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Dear Sonia,

**Re: Consultation on the proposed treatment under section 19A of the Gas Act 1986 of gas storage facilities with split ownership**

You have sought views on a specific issue in relation to any new storage facility eligible to benefit from an exemption, under Section 19A(6)(a) of the Gas Act 1986, from the requirement to offer RTPA on the basis that the use of the storage facility by others is not necessary for the operation of an economically efficient gas market (the "de minimis test").

The Gas Act 1986 (the "Act") requires the de minimis test to be carried out by considering the full capacity of the storage facility. It is our view that this remains the case even where multiple owners of a facility exist and where each has exclusive rights to a proportion of the facility's capacity. We consider that this is the inevitable consequence of the definition of "storage facility" in section 19E(1) of the Act when applied to section 19A(6)(a). We also consider that this approach is entirely appropriate from a regulatory perspective since it prevents a facility that would not otherwise be eligible for an exemption under the de minimis test becoming eligible by splitting capacity ownership between a number of users into smaller discrete parcels: if this were possible, it would encourage developers of new facilities to seek to avoid the application of section 19B of the Act through artificial ownership structures.

In the instance where a storage facility, eligible for exemption under the de minimis test, is owned by more than one legal owner we do not believe that the contractual arrangements between the owners need to be taken into account in assessing whether or not to grant an exemption. Indeed, such consideration would only be necessary were the issue of the availability of an exemption to be considered in relation to part, rather than the whole of a new facility (which, for the reasons set out above, we do not consider is appropriate). Any exemption should only be granted where it is not necessary for others to access the facility for the operation of an economically efficient gas market: by definition this can only be determined through a consideration of the nature of the facility and not of the contractual relationship between its owners.

You also asked for views on whether multiple owners of a storage facility eligible for an exemption under the de minimis test should apply for an exemption jointly or individually. We see no compelling logic that would lead us to recommend a preference, the decision over how to apply should remain a choice for the facility owners in question as the issues to be considered relate solely to the facility, not the owners for the reasons set out above.

Should you have any questions concerning our response please do not hesitate to contact David Chamberlain on 01926 655838 or myself.

Yours sincerely,

By email

Tim Tutton