any destination or resale restrictions. As such, you conclude that the project is not detrimental to the effective functioning of the internal market. We agree with your analysis.

You explain that, with respect to the UK, the connection of the terminal will be consistent with existing transmission specifications and entry capacity arrangements. We agree with your analysis.

### **Withdrawal of an exemption**

We can confirm the grounds on which an exemption, once granted, could be expected to be modified or withdrawn. These are with respect to QP and / or EM:

- ◆ A material breach of exemption criteria
- ◆ A proven breach of EU or UK competition law
- ◆ Insolvency
- ◆ Merger / acquisition activity of the Sponsors or the terminal operating company that would have a material impact in relation to the terminal exemption

In the case of a material breach of the exemption criteria or a proven breach of competition law it would be necessary to establish that such breaches had occurred and we would also envisage that an opportunity is provided to remedy breaches (that are capable of being remedied) before an exemption were withdrawn or modified. We propose to consider further the precise terms that will be appropriate for the above remedies.

### **Next steps**

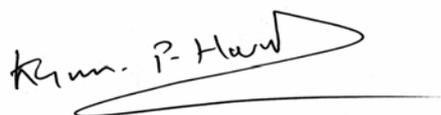
We understand that the European Commission is considering providing a view as to the guidance issued by Ofgem in this letter. In that light, we have sent this letter, with all necessary supporting documentation, to the European Commission.

From our initial discussions with the European Commission, it is clear that they have some concerns with respect to the QP/EM application. Ofgem (and the DTI) will be arguing the merits of the QP/EM application to the Commission.

### **Summary**

We have explained above Ofgem's current view as to the QP/EM draft application for exemption from certain aspects of the Gas Directive. We have concluded that the application by QP/EM meets each of the criteria set out in the Gas Directive. As a result, Ofgem currently envisages granting an exemption from certain aspects of the Gas Directive for the capacity of the underlying contracts that will underpin the construction of the South Hook terminal. We would currently expect to grant exemption for the full duration of the contracts underlying the investment.

Yours sincerely



Kyran P Hanks  
**Director, Gas Trading Arrangements**

## APPENDIX 1

### Conditions relevant to Ofgem's view

This letter is limited by the fact that Ofgem currently has no legal vires to grant any exemption. As such, any informal early guidance given by Ofgem at this stage cannot legally bind Ofgem as and when a formal application for an exemption is made by QP/EM. This letter is not intended to create any rights or expectations enforceable in a court of law or to fetter the discretion of Ofgem in any way in the discharge of its functions.

Once formal powers to exempt are available to Ofgem, we would formally consult on your application. The responses to any such formal consultation may lead Ofgem to arrive at a decision, which is different from the informal early guidance given in this letter, to the extent that such responses revealed material new information.

The informal early guidance set out in this letter may need to be revised if the market conditions which are in existence at the time of your formal application for exemption are materially different from those in existence today or currently expected to exist at the time of your formal application.

Any exemption granted by Ofgem will be subject to veto by the European Commission. The informal early guidance set out in this letter may not therefore be applicable if the European Commission should come to a different conclusion.

In providing this letter, Ofgem is not exercising its concurrent powers under the Competition Act 1998. Consequently, this letter is without prejudice to such powers and to any other approval, exemption or clearance, which may be required under EU or UK competition law.

This letter is based on the assumption that the information provided to Ofgem is accurate and does not have any misstatements or omissions which may be material to Ofgem in considering this draft application.

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## Appendix 2: Draft exemption order

### **GAS ACT 1986 SECTION 19C EXEMPTION**

Pursuant to sub-section 19C(5) of the Gas Act 1986 (the Act), the Gas and Electricity Markets Authority hereby gives to South Hook LNG Terminal Company Ltd<sup>10</sup>, as the owner of an LNG importation terminal, an exemption from the application of section 19D of the Act in relation to the LNG importation terminal located at South Hook, Milford Haven Dale Road, Hubberston, Milford Haven, Pembrokeshire, SA73 1DR subject to the attached Schedule.

The Official Seal of the Gas and Electricity Markets Authority hereunto affixed is authenticated by

**Steve Smith**

Authorised in that behalf by the  
Gas and Electricity Markets Authority  
Dated

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<sup>10</sup> Registered in England No. 4982132. Registered Office: 10 Upper Bank Street, London, E14 5JJ.

# DRAFT

## SCHEDULE

### **PERIOD, CONDITIONS, AND REVOCATION OF EXEMPTION**

#### **A. Interpretation and Definitions**

In this exemption:

“the Authority” shall mean the Gas and Electricity Markets Authority established by section 1(1) of the Utilities Act 2000

“the Act” shall mean the Gas Act 1986

“the facility” shall mean LNG importation terminal

“facility owner” shall mean South Hook LNG Terminal Company Ltd

“facility operator” shall mean South Hook LNG Terminal Company Ltd

“throughputter” shall mean any primary capacity holder of the facility

#### **B. Full description of the facility to which this exemption relates**

The South Hook LNG importation terminal with:

- (a) an initial capacity of 10.5 billion cubic meters per year and;
- (b) an expanded capacity of 10.5 billion cubic meters per year.

#### **C. Expiry**

Pursuant to section 19C(3)(a) of the Act, this exemption will cease to have effect:

- (a) in respect of the initial capacity of the facility, 25 years from the date that the facility commences commercial operation; and
- (b) in respect of the expansion capacity, 25 years from the date that the expansion capacity commences commercial operation.

#### **D. Conditions**

Pursuant to sub-section 19C(3)(b) of the Act, this exemption is made subject to the following conditions:

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1. That the material provided by the facility owner to the Authority in respect of this exemption is accurate in all material respects.
2. The facility owner notifies the Authority within ten days of:
  - (a) the initial capacity of the facility commencing commercial operation; and
  - (b) the expansion capacity commencing commercial operation.
3. The facility owner furnishes the Authority in such manner and at such times as the Authority may reasonably require, with such information as the Authority may reasonably require or as may be necessary for the purpose of:
  - (a) performing the functions assigned to it by or under the Act, the Utilities Act 2000, or the Energy Act 2004; or
  - (b) monitoring the operation of the exemption.
4. The facility owner makes publicly available, in such manner and at such times as directed by the Authority, such information as the Authority determines is reasonable.
5. The facility owner complies with any direction given by the Authority (after the Authority has consulted Transco plc and, where relevant, the Health and Safety Executive) to supply to Transco plc such information as may be specified or described in the direction -
  - (a) at such times, in such form and such manner; and
  - (b) in respect of such periods, as may be so specified or described.

Where the facility owner is prevented from complying with such a direction by an incident beyond its control, it shall not be treated as having contravened the condition specified in that paragraph.

In this condition 'information' means information relating to the operation of the pipe-line system which is operated by Transco plc.

## **E. Revocation**

This exemption may be revoked by the Authority by giving a notice of revocation to the facility owner not less than four months before the coming into force of the revocation in any of the following circumstances:

- (a) where:
  - (i) in the Authority's reasonable opinion there is a material decrease in the degree to which the requirements of sub-sections 19C(7)(a), (c), (d) or (e) of the Act are met with respect to the facility as the result of the direct action of the facility owner, facility operator, or throughputter;

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- (ii) the facility owner is declared bankrupt;
  - (iii) the facility owner is found to be in breach of the Competition Act 1998; or
  - (iv) there is merger or acquisition activity in relation to, or by the facility owner, that is detrimental to competition.
- (b) the facility owner has failed to comply with a request for information issued by the Authority under paragraph D3 above and the Authority has written to the facility owner stating that the request has not been complied with and giving the facility owner notice that if the request for information remains outstanding past the period specified in the notice, the exemption may be revoked; or
- (c) the facility owner has failed to comply with a direction issued by the Authority under paragraph D4 or D5 above and the Authority has written to the facility owner stating that the direction has not been complied with and giving the facility owner notice that if the direction remains outstanding past the period specified in the notice, the exemption may be revoked.