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15 December 2005

Dear Colleague,

Decision on an application by Ineos Enterprises Limited for an exemption under section 19A of the Gas Act 1986 from section 19B of the Gas Act 1986 for Holford H165 gas storage facility

Introduction

This letter provides details of the application by INEOS Enterprises Limited (INEOS) for an exemption under section 19A(2) 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 Holford H165 gas storage facility in Northwich, Cheshire. This letter also provides Ofgem's¹ decision on the application.

The Holford H165 gas storage facility

INEOS owns a salt cavity at Holford in Cheshire (Holford H165), which for the last 20 years has been used by National Grid Gas NTS and its predecessors for diurnal gas storage.² This operation ended 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.

On 30 September 2005, INEOS wrote to Ofgem under section 19A(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.

In its application for an exemption INEOS noted that it was currently negotiating contracts in respect of the operation of the facility which would allow the import and export of gas from the cavity and for the trading of gas. INEOS suggested that these agreements will only be possible if INEOS has exclusive use of the cavity. In its application INEOS also noted that the facility is relatively small, representing an increase in the existing UK gas storage market of < 1% and that INEOS would be a new player in the gas storage market, which would add diversity and

¹ Ofgem is the Office of the Gas and Electricity Markets Authority, which supports the Gas and Electricity Markets Authority, the regulator of the gas and electricity industries in Great Britain. The terms 'Ofgem' and the 'Authority' are used interchangeably in this letter.

² Following its recent rebranding, the company previously known as Transco is now known as National Grid Gas.

competition to the market. INEOS therefore considered 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

On 21 October 2005, Ofgem issued a consultation letter in respect of the application by INEOS for an exemption from the TPA requirements contained in section 19B of the Gas Act. Having taken into account the size of the Holford H165 gas storage facility in relation to the size of the GB market for gas storage, Ofgem's initial view was 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, therefore, was 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 to cover the entire capacity of the Holford H165 gas storage facility. Ofgem invited responses on its initial view and on the draft exemption order to be received by close of business 30 November 2005.

Respondents' views

Ofgem received three responses to the consultation, one of which was confidential. The two non-confidential responses can be found in full on the Ofgem website.³ Two of the respondents agreed with Ofgem's initial view that the use of this storage facility by other persons is not necessary for the operation of an economic and efficient gas market and that it would therefore be appropriate to grant the exemption. The other response supported exemptions where they encourage the development of storage facilities without distorting competition in the gas supply market, but had no comments on the technical aspects of this application.

One respondent felt that it was particularly appropriate that a workable use it or lose it (UIOLI) regime is set up whereby this capacity can be available to the market in all circumstances, and that this should be a condition of the exemption. Two respondents raised wider concerns about mid-range storage in general, pointing out that the proportion of mid-range storage which is exempt from TPA may have an adverse effect on the market, and Ofgem should monitor the performance of all forms of storage.

Ofgem's final view

Having considered respondents' views, Ofgem remains of the view that use of the facility by other persons is not necessary for the operation of an economically efficient gas market, due to the size of the Holford H165 gas storage facility in relation to the size of the GB market for gas storage. The Authority has therefore granted INEOS an exemption in respect of the entire capacity of the Holford H165 gas storage facility under section 19A(5) of the Gas Act from the TPA requirements in section 19B of the Gas Act. This exemption order is set out in the Appendix to this letter.

Ofgem notes the view of one respondent that UIOLI arrangements should be a condition of this and future mid range storage exemptions. Ofgem has made effective UIOLI arrangements a condition of exemptions granted to LNG facilities on the basis of the six exemption requirements contained in section 19A(8) of the Gas Act and recognises the concerns expressed regarding the need for effective UIOLI arrangements at mid range storage sites. Given the small size of the Holford storage facility, and therefore that access to Holford storage is not necessary for the operation of an economically efficient gas market, Ofgem does not currently consider it

³ <http://www.ofgem.gov.uk>

necessary for UIOLI arrangements to be a requirement of this exemption. However, Ofgem does keep all exemptions under review as part of its routine market surveillance activities. If it was considered that such arrangements were necessary at some point in the future, Ofgem would, through its normal consultation process, review the need for such arrangements to be introduced.

Respondents also noted the potential for an adverse effect on competition as a result of the granting of exemptions. When considering any exemption application under section 19A(2) of the Gas Act, Ofgem makes its assessment of whether the use of the facility by other persons is necessary for the operation of an economically efficient gas market in light of the current and likely future state of the gas market. The amount of storage which is subject to third party access compared with the amount which is exempt will form part of Ofgem's assessment of the state of the gas market at any point in time. In assessing and reviewing exemptions, therefore, Ofgem assesses the potential for any adverse effect on competition that could arise as a result of the amount of storage which is exempt from TPA. Ofgem considers that this approach is appropriate since it allows it to respond to changes in the market in a considered and relevant manner.

It should also be noted that as part of its ongoing market surveillance activities, Ofgem, takes into account the effect of exemptions on the market and it should be noted that this exemption, as is the case with all other exemptions, may be amended or revoked if the Authority considers that the use of the facility is necessary for the operation of an economically efficient gas market.

Ofgem would like to note that, in the event that any of the circumstances occur which may give rise to the need to amend an exemption, Ofgem would consult interested parties before any amendment is made.

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.

The way forward

The attached exemption order, attached as an Appendix, will come into effect from 16 December 2005. If you wish to discuss any matters in this document, please contact Ben Woodside on 020 7901 7471.

Yours sincerely



Sonia Brown
Director, Wholesale Markets

Appendix : 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 Holford H165 storage facility located at Holford in Northwich, Cheshire, subject to the attached Schedule.



Sonia Brown

Authorised in that behalf by the
Gas and Electricity Markets Authority

Dated: 15 December 2005

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 and paragraph D6 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, or until it ceases to have effect in accordance with paragraph D6.

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
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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. Subject to paragraph D7, this exemption shall only have effect whilst the facility owner is the sole owner of the storage facility.
7. This exemption is transferable to a new owner of the facility only where the Authority consents in writing to such transfer. In any other circumstances the benefit of this exemption will not transfer to any new owner of the facility. For the avoidance of doubt, where the Authority consents to any transfer of this exemption all of the conditions contained in this exemption order will apply to the new owner of the facility.

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 the Authority considers that the use of the facility is necessary for the operation of an economically efficient gas market;
 - (b) 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;

- (c) 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;
 - (d) the facility owner is found to be in breach of any national or European competition laws, such breach relating to the facility;
 - (e) 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
 - (f) 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. Without prejudice to paragraph 1 above, or section 19A(4) of the Act, this exemption may be revoked by the Authority with immediate effect with the consent of the facility owner.