



*Bringing choice and value
to customers*

Direct Dial: 020 7901 7172
Email: sonia.brown@ofgem.gov.uk

To all interested Parties

21 October 2005

Consultation on an application by INEOS Enterprises Limited for an exemption under section 19A(5) of the Gas Act 1986 from section 19B of the Gas Act 1986

This document provides details of an application by INEOS Enterprises Limited (INEOS), part of the INEOS group of companies, for an exemption under section 19A(5) of the Gas Act 1986 ('the Gas Act') from the negotiated third party access (TPA) requirements contained in section 19B of the Gas Act. The application relates to the gas storage facility located at Holford in Northwich, Cheshire. This document also provides Ofgem's initial views on the application and invites responses on these views.

The Holford gas storage facility

INEOS owns a salt cavity at Holford in Cheshire ("Holford H165"), which for the last 20 years has been used by Transco for diurnal gas storage.¹ This operation will end in November 2005 and INEOS wishes to use the cavity for its own storage and trading of gas. The facility has a maximum working gas volume of 50 GWh. Contracts are being negotiated (a) for operation of the facilities allowing import and export of gas from the cavity and (b) in the trading of gas. INEOS suggests that agreements will only be possible if INEOS has exclusive use of the cavity. INEOS has no existing participation in the gas storage market.

Application for exemption

On 30 September 2005, INEOS wrote to Ofgem under section 19(2) of the Gas Act applying for an exemption under section 19A of the Gas Act from the application of section 19B of the Gas Act for the Holford H165 gas storage facility on the basis that the use of the facility by other persons is not necessary for the operation of an economically efficient gas market.

Ofgem's initial view

Based on the information available to Ofgem, the Holford H165 gas storage facility, with an estimated 50 GWh of working volume, would constitute less than 0.5 per cent of the overall market for existing (maximum) gas and LNG storage space in GB. The facility has a wide range of maximum deliverability levels, depending on the level of working gas in the cavity at the

¹ All references to Transco in this document relate to the company which is now called National Grid, following its recent rebranding.

time. The estimated maximum deliverability is 75 GWh/day, but it can be as low as 7.5 GWh/day. Based on the market definition provided by the Competition Commission² in relation to maximum daily flexibility, this estimated 75 GWh maximum deliverability would constitute around 2 per cent of the overall existing market for flexibility in GB. If a more narrow approach was adopted to the definition of the flexibility market – to the flexibility provided by existing and likely future medium duration storage facilities³, the facility's estimated maximum deliverability would represent around 6 per cent of this market.

It is Ofgem's initial view that, on the basis of the size of the market share that the Holford H165 gas storage facility would represent in the market for storage space and for flexibility (under both market definitions), the use of the facility by other persons is not necessary for the operation of an economically efficient gas market. Ofgem's initial view is, therefore, that an exemption should be granted to INEOS under section 19A(5) of the Gas Act from the TPA requirements in section 19B of the Gas Act in respect of the whole of the capacity of the Holford H165 gas storage facility.

For the avoidance of doubt, any views expressed, or decisions made, in respect of the giving of exemptions from section 19B are expressed or made solely in relation to the relevant criteria for the giving of exemptions set out in section 19A. Any decision 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 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.

Draft exemption order

A draft exemption order for the Holford H165 gas storage facility is set out in Appendix 1. The drafting of this exemption order is, where relevant, consistent with exemptions granted to other gas storage and LNG import terminal facilities since the 2004 regulations came into force.

Views invited

This document presents Ofgem's initial views on INEOS' formal exemption application. Ofgem would welcome views on the initial views contained in this document and the draft exemption order contained in Appendix 1. Any responses should be received by close of business on Wednesday 30 November 2005. All responses will normally be published on Ofgem's website and held in the Research and Information Centre. If respondents do not wish their response to be made public then they should clearly mark their response as being not for publication. Ofgem prefers to receive responses in an electronic form so they can be placed easily on the Ofgem website.

² Competition Commission, *Centrica plc and Dynegy Storage Ltd and Dynegy Onshore Processing UK Ltd*, August 2003, Table 5.9.

³ For the purpose of this calculation Hatfield Moor, Hornsea and Hole House are classified as existing medium duration storage facilities, and the Humbly Grove, Welton, Aldbrough and Byley storage facilities are classed as the likely future medium duration storage facilities. Ofgem considers that this interpretation is consistent with Table 4.5B of Transco's Transportation Ten Year Statement 2004 on the basis that 'likely future' storage facilities are those that have progressed beyond the 'conceptual' stage.

Responses should be addressed to:
Sonia Brown
Director, Markets
Office of Gas and Electricity Markets
9 Millbank
London
SW1P 3GE

Electronic responses should be sent to ben.woodside@ofgem.gov.uk. If you wish to discuss any aspect of this paper, Ben Woodside (telephone 020 7901 7471) would be pleased to help.

Way forward

Ofgem will consider responses received to this formal consultation in making its decision on whether to grant an exemption to INEOS under section 19A(5) of the Gas Act from the TPA requirements in section 19B of the Gas Act to cover the whole of the capacity of the Holford H165 gas storage facility. Ofgem will publish its decision in a final views document.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Sonia', with a small flourish at the end.

Sonia Brown
Director, Markets

Appendix 1: Draft exemption order

GAS ACT 1986 SECTION 19A EXEMPTION

Pursuant to sub-section 19A(5) of the Gas Act 1986 (the Act), the Gas and Electricity Markets Authority hereby gives to INEOS Enterprises Limited⁴, as 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 Holford in Northwich, Cheshire, subject to the attached Schedule.

Steve Smith

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

⁴ Registered in England No. 4651437. Registered Office: Runcorn Site HQ, South Parade, PO Box 9, Runcorn, Cheshire WA7 4JE.

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 the Holford H165 gas storage facility
“facility owner”	Means INEOS Enterprises Limited in its capacity as owner of the storage facility
“facility operator”	Means INEOS Enterprises Limited in its capacity as operator of the storage facility

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

The capacity of the facility, being up to 50GWh.

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	means any holder of a gas transporter licence under

transporter”	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.

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 an administration order under section 8 of the Insolvency Act 1986, as amended from time to time, made in relation to it;
 - (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.