



Gas storage facility owners and operators, gas shippers, gas suppliers and other interested parties

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10 October 2007

Dear Colleague,

Draft Decision letter: SSE Hornsea Ltd's application for an exemption from section 19B of the Gas Act 1986

On 16 May 2007, Ofgem published a consultation document on the exemption application¹ submitted by SSE Hornsea Limited (SSEHL) in relation to its share of the proposed storage facility at Aldbrough. In the consultation document (the May consultation document)², Ofgem set out its initial view that an exemption should be granted from requirements regarding third party access.

As a result of our consideration of the responses to the May consultation document, we have undertaken additional analysis to take into account the comments received. This analysis has not altered our view that an exemption should be granted. To enable interested parties to provide comments, we are issuing this draft decision letter which sets out this analysis.

This letter sets out Ofgem's current view on SSEHL's application. It should be read in conjunction with the May consultation document.

Background

In October 2006, SSEHL submitted an application under section 19A(2) of the Gas Act 1986 (the Gas Act) requesting an exemption³ from section 19B of the Gas Act in relation to its share of the Aldbrough storage facility which is currently under construction in East Yorkshire. Section 19B of the Gas Act concerns the requirement to provide third party access to gas storage facilities.

¹ Application: SSEHL UK Ltd's application for an exemption from Section 19B of the Gas Act 1986, available from the Ofgem website, www.ofgem.gov.uk.

² Consultation Document: SSE Hornsea Limited's application for an exemption from Section 19B of the Gas Act 1986, 118/07, 16 May 2007, available from the Ofgem website, www.ofgem.gov.uk.

³Section 19A(6)(a) of the Gas Act 1986 states that the Authority shall give an exemption with respect to a new facility where it is satisfied that "use of the facility by other persons is not necessary for the operation of an economically efficient gas market".

The Aldbrough gas storage facility is a two-part facility with respective parts being owned by SSEHL and Statoil UK Limited (STUK).

The total project consists of 4550GWh/annum of gas storage space with the ability to deliver a maximum of 421GWh/day. The SSEHL share of the project consists of 3,033GWh of space with 141GWh/d of injection capacity and 281GWh/d of deliverability, two-thirds of the total. All costs will be split on a two-thirds to one-third basis between SSEHL and STUK respectively.

In September 2005, Ofgem consulted on the treatment of split facilities under the Gas Act. In a letter dated 20 December 2005 Ofgem concluded that, where there are multiple owners of a facility, it is appropriate to accept exemption applications from more than one owner provided that effective operational separation is achieved.⁴

Ofgem's initial view

As indicated above, our initial view was that an exemption should be granted to SSEHL. The May consultation document explained the grounds on which we considered that SSEHL had met the test for the exemption to be granted.

Review of responses

Ofgem received six responses to the May consultation document.⁵ These included responses from SSE, the parent company of SSEHL and from STUK.

In the May consultation document we asked for views on six specific questions which we considered appropriate to this application. Responses to these questions and Ofgem's view are discussed below.

In addition, respondents were asked for views on any other issues that they considered relevant to the application. Issues raised included Ofgem's market share analysis, requirements for information transparency and anti-hoarding arrangements for capacity as well as the terms of the exemption order. These issues are addressed separately below.

All respondents broadly supported Ofgem's initial view that SSEHL had met the test for an exemption to be granted. However, as set out below, some respondents expressed reservations concerning Ofgem's definition of the relevant market. One respondent said that its support was conditional on the arrangements for nTPA being effective at the Hornsea gas storage facility.

The following section first reviews responses to the six questions asked in the May consultation document and then considers additional points raised by respondents.

Question 1. Do you consider that our market definition is appropriate?

In the May consultation document, we explained why we considered that the relevant product market was the flexibility market and the relevant geographic market was Great Britain. However, we acknowledged that the product definition of gas flexibility is not straightforward.

In order to define the market for flexibility we looked at information on how sources of gas flowed over the most relevant time period. We then sought to determine which sources of gas showed similar flexible characteristics to the proposed facility. Such sources of gas were then included in the market definition. This process arrived at two separate potential market definitions:

⁴ Ofgem letter, Decision on the proposed treatment under section 19A of the Gas Act 1986 of gas storage facilities with split ownership, Ref: 290/05, 20 December 2005, available from the Ofgem website, www.ofgem.gov.uk.

⁵ Non-confidential responses have been published on Ofgem's website, www.ofgem.gov.uk.

- medium range storage (MRS) + long range storage (LRS) + imports through Interconnector UK (IUK)⁶,
- MRS + LRS + IUK imports + Flexible beach⁷.

Ofgem considered either of these definitions to be appropriate, and conducted its analysis of SSEHL's market share of the relevant market using both of these market definitions. Below we explain the process that we undertook to arrive at these two market definitions, summarise the responses that we received in respect of this process and provide our latest view on potential market definitions.

Time period for market definition analysis

Significant new gas import capacities came online during winter 2006/7 (e.g. the Langeled pipeline and the BBL Dutch-UK interconnector) which altered the previously observed supply and demand balance. We therefore began our data analysis from the date that the BBL interconnector came on line as this was the last of these new projects to start operation during winter 2006/7. The BBL interconnector came online on 25 November 2006.

Ofgem's approach in this respect was supported by a respondent who argued that "the fundamental nature of UK gas supplies is changing with new supply sources and infrastructure coming on-stream in response to declining UKCS gas supplies."

In the May consultation document Chart 2 (the load duration curve) was labelled so that it was clear that it related to the period 25 November 2006 to 31 March 2007⁸. However, Chart 1 (the flexibility of gas supply) was not similarly labelled. We consider that the text of the May consultation document may have given the impression that Chart 1 represented data for the same period as Chart 2. This was not the case; the data included in Chart 1 only covered the time period 25 November 2006 to 5 February 2007. Figure 1 below replicates the data that we presented in Chart 1 of the May consultation document (i.e. for the time period 25 November 2006 to 5 February 2007). As part of our updated analysis Figure 2 below presents information for the time period 25 November 2006 to 31 March 2007.

Please note that on Chart 1 in the May consultation document we incorrectly described the calculation that we had undertaken to determine the flexibility characteristics. The calculation used to derive the flexibility range was the average 10 highest flow days minus the average 10 lowest flow days all divided by the maximum daily flow. Chart 1 incorrectly indicated that the denominator was the average of the 10 highest flow days. Figures 1 and 2 below show the correct formula.

Figures 1 and 2, below, present a comparison of our market analysis on these two different timescales. Figure 1 presents market analysis for the period 25 November 2006 to 5

⁶ We note that the current maximum technical deliverability at IUK is 74 mcm/day (801 GWh/day). However, in our modelling, IUK capacity was calculated based upon National Grid's assessment of maximum winter outlook for 2007/8, at 40 mcm/day (433 GWh/day). This anticipated lower rate is caused by a combination of technical and contractual matters. We note that flows could increase significantly in the future.

⁷ We were unable to observe data at most beach fields due to data constraints. Because of this we have not been able to observe whether, and to what extent, they demonstrate flexible behaviour. However, as data is available for the Barrow fields we were able to analyse this for flexible characteristics and use this as a proxy for "Beach Flex". Ofgem's initial analysis (illustrated by Chart 1 in the May consultation document and supported by the evidence of the Barrow fields) illustrated that there was a degree of flexibility in certain beach supplies. In Figures 1 and 2 (set out below in this document) we have also used data for Barrow as a proxy for "Beach Flex" to assist in our market definition. In conducting the market share analysis we have included the deliverability figures for both the Barrow and Sean fields (a gas field with 'known flexible characteristics') within our definition of Beach Flex. Whilst we recognise that there may be other beach sources which show flexible behaviour we are using the deliverability capacity at Barrow and Sean as a proxy for the whole of Beach Flex. We are therefore likely to have been conservative in our analysis in terms of the volume of Beach Flex included.

⁸ 31 March 2007 was the last full set of data that we had available prior to publication of the May consultation document.

February 2007, as was included in error in our consultation document. Figure 2 presents a revised analysis to cover the period from 25 November 2006 to 31 March 2007.

Figure 1: The flexibility of gas supply (25 November 2006 to 5 February 2007)

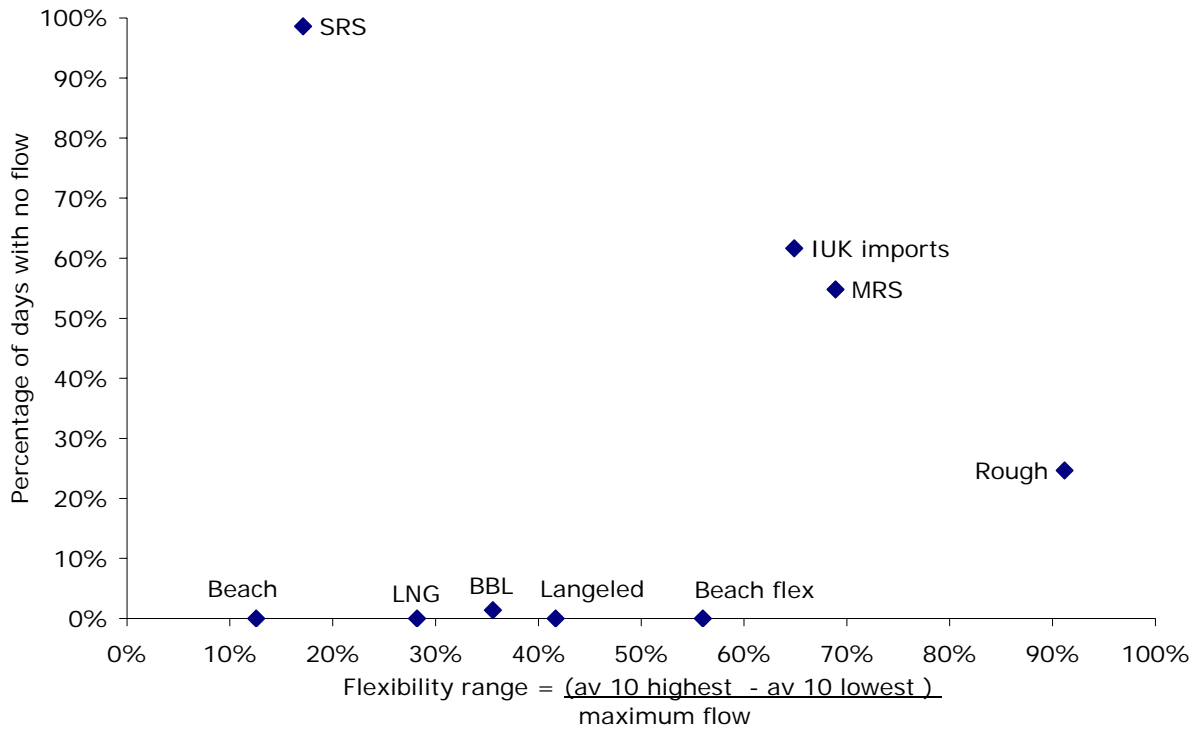


Figure 2: The flexibility of gas supply (25 November 2006 to 31 March 2007)

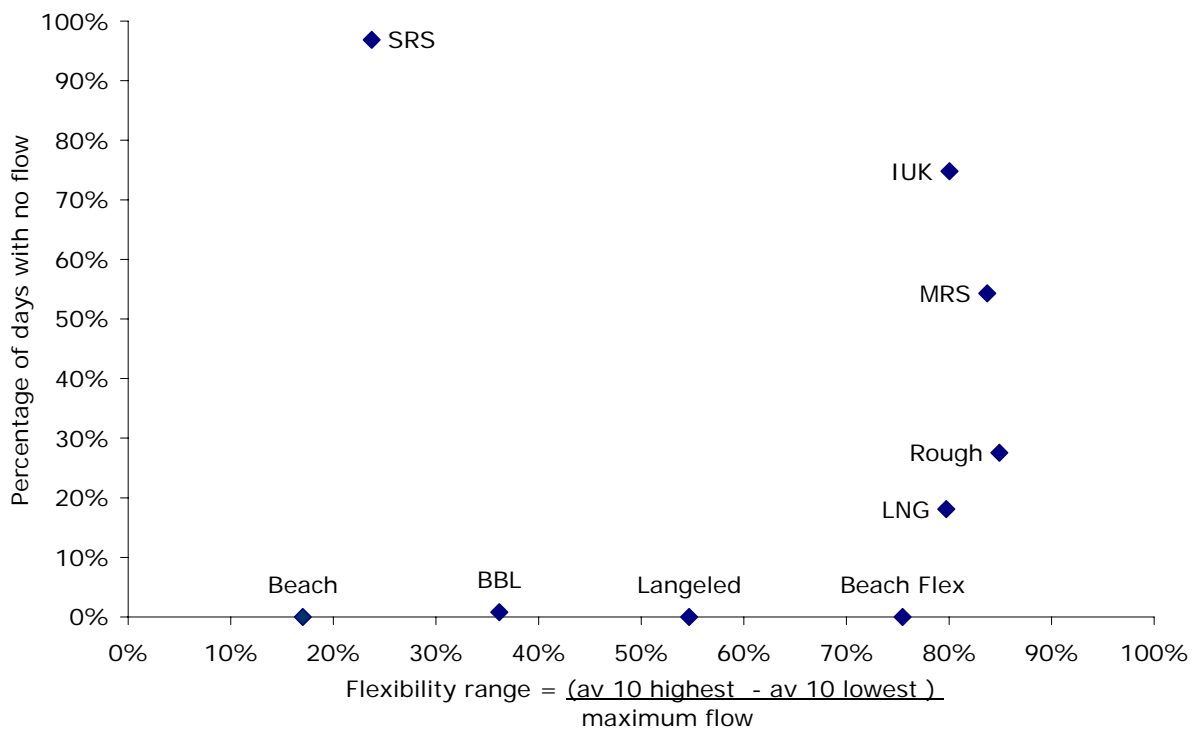


Figure 2 illustrates that by extending the analysis to cover the period through to the end of March 2007 additional supply sources may be considered to be part of the relevant (i.e. flexibility) market. As a result of this we have reconsidered the sources of flexibility to be used in our market share analysis, which we discuss further below.

Two respondents argued that the time period used was too short for valid analysis. We concur that such a short timeframe is not ideal. One respondent argued that their analysis of gas flows for the period October 2006 to March 2007 showed greater flexibility than in Ofgem's analysis.

As set out above, we consider that the use of data from before 25 November 2006 is not appropriate due to the introduction of the new import capacities which we consider to have altered the GB market for flexible gas supplies. We have used 31 March 2007 as the end date for our revised analysis period as this date marks the end of the winter. Whilst we recognise that MRS can be used as a source of gas over the rest of the year we note that this is much less likely and that analysis of flexible behaviour over other periods, such as the summer months, can be complex due to likelihood of maintenance periods where other sources of gas might display "flexible" characteristics which are driven by factors other than price and demand.

Sources of flexibility

Some respondents argued that the Langeled and Vesterled pipelines, LNG importation terminals, the BBL interconnector and other parts of the UK continental shelf could potentially provide additional sources of flexibility and should have been included in our analysis. Some respondents also argued that Ofgem should have included demand side response as a source of flexible gas in the market definition.

Ofgem's analysis of the period between 25 November 2006 and 5 February 2007 concluded that Langeled, LNG importation terminals, the BBL interconnector and other parts of the UK continental shelf did not provide flexibility in the same region as MRS over the time period considered. However, by extending the relevant time period to 31 March 2007, our analysis indicates that additional sources of gas (namely LNG facilities⁹ and Langeled¹⁰) could be considered to have provided flexibility and should potentially be included in the market definition.

We did not include demand-side response within our market definition. There are significant difficulties in modelling the relevant level of demand-side response over the relevant time period. We consider that trying to establish a level of potential demand-side response by considering the volume identified during winter 2006/7 may not provide an accurate figure going forward. For example, the complex contractual position of suppliers and customers, that will enable a demand side response, may vary considerably from year to year and is therefore difficult to quantify. We observe that our analysis is likely to be conservative in terms of potential substitutes, given its focus solely on supply. The effect of including demand-side response within our market definition is likely to increase the size of the relevant market against which to compare the market share of SSEHL.

Revised market definition

On the basis of the analysis mentioned above we have revised our definition of the relevant market for MRS. For completeness, we have again set out a number of potential definitions.

Our revised view is that a definition of the flexible gas market that includes either LNG or both LNG and part of the Langeled pipeline, as well as the sources of gas set out in our original market definitions (i.e. in the May consultation document) is most appropriate. The

⁹ This is based on observed flow data at the Isle of Grain. The flow of gas from the Isle of Grain was fairly steady from the period 25 November to the start of February. From the start of February until 31 March the flow of gas from this facility was much more limited. This indicates that this may be considered a flexible source. However, the flow pattern is different from that observed for MRS where the flow of gas may be much more varied between days over the whole of the period.

¹⁰ Due to data constraints it is not possible to observe the flow of gas from the Vesterled pipeline over the relevant period and hence we have not been able to consider its flexibility as per Figure 2. However, we recognise that it may provide an additional source of flexibility in a similar manner to Langeled. We therefore consider that the two levels of deliverability that we have included in our market share calculations for Langeled are likely to incorporate the combined level of flexibility from both Vesterled and Langeled.

market definitions that we used in the May consultation document were derived from the time period considered in our initial analysis (i.e. up to 5 February 2007). Extending our analysis up to 31 March 2007 shows that flexible behaviour can also be seen at LNG facilities and potentially at Langeled. For completeness only our revised market share analysis shown later in this document includes the two market definitions that we included in the May consultation document.

For the purposes of Langeled we have not considered the total daily deliverability of the facility¹¹, as we do not consider that the total should be included in the relevant market. At periods of high demand we would expect MRS to flow. We have also observed that Langeled is also able to increase the volume of supply in response to peak demand days. However, unlike Langeled, MRS is not expected to flow during non-peak demand days. To take account of this pattern of flexibility at Langeled we have modelled two different scenarios, one where a relatively low proportion is considered to be flexible (200GWh/day) and the other where a relatively high proportion is considered to be flexible (600GWh/day).

The range of market definitions that we have used in our revised analysis are set out below. As noted above, our revised analysis of the behaviour of gas flows over the period 25 November to 31 March indicates that flexibility is evident at LNG facilities and potentially at Langeled.

- MRS + LRS + IUK imports + Flexible beach + LNG Facilities
- MRS + LRS + IUK imports + Flexible beach + LNG Facilities + Langeled (200GWh/day)
- MRS + LRS + IUK imports + Flexible beach + LNG Facilities + Langeled (600GWh/day)

Question 2. In particular, do you consider the flexible gas market remains the appropriate market definition for considering the effect on competition of the development of a new medium range storage facility?

All respondents who offered an opinion agreed that the flexible market was appropriate for considering the development of the Aldbrough storage facility, reflecting the sources of flexibility open to market participants to meet variations in supply and demand. Some respondents argued that Ofgem was too restrictive in its definition of what constitutes flexibility (see above).

Question 3. What is your experience of the functioning of Third Party Access (TPA) regulation in the GB market?

Three respondents commented positively on the functioning of existing TPA regulation, one noting that there were "many non-asset owners utilising these arrangements to access capacity contracts in certain facilities."

Two respondents expressed some concern that the obligations on operators of facilities relating to access to facilities subject to TPA arrangements were not uniform. One respondent argued that differences existed between the undertakings given by Centrica to the Secretary of State for Trade and Industry in 2003 regarding the facilities at Rough and the negotiated TPA arrangements in existence at Hornsea¹².

Where facility owners are required to operate in accordance with TPA under the Gas Act requirements then they should do so. The way in which nTPA arrangements are implemented may differ between facilities but the storage operator must ensure they meet the requirements of the Gas Act. The Authority has a formal role in determining disputes about access to storage facilities under the Gas Act. Where a party has concerns about the

¹¹ The maximum daily flow at Langeled is 741GWh/day.

¹² Rough is a long-range gas storage facility, owned by Centrica Storage Ltd, and is currently the largest facility of its type in GB. The facility is subject to conditions imposed by the Competition Commission, reproduced here: http://www.competition-commission.gov.uk/rep_pub/reports/2003/480centrica.htm. Hornsea is a medium-range storage facility which is subject to negotiated TPA (nTPA). The Hornsea facility is owned by SSEHL.

operation of nTPA arrangements then these should be formally addressed directly to the Authority.

Question 4. Should ownership of TPA facilities be included in this assessment?

The May consultation document stated that we prefer not to include facilities subject to TPA in our market share analysis for the purposes of applications for exemptions under section 19A(6)(a) of the Gas Act. We noted that this was based on an assumption that TPA is effective and restricts market participants from exercising market power. We asked for views on this approach.

All respondents except one stated that TPA facilities should be excluded from market share calculations (i.e. scenario "c" as set out in chapter 3 of the May consultation document). The remaining respondent did not specifically agree or disagree with this view. Some respondents argued that TPA facilities should demonstrate the effectiveness of the TPA arrangements before capacity holdings at such facilities were excluded from the market share analysis.

Having considered this issue further, we think that, in addition to scenario "c", it is also appropriate to give weight to the scenario where the applicant's primary capacity holdings in TPA facilities are included in its market share (i.e. scenario "b" as set out in chapter 3 of the May consultation document).¹³ Our argument for this revised approach is set out below.

The purpose of our analysis is to ascertain whether or not SSEHL's position in the relevant market is so weak that it would only be capable of having an insignificant effect on the competitive conditions in that market. If SSEHL's market share is sufficiently low, we can conclude that we are content for SSEHL to hold all of the capacity in its share of the Aldbrough facility and that use of that facility by other persons would not be necessary for the operation of an economically efficient gas market.

It is possible to argue that we should take into account all of the capacity holdings that make up SSEHL's share of the relevant market to correctly identify the position of SSEHL in the relevant market and that we should therefore include its holdings in facilities subject to TPA¹⁴. This argument is based on the view that, where capacity is held at a TPA facility it is not available to the rest of the market. Capacity ownership at TPA facilities can change as a result of the regulated allocation process. However, it may be reasonable to make an assumption that a holder of capacity at a TPA facility will seek to retain that holding on an ongoing basis so that this market share should be included in the applicant's overall share of the flexibility market. Whilst we do not know for certain what the future capacity holdings of SSEHL will be at TPA facilities, for the purpose of our analysis of scenario "b" we have assumed it to be the same as current holdings.

We consider that there are arguments in favour of both approaches. For completeness we therefore believe that it is appropriate to consider the results of our revised analysis for both scenarios "b" and "c". This revised analysis is set out below.

Question 5. Is it appropriate to exclude Hornsea from SSEHL's share of the market given that Hornsea is subject to nTPA?

In addition to the general views above on the treatment of TPA facilities, some respondents specifically addressed SSE's position at Hornsea. Of the six respondents, three argued that it was appropriate to exclude Hornsea from SSEHL's share of the market. One respondent offered no specific answer to this question. One respondent said that, should SSEHL be able to demonstrate to Ofgem that it offers TPA services on a fair and non-discriminatory basis

¹³ In the case of SSEHL, this relates to capacity held at the Hornsea gas storage facility.

¹⁴ Note that in conducting our analysis we looked at the capacity held by the SSE company group rather than SSEHL itself. In this document therefore, references to SSEHL in the context of market share analysis are references to SSE company group.

and that they were fully compliant with GGPSSO¹⁵, then it would be appropriate to exclude Hornsea from SSEHL's share of the market. The remaining respondent queried the effectiveness of the existing TPA regulations at Hornsea, arguing that the ability of SSE to reserve capacity at Hornsea for themselves and then to decide how much of the remaining capacity to auction and for what duration left them uncomfortable with its exclusion.

We have addressed the treatment of TPA facilities above in relation to Question 4. Also, as noted above, we consider that if respondents have specific complaints regarding the operation of TPA at Hornsea, these should be addressed separately to Ofgem.

Question 6. Do you agree with our overall assessment that the proposed exemption should be granted?

One respondent did not offer explicit support for the granting of the exemption, although they did not offer a case for its rejection. All other respondents supported the proposed exemption. As noted above, one respondent said that their support was conditional on the arrangements for nTPA being effective at the Hornsea gas storage facility.

Market share analysis

One respondent expressed concern that Ofgem had only carried out its calculation of market shares based on historic gas flows. This is not the case. Whilst we determined the most relevant market for the Aldbrough facility by looking for evidence of flexibility on a historic basis, we have calculated, to the best of our knowledge¹⁶, the market share of SSEHL based on its expected future capacity¹⁷ in the sources of supply considered to be part of the relevant market for each of the three years following commencement of operations at Aldbrough. Our market share analysis is therefore based on expected future capacity (i.e. in terms of deliverability), rather than any measure of historic capacity or gas flow data.

As discussed above, we have revisited our market share analysis based on revised definitions of the flexibility market. The two market definitions that we used in the May consultation document have been included for completeness and are shown in the table with grey shading.

To present a complete analysis of the market shares of the applicant we have again run our analysis under three scenarios. These scenarios capture different approaches to the treatment of facilities that are subject to third party access obligations.

Scenario a) 100% of capacity at TPA facilities owned by the applicant (or parent company) to be included in applicant's market share. In this case this relates to 100% of the capacity at Hornsea.

Scenario b) Applicant's parent company's current primary capacity holdings and predicted future holdings at TPA facilities to be included in the applicant's market share.¹⁸

Scenario c) No capacity (zero ownership) at TPA facilities to be included in SSEHL's market share

¹⁵ The Guidance for Good TPA Practice for Storage System Operators (GGPSSO) have been issued by ERGEG and set out best practice for storage operators who are subject to TPA requirements.

¹⁶ As a result of further information being obtained since we presented our initial analysis in the May consultation document the exact market share figures are likely to have changed.

¹⁷ The measure that we have used in this instance is deliverability. This appears to be the most appropriate measure for comparing MRS with other sources of gas in the market definition. Total available space and injectability are also important characteristics of a storage facility. However, they are not directly comparable with other sources of gas within the flexible market definition such as IUK imports and Beach Flex.

¹⁸ This data has not been included in this document at the request of SSEHL on confidentiality grounds. The data is therefore presented in the form of data ranges.

The resultant market shares of the applicant for each scenario, for each of our revised market definitions and for the next three years are shown in Table 1, 2 and 3.

Table 1: SSEHL Market Shares under various scenarios for treatment of TPA (Gas year 2007/08)

Market Definitions	Scenario "a"	Scenario "b"	Scenario "c"
MRS + LRS + IUK + Flexible Beach + LNG	12.8%	5-10%	4.2%
MRS + LRS + IUK + Flexible Beach + LNG + Langeded (200)	11.7%	5-10%	3.8%
MRS + LRS + IUK + Flexible Beach + LNG + Langeded (600)	10.1%	5-10%	3.3%
MRS + LRS + IUK	20.2%	10-15%	6.6%
MRS + LRS + IUK + Flexible Beach	15.5%	10-15%	5.0%

Table 2: SSEHL Market Shares under various scenarios for treatment of TPA (Gas year 2008/09)

Market Definitions	Scenario "a"	Scenario "b"	Scenario "c"
MRS + LRS + IUK + Flexible Beach + LNG	9.9%	5-10%	4.4%
MRS + LRS + IUK + Flexible Beach + LNG + Langeded (200)	9.4%	5-10%	4.2%
MRS + LRS + IUK + Flexible Beach + LNG + Langeded (600)	8.5%	5-10%	3.7%
MRS + LRS + IUK	19.3%	10-15%	8.6%
MRS + LRS + IUK + Flexible Beach	15.5%	10-15%	6.9%

Table 3: SSEHL Market Shares under various scenarios for treatment of TPA (Gas year 2009/10)

Market Definitions	Scenario "a"	Scenario "b"	Scenario "c"
MRS + LRS + IUK + Flexible Beach + LNG	12.3%	5-10%	7.3%
MRS + LRS + IUK + Flexible Beach + LNG + Langeded (200)	11.7%	5-10%	6.9%
MRS + LRS + IUK + Flexible Beach + LNG + Langeded (600)	10.7%	5-10%	6.3%
MRS + LRS + IUK	22.4%	15-20%	13.2%
MRS + LRS + IUK + Flexible Beach	18.5%	10-15%	10.9%

For the purposes of this application, Ofgem believes the most relevant scenarios are "b" and "c" above. As set out in the May consultation document we do not consider that scenario "a" is an appropriate approach as this scenario does not take into account the fact that Hornsea is subject to nTPA.

All of the market shares attributed to SSE in our revised market definitions under scenarios "b" and "c" are less than 10%. We note that, for scenario "a" and for the market definitions that we presented in the May consultation document the market share figures are typically above 10%. However, for the reasons set out above, we do not consider that weight should be given to these market share figures. We therefore continue to consider that access to SSEHL's share of the Aldbrough facility is "not necessary for the operation of an economically efficient gas market".

One respondent noted that an extension of the Aldbrough facility is currently proposed, and that the two stages should be considered within one application. At this stage, we think that it is appropriate to consider the existing application as it stands.

Information provision and anti-hoarding arrangements

Two respondents argued that the exemption should be supported by the provision of information in respect of the facility, in particular in relation to capacity utilisation such as daily aggregate site nominations and weekly stock levels and effective anti-hoarding arrangements to provide access to unused capacity. When granting an exemption to a facility on the basis that it is not necessary for the economically efficient operation of the market, we do not consider that it is appropriate to require, as a term of the exemption, that effective anti-hoarding arrangements are in place or that information about the usage levels at that particular storage facility is given to the market.

Ownership of capacity at Hornsea

One respondent raised concerns about which part of the SSE group owned capacity at Hornsea and questioned whether this had an impact on our analysis. They noted that capacity at Hornsea was held by SSE Energy Supply Limited (SSEESL) which is separate from SSEHL.

Ofgem's market share calculations are conducted at a group level, and therefore include capacity held by SSEESL and any other companies within the SSE group. We recognise that this point may not have been made sufficiently clear in our May consultation document.

Terms of the proposed exemption

One respondent expressed a preference for the exemption to be granted 'indefinitely'. Given our proposal to grant an exemption under section 19A of the Gas Act on the basis that TPA is not required for the economically efficient operation of the GB gas market, the exemption will not be time bound. However, an exemption may be subject to revision or revocation should there be a material change to either the circumstances under which it was granted or to the relevant market i.e. where the use of the facility becomes necessary for the operation of an economically efficient gas market (see sections D and E of the exemption order attached to this document). For example, we might consider it necessary to reconsider the exemption if there is a significant change to the ownership of capacity rights at the facility.

Review of storage

Whilst we do not consider that it is necessary to conduct a review of the storage market at this stage, as requested by one respondent, it should be noted that Ofgem keeps all exemptions and the operation of the storage market in general under review as part of its routine market surveillance activities. In doing so we take into account the effect of exemptions on the market.

Ofgem's current view

After giving due consideration to the responses received to the May consultation document and following our further analysis we continue to believe that the test under Section 19A(6)(a) of the Gas Act is met by the SSEHL exemption application, for the reasons set out in this letter. We therefore agree with the view of respondents that an exemption should be granted from the nTPA requirements set out under section 19B of the Gas Act.

For the avoidance of doubt, any views expressed, or decisions made, in respect of the giving of exemptions from section 19B of the Gas Act are expressed or made solely in relation to the relevant criteria for the giving of exemptions set out in section 19A. Any decisions that Ofgem may make, or view that Ofgem may express, in relation to this

application for an exemption does not preclude or impact in any way on the operation of the Competition Act 1998 or the Enterprise Act 2002. Further, as the analysis contained in the 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, the Competition Act 1998 or the Enterprise Act 2002.

Attached to this letter is a copy of the draft exemption order granted by the Gas and Electricity Markets Authority (the 'Authority').

Any responses to this letter should be received by 19 October 2007 and should be sent to:

Philip Davies
GB Markets
9 Millbank, London, SW1P 3GE
Email: GB.Markets@ofgem.gov.uk

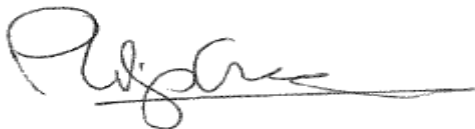
Unless marked confidential, all responses will be published by placing them in Ofgem's library and on its website www.ofgem.gov.uk. Respondents may request that their response is kept confidential. Ofgem shall respect this request, subject to any obligations to disclose information, for example, under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004.

Respondents who wish to have their responses remain confidential should clearly mark the document/s to that effect and include the reasons for confidentiality. It would be helpful if responses could be submitted both electronically and in writing. Respondents are asked to put any confidential material in the appendices to their responses.

Having considered the responses to this letter, Ofgem intends to publish its final decision. Any questions on this letter should, in the first instance, be directed to:

Andrew Wallace
GB Markets
9 Millbank, London, SW1P 3GE
Tel: 020 7901 7067
Email: andrew.wallace@ofgem.gov.uk.

Yours sincerely,



Philip Davies
Director, GB Markets

GAS ACT 1986
SECTION 19A
EXEMPTION

Pursuant to sub-section 19A(6)(a) of the Gas Act 1986 (the Act), the Gas and Electricity Markets Authority hereby gives to SSE Hornsea Limited¹⁹, as a person who expects to be an owner of a storage facility, an exemption from the application of section 19B of the Act, in respect of the storage facility located at Aldbrough, Garton, Hull HU11 4QB, subject to the attached Schedule.

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

¹⁹ England No. 04467860. Registered Office: SSE Hornsea Limited, 55 Vastern Road, Reading, Berkshire, RG1 8BU

SCHEDULE
PERIOD, CONDITIONS, AND REVOCATION OF EXEMPTION

A. Interpretation and Definitions

In this exemption:

"the Authority"	means the Gas and Electricity Markets Authority established by section 1(1) of the Utilities Act 2000, as amended from time to time
"the Act"	means the Gas Act 1986, as amended from time to time
"the facility"	means SSE Hornsea Limited's share of the Aldbrough gas storage facility located at Garton, Hull, HU11 4QB, being a capacity of 3,033 GWh.
"facility owner"	means SSE Hornsea Limited in its capacity as owner of the facility
"facility operator"	means SSE Hornsea Limited in its capacity as operator of the facility

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

The capacity of the facility, being 3,033 GWh.

C. Period

Subject to section E below, and pursuant to section 19A(3)(a) of the Act, this exemption shall come into effect on the date that it is issued and will continue until it is revoked in accordance with Section E.

D. Conditions

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

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 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, each as amended from time to time; or

(b) monitoring the operation of this exemption.

3. The facility owner complies with any direction given by the Authority (after the Authority has consulted the relevant gas transporter and, where relevant, the Health and Safety Executive) to supply to the relevant gas transporter 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 a matter beyond its control, it shall not be treated as having contravened the condition specified in this paragraph.

In this condition:

"information"	means information relating to the operation of the pipe-line system which is operated by a relevant gas transporter
"relevant gas transporter"	means any holder of a gas transporter licence under section 7 of the Act owning a transportation system within Great Britain to which the facility is connected or with whom the facility operator interfaces with as a system operator

4. Should any of the grounds for revocation arise under section E of this exemption, the Authority may, with the consent of the facility owner, amend this exemption rather than revoke the exemption.

5. The Authority may, with the consent of the facility owner, amend this exemption.

6. This exemption is transferable to another facility owner where the Authority has given its written consent to such a transfer. For the avoidance of doubt, all of the conditions contained in this exemption order continue unaffected in respect of any facility owner to whom this exemption order may be transferred (and as if the transferee was substituted in the definition of "facility" and "facility owner").

E. Revocation

Pursuant to sub-section 19A(4) of the Act, this exemption may be revoked in the following circumstances:

1. 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) the Authority considers that the use of the facility is necessary for the operation of an economically efficient gas market;

(ii) the facility owner has a receiver (which expression shall include an administrative receiver within the meaning of section 251 of the Insolvency Act 1986, as amended from time to time) of the whole or any material part of its assets or undertaking appointed;

(iii) the facility owner has entered administration under section 8 of and Schedule B1 to the Insolvency Act 1986;

(iv) the facility owner is found to be in breach of any national or European competition laws, such breach relating to the facility; or

(b) the facility owner has failed to comply with a request for information issued by the Authority under paragraph D2 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 D3 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.

2. This exemption may be revoked by the Authority with the consent of the facility owner.