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for energy consumers

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

Email: energy.securityofsupply@ofgem.gov.uk

Date: 03 August 2022

Dear Colleague,

Ofgem decision on Centrica Storage Limited's application for an exemption to the Acquisition of rights to use storage facilities (section 19B of the Gas Act 1986) for the Rough storage facility.

This letter sets out Ofgem's decision on Centrica Storage Limited's ("CSL") application for an exemption until 30 June 2024 from negotiated third party access ("nTPA") for new natural gas storage capacity of 28 billion cubic feet ("bcf") for the winter of 2022/2023 and 59 bcf for the winter of 2023/2024. The application, submitted on 27 June 2022 and revised on 27 July 2022, was made consistent with section 19A(6) of the Gas Act 1986 (as amended) ("the Gas Act").

Background

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 Directive¹ and the Gas Regulation.² This requires member states to choose either nTPA or

¹ 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.

² 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.

regulated third party access ("rTPA") for access to storage facilities. The Gas Directive and Gas Regulation continue to apply as Retained EU Law.³

In Great Britain ("GB") the default regime for natural gas storage facilities is nTPA, as set out in 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.⁴

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. The Authority can exempt certain new or modified gas infrastructure, including gas storage facilities, from nTPA where the requirements of section 19A of the Gas Act are satisfied.

CSL ceased gas storage operations at Rough in 2017. Following the revocation of its storage licence, CSL has been producing the cushion gas left in the facility. As a result of current market conditions, a decision was made to convert Rough back to natural gas storage operations.

Exemption Criteria

An application for an exemption to nTPA under section 19A(2A) of the Gas Act must relate to a storage facility or a modification to a storage facility which is not yet operational. A modification must provide for a significant increase in the capacity of the facility or enable the development of new sources of gas supply.

The exemption criteria are set out in section 19A(8) of the Gas Act. The Authority can grant an exemption where:

- a) The facility or (as the case may be) the modification will promote security of supply;
- b) The level of risk is such that the investment to construct the facility or (as the case may be) to modify the facility would not be or would not have been made without the exemption;
- c) The facility is or is to be owned by a person other than the gas transporter who operates or will operate the pipeline system connected or to be connected to the facility;

³ "Retained EU Law": Retained EU Law has the same meaning as that given by [section 6\(7\) of the European Union \(Withdrawal\) Act 2018](#).

⁴ <https://www.ofgem.gov.uk/publications-and-updates/guidance-regulatory-regime-gas-storage-facilities-great-britain>

- d) Charges will be levied on users of the facility or (as the case may be) the increase in its capacity;
- e) The exemption will not be detrimental to competition, the operation of an economically efficient gas market or the efficient functioning of the pipeline system connected or to be connected to the facility.

Section 19A(7A) provides that when deciding whether the requirements above are met, the Authority must take into account the way in which capacity is to be allocated under the capacity allocation mechanism approved in accordance with section 19DB of the Gas Act.

Assessment of criteria

Gas storage operations at Rough ceased in 2017 and its storage licence was revoked. As Rough no longer operates as a gas storage facility, it is currently not yet operational and we consider it eligible for an exemption on this basis, subject to meeting the above exemption criteria.

Allowing gas storage operations at Rough will provide approximately an additional 28 bcf of gas storage capacity for the winter of 2022/2023 and 59 bcf for the winter of 2023/2024. We consider that this provides a significant increase in gas storage capacity for GB for the next two winters and, consequently, promotes security of supply.

The facility is owned by CSL. CSL is not a gas transporter who operates or will operate the pipeline system connected to the facility. CSL has confirmed that charges will be levied on users of the facility. CSL has specified a capacity allocation mechanism (see below) and has confirmed that the capacity allocation mechanism will allow for any unused capacity in the exempt infrastructure to be made available to other users or potential users and will not prevent subsequent trading of rights to use the exempt infrastructure.

In order for a facility to operate under nTPA, certain criteria must be followed. For example, the main commercial conditions must be consulted on for at least two months before they come into effect. An exemption to nTPA allows the storage facility to be utilised during the time period that would usually be required to make nTPA arrangements, providing security of supply for the coming winter and benefiting GB consumers.

CSL has confirmed that significant capital expenditure is required to recommence gas storage operations at Rough for this winter and to expand capacity for winter 2023/2024 and that, without the exemption to nTPA, CSL would not make the necessary investment now to repurpose Rough. If CSL was required to engage in an nTPA allocation process for Rough, this may result in such capacity not being fully utilised, meaning the required

investment may not be recovered and enhanced security of supply may not be achieved. Therefore, we consider it appropriate to grant an exemption for a relatively short period of time (less than two years) to allow CSL to recover the necessary investment and provide enhanced security of supply.

The exemption is for a relatively short period of time and CSL has confirmed that the investment would not be made without an exemption to nTPA arrangements for the period under consideration. Furthermore, CSL has stated that the capacity allocation mechanism will allow for any unused capacity in the exempt infrastructure to be made available to other users or potential users and will not prevent subsequent trading of rights to use the exempt infrastructure. Consequently, we do not consider that the exemption will be detrimental to competition, the operation of an economically efficient gas market or the efficient functioning of the pipeline system connected to the facility.

Capacity Allocation Mechanism

Section 19DB(3) provides that the Authority must not give an exemption to nTPA under section 19A of the Gas Act unless it has approved the capacity allocation mechanism specified in the application, or approved the mechanism on condition that certain modifications are made to it.

Under section 19DB(4), the capacity allocation mechanism must meet the following three conditions as set out in sections 19DB(5)-(7):

- a) Before a right to use the exempt infrastructure is granted to the owner of the facility or to any other person-
 - i. The intention to grant a right to use the exempt infrastructure must be published in a way that the Authority considers appropriate for the purpose of bringing it to the attention of persons likely to be interested in using the infrastructure; and
 - ii. Such persons must be able to register an interest in using the exempt infrastructure.
- b) Any unused capacity in the exempt infrastructure must be made available to other users or potential users.
- c) The mechanism must not prevent, and must not be capable of being used to prevent, subsequent trading of rights to use the exempt infrastructure.

CSL has confirmed that it will publish a statement on its website alongside an email address that can be used by parties to register an interest in using the infrastructure, one week ahead of intended commencement of commercial gas storage operations. CSL will put in place arrangements to ensure that any unused capacity this winter will be made available

to other potential users (subject to the principles of efficiency, reasonableness and proportionality), including arrangements for an auction to be held to allocate such unused capacity to these potential users. CSL has confirmed it will not prevent the subsequent trading of rights to use the exempt infrastructure.

Consequently, we consider the criteria of the capacity allocation mechanism to be met. We will continue to monitor the capacity allocation mechanism and may request supporting evidence during the period of the exemption.

Decision not to consult

Whilst there is no statutory obligation to consult before reaching our decision, our past practice has been to do so. In the circumstances of this case, we consider it is not practical to consult on this decision as the decision needed to be made on an urgent basis to allow the refilling of the facility to commence early enough to provide any security of supply benefits for this winter. We also observed that a recent consultation to grant a Minor Facility Exemption to SSE Hornsea Ltd for the Hornsea gas storage facility,^{5,6} resulted in no consultation responses being submitted. As such, we have taken the view that any consultation seems highly unlikely to result in the receipt of evidence or information that would undermine or change our assessment of the exemption application (against the stated criteria). The exemption is for a relatively short period of time, less than two years, so we consider that it is likely there would be no adverse impacts on third parties and, if there were any impacts, these would be limited. In the circumstances, we consider that the public interest of the security of supply benefits of this time-limited decision outweighs the potential benefits of consultation.

Final decision

The Authority approves the capacity allocation mechanism set out by CSL in its application updated on 27 July 2022. We consider that all the criteria are met for the reasons set out above.

The Authority considers that an exemption from nTPA should be granted for the period commencing on the date of this notice and expiring on 30 June 2024. We consider that all the criteria are met for the reasons set out above. The final exemption order granted by the Authority can be found at Appendix 1 below.

⁵ Consultation: <https://www.ofgem.gov.uk/publications/sse-hornsea-ltds-application-minor-facility-exemption-hornsea-gas-storage-facility>

⁶ Decision: <https://www.ofgem.gov.uk/publications/decision-sse-hornsea-ltds-application-minor-facility-exemption-hornsea-gas-storage-facility>

This document constitutes notice of the Authority's reasons for the decision pursuant to section 38A of the Gas Act.

If you have any questions or comments on the content of this letter, please contact the Energy Security of Supply team at energy.securityofsupply@ofgem.gov.uk.

Yours faithfully,

Dr Adrian Richardson
Head of Energy Security of Supply, ESMS

Appendix 1 – Exemption Order

GAS ACT 1986 SECTION 19A EXEMPTION

Pursuant to section 19A(2) of the Gas Act 1986 ("the Act"), the Gas and Electricity Markets Authority hereby gives to Centrica Storage Limited,⁷ as a person who is an owner of a storage facility, an exemption from the application of section 19B of the Act in respect to the gas storage facility known as Rough located in the United Kingdom Continental Shelf, subject to the attached Schedule.

Dr Adrian Richardson
Head of Energy Security of Supply, ESMS
Authorised in that behalf by the
Gas and Electricity Markets Authority

Dated 03 August 2022

⁷ A company registered in England and Wales with the registration number 03294124.

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"	the gas storage facility known as Rough located in the United Kingdom Continental Shelf
"facility owner"	means Centrica Storage Limited in its capacity as owner of the facility
"facility operator"	means Centrica Storage Limited in its capacity as operator of the facility
"throughputter"	means any user of the facility

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

The exemption relates to the Rough gas storage facility in the UK Continental Shelf comprising up to 59 billion cubic feet capacity for the duration of the exemption.

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 cease to have effect on 30 June 2024 or until it is revoked in accordance with section E.

D. Conditions

Pursuant to section 19A(3) 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 the exemption is and remains accurate in all material respects.
2. The facility owner notifies the Authority within ten days of the commencement of the commercial operations in respect of the facility.
3. That the facility operator obtains all licences and regulatory approvals that it requires to operate as a storage facility and maintains those licences and approvals throughout the period of this exemption.
4. The facility owner must comply with the capacity allocation mechanism approved by Ofgem in accordance with Section 19DB of the Act. Such measures may be subject to periodic review and approval by the Authority.

5. 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 may be necessary, for the purpose of:
 - a. performing the function 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.
6. 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.
7. 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 pipeline 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

8. 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.
9. The Authority may, with the consent of the facility owner, amend this exemption.
10. 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 section 19AA(3) and (5) of the Act, this exemption may be revoked in the following circumstances:

1. The Authority must revoke this exemption if the construction of the facility, or (as the case may be) the making of the modification to which the exemption relates, has not been started within 2 years from the date of this exemption or if the facility, or (as the case may be) the modification to which the exemption relates, is not operational within 5 years from the date of this exemption.
2. 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 change in the degree to which the requirements of section 19A(8)(a), (c), (d) or (e) of the Act are met with respect to the facility as the result of any action or omission of the facility owner, facility operator or throughputter;
 - ii. in the Authority's reasonable opinion there is a material change in the degree to which the requirements of section 19DB(5), (6) or (7) of the Act are met with respect to the facility as the result of any action or omission of the facility owner, facility operator or throughputter;
 - iii. any of the conditions in paragraphs D1, D2, D3 and D4 above is not (or does not continue to be) fulfilled, and remains outstanding beyond the period specified in the notice;
 - iv. 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;
 - v. the facility owner has entered administration under section 8 of and Schedule B1 to the Insolvency Act 1986;
 - vi. the facility owner is found to be in breach of any national or European competition laws, such breach relating to the facility;
 - vii. there is merger or acquisition activity in relation to, or by the facility owner, that is detrimental to competition; or
 - b. the facility owner has failed to comply with a request for information issued by the Authority under paragraph D5 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 D6 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.

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