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Dear Steve

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

This letter sets out NGT's view on Ofgem's proposal to grant SHTCL an exemption from section 19D of the Gas Act in respect of its LNG importation facility at South Hook, Milford Haven. Our views on this consultation should be read in conjunction with our response to the initial consultation, that formed part of the informal guidance process, particularly as no material changes have since been made by SHTCL or Ofgem.

Given this we agree with Ofgem that the criteria permitting an exemption to be granted appear to have been satisfied and as such the exemption should be granted. This will remove a key regulatory hurdle enabling the UK to benefit from this facility's contribution towards diversification and increasing security of gas supplied to the UK.

The consultation includes a draft exemption order setting out the conditions on which the proposed exemption would be granted and the circumstances in which the exemption may be revoked. NGT's comments focus on the apparent differences between the exemption order proposed for Grain LNG Ltd and that proposed for SHTCL.

We note that the draft exemption order framework is similar but not the same as that proposed by Ofgem for Grain LNG Ltd (presently the subject of a separate consultation). The main difference being, in respect of each draft exemption order, the location of the following text:

- (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;*
- (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.*

For SHTCL the above text is only included within the "revocation" section of SHTCL's draft exemption order. This permits Ofgem to exercise judgement over whether or not to revoke the exemption should any one of the above events occur.

Whilst this same test is also present within Grain LNG Ltd's draft exemption order, in the "revocation" section, the text also forms part of the "conditions" section making the exemption conditional on none of the above events occurring. This implies that in the case of Grain LNG Ltd the exemption should automatically be removed if any of the above events arise thereby curtailing Ofgem's ability to exercise discretion in revoking an exemption should one of the above events arise.

We believe that in this respect the exemption order proposed for SHTCL is more appropriate than that proposed for Grain LNG Ltd as it removes the potential for ambiguity for Ofgem whilst providing a more practical framework within which Ofgem may exercise judgement. This would provide equitable treatment for the two facilities.

That is not to say that the detailed wordings of the conditions of each exemption order have to match exactly. The wording used for SHTCL (and for the Grain LNG Ltd proposed exemption) appears to be particularly suitable in those situations where the facility is being developed as part of a more vertically integrated organisation. This is because condition E (a) (i) in its general form provides for the revocation of an exemption as a result of a detrimental impact on competition caused by the direct behaviour of a "throughputter". Whilst this may be appropriate for facilities developed by a vertically integrated organisation, which is able to exercise influence over the behaviour of the "throughputter" concerned, it is not appropriate for facilities developed by independent third parties that are unable to directly influence "throughputters" behaviour. In this latter situation NGT proposes that Ofgem should take direct action against the "throughputter" concerned without the prospect of the facility developer's exemption being revoked.

Should you have any questions concerning this response please do not hesitate to contact me.

Yours sincerely

By e-mail

Tim Tutton