

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

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Date: 28 July 2022

Dear colleague

Final Decision – SSE Hornsea Limited’s (“SSEHL”) application for a minor facility exemption for SSEHL’s Atwick gas storage facility (referred to as “Hornsea”)

We have decided to grant SSEHL a minor facility exemption (“MFE”) for the Hornsea gas storage facility, as we consider that negotiated Third Party Access (“nTPA”) at the facility is not technically or economically necessary for the operation of an efficient gas market.

On 10 June 2022, we published a consultation on our initial view to grant the MFE,¹ which closed on 08 July 2022. We received zero responses to our consultation. Therefore, our final decision is to grant the MFE. This letter explains the reasons for our decision, and includes the exemption order. Our consultation contained more detail on our assessment.

Background

SSEHL, a wholly owned subsidiary of SSE plc, is the owner and operator of the Hornsea gas storage facility in East Yorkshire. Hornsea was developed by British Gas and came into operation in 1979. Hornsea has storage capacity of 325 million cubic meters (“mcm”), a withdrawal rate of up to 11.8 mcm/d and injectability of 2 mcm/d.

On 1 June 2015, Ofgem rejected an application by SSEHL for an MFE.² This was primarily as Ofgem judged SSEHL’s market share as sufficient to enable it to distort the efficient

¹ <https://www.ofgem.gov.uk/publications/sse-hornsea-ltds-application-minor-facility-exemption-hornsea-gas-storage-facility>

² <https://www.ofgem.gov.uk/publications/final-decision-ssehls-application-minor-facilities-exemption-hornsea-gas-storage-facility>

functioning of the flexibility market. Since then, however, market conditions have changed and we consider that it is appropriate to consider a re-application for an MFE by Hornsea gas storage facility.

Exemption criteria

Access arrangements for gas storage facilities are set out in the EU Third Internal Energy Market Package ("Third Package"), which for the purposes of this document means the Gas Directive³ and the Gas Regulation.⁴ This requires member states to choose either nTPA or regulated third-party access ("rTPA") for access to storage facilities. The Gas Directive and Gas Regulation continue to apply as Retained EU Law.⁵

In Great Britain ("GB") the default regime for natural gas storage facilities is nTPA, as set out in the Gas Act 1986 ("the Gas Act"). This means that arrangements must enable storage users to negotiate access to storage when technically or economically necessary for efficient access to the system. In 2011, we published guidance describing our views on the measures that storage operators should consider in meeting the nTPA requirements of the Third Package.⁶

To provide transparency to the market on when nTPA has to be offered at a storage facility, the Gas Act and Petroleum Act 1998 ("Petroleum Act") require that an assessment be made and a facility be specifically excluded from the requirement to provide nTPA.

Our assessment of the exemption application under section 8S of the Gas Act considers, as set out in Article 33 of the Gas Directive, whether nTPA is technically or economically necessary to provide efficient access to the system for the supply of customers as well as for the organisation of access to ancillary services. If it is clear from both criteria that an nTPA is not required, the storage operator can be granted an exemption.

The basis for our assessment approach is our 2009 open letter.⁷ Our consultation explained

³ Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC ("Gas Directive") as amended by Directive 2019/692 and as implemented by [The Gas \(Internal Markets\) Regulation 2020/625](#). The Regulations amended the Gas Act 1986 to implement Directive 2019/692/EC.

⁴ Regulation (EC) No 715/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the natural gas transmission networks and repealing Regulation (EC) No 1775/2005 ("Gas Regulation"). EC 715/2009 as amended by Electricity and Gas (Powers to Make Subordinate Legislation) (Amendment) (EU Exit) Regulations 2018 SI no.1286.

⁵ "Retained EU Law": Retained EU Law has the same meaning as that given by [section 6\(7\) of the European Union \(Withdrawal\) Act 2018](#).

⁶ <https://www.ofgem.gov.uk/publications-and-updates/guidance-regulatory-regime-gas-storage-facilities-great-britain>

⁷ <https://www.ofgem.gov.uk/publications/gas-storage-minor-facility-exemptions-open-letter>

why we thought that SSEHL met the criteria for the MFE to be granted. We summarise our key findings below; you can find more detail in our consultation document.

Our assessment of the application

Technically necessary

We have determined that nTPA at Hornsea is not technically necessary for the operation of an efficient gas market. To reach this view, we assessed whether nTPA at Hornsea is technically necessary for a peak day⁸ and a cold winter.⁹ Our test was whether supply capability was sufficient to meet demand over these periods, when Hornsea was excluded. In all scenarios examined, this was the case.

Economically necessary

We have determined that nTPA at Hornsea is not economically necessary for the operation of an efficient gas market. We reached this conclusion after considering a range of indicators. The focus of our assessment was on whether granting the MFE could give SSEHL an excessive degree of market power in the GB gas flexibility market. Our analysis is therefore forward looking.

To a greater or lesser extent, a range of supply sources are substitutes for gas storage in the flexibility market. There is some uncertainty about the future behaviour of flexible gas sources. To address this, we used three possible market definitions,¹⁰ which are designed to account for a range of future scenarios. We calculated market shares for each definition, which showed SSEHL's share of the gas flexibility market remained below 17.5 per cent for the most conservative Ofgem definition and below 10 per cent for Ofgem's least conservative definition. This indicates that it is unlikely that SSEHL would hold an excessive degree of market power in the gas flexibility market if Hornsea is granted an MFE.

Furthermore, we assessed the potential for market power using pivotality modelling.¹¹ A player is pivotal if total demand cannot be met from all available sources of supply controlled by other players. Using our base assumptions, SSEHL was not pivotal. A

⁸ Page 14-17 of Ofgem's June 2022 minded-to position and consultation: <https://www.ofgem.gov.uk/publications/sse-hornsea-ltds-application-minor-facility-exemption-hornsea-gas-storage-facility>

⁹ Page 17-19, *ibid.*

¹⁰ Page 25-29, *ibid.*

¹¹ Page 23-25, *ibid.*

significant supply outage was required to create a situation of pivotality.

Our assessment concluded that SSE's position in vertically linked markets¹² would be unlikely to lead to market power in the flexibility market. We also determined that the exemption would not have a detrimental impact on market operation. We noted that SSEHL would still be subject to transparency requirements in relation to the physical operation of the facility and noted SSEHL's intention to continue to offer access to third parties if the price supported by the market is at a level which has been assessed to reflect fair market value.

Response to consultation

We received zero responses to our consultation.

Our final decision is to grant the exemption

We have considered SSEHL's application, the assessment we have carried out and consulted on that assessment. Based on this, we have decided to grant the MFE. The formal exemption order is included as an annex to this letter.

It should be noted that our decision on the exemption has been made on the basis of information provided by SSEHL in their application. As part of our ongoing market surveillance activities, we will continue to assess the effect of exemptions on the market. If circumstances relating to the exemption change, we may seek SSEHL's consent to an amendment of the exemption conditions. Alternatively, the exemption may be revoked if we consider that the facility has become technically or economically necessary for the operation of an efficient gas market.

If you have any questions about this letter, please contact the Energy Security of Supply team via energy.securityofsupply@ofgem.gov.uk.

Yours sincerely

**Dr Adrian Richardson,
Head of Energy Security of Supply, ESMS**

¹² Page 30-31, of Ofgem's June 2022 minded-to position and consultation: <https://www.ofgem.gov.uk/publications/sse-hornsea-ltds-application-minor-facility-exemption-hornsea-gas-storage-facility>

GAS ACT 1986
SECTION 8S
EXEMPTION

Pursuant to section 8S of the Gas Act 1986 (the "Act"), the Gas and Electricity Markets Authority ("the Authority") hereby gives to SSE Hornsea Limited, as a person who is an owner of a storage facility, an exemption from the application of section 8R and 19B of the Act, in respect of Atwick Gas Storage facility located at East Yorkshire (referred to as "Hornsea"), subject to the attached Schedule.

Dr Adrian Richardson
Head of Energy Security of Supply

Authorised in that behalf by the
Gas and Electricity Markets Authority

28 July 2022

SCHEDULE

PERIOD, CONDITIONS, AND REVOCATION OF EXEMPTION

A. Interpretation and Definitions

In this exemption:

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|---------------------|---|
| "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 the Atwick gas storage facility located in East Yorkshire, England (referred to as "Hornsea") |
| "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

This exemption relates to the Hornsea facility, which provides capacity to store 325 mcm of gas. Four compressors provide the means to inject up to 2 mcm of gas per day, where it is stored at pressures between 120-270 bar. Gas can be withdrawn at a rate of up to 11.8 mcm per day.

C. Period

Subject to section E below, and pursuant to sub-section 8S(3)(b)(i) 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 8S(3)(b)(ii) of the Act, this exemption is made subject to the following conditions:

1. 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 owner").

E. Revocation

Pursuant to sub-section 8S(5) 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 technically or economically necessary for the operation of an 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.