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To all interested Parties

22 June 2006

Consultation on an application by WINGAS Storage UK Limited for an exemption under section 19A(6)(a) of the Gas Act 1986 from section 19B of the Gas Act 1986

This document provides details of an application by WINGAS Storage UK Limited (WSUK), for an exemption under section 19A(6)(a) 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 proposed gas storage facility located at Saltfleetby, Lincolnshire. This document also provides Ofgem's initial views on the application and invites responses on these views.

Background

Changes were made to the Gas Act through the Gas (Third Party Access) Regulations 2004¹ (the 2004 Regulations), which transposed, in part, the Second EU Gas Directive² into GB law. As a result of these changes, for new storage facilities section 19A of the Gas Act now provides two routes for exemption from the negotiated TPA requirements for gas storage, which are set out in sections 19B of the Gas Act. The facility may be granted an exemption if either: use of the facility by other persons is not necessary for the operation of an economically efficient gas market, or, if the six exemption requirements contained in section 19A(8) of the Gas Act are met.

Saltfleetby storage facility

WSUK, a joint venture between WINGAS GmbH, Kassel (Germany) (WINGAS)³ and ZMB Gasspeicherholding GmbH, Vienna (Austria) (ZGHG)⁴, owns the Saltfleetby gas field, an onshore natural gas field at Saltfleetby, Lincolnshire. Gas production from the Saltfleetby gas field is declining and it is the intention of WSUK, subject to obtaining the necessary consents and approvals, to convert Saltfleetby gas field into an underground gas storage facility by 2008.

WSUK stated in its application that Saltfleetby will be a seasonal storage facility and operations will substantially comprise of one annual cycle of filling and emptying due to the specific geological features of the reservoir.

¹ SI 2004/2043.

² Directive 2003/55/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in natural gas and repealing Directive 98/30/EC.

³ WINGAS is a joint venture of Wintershall AG, Kassel (Germany) and OAO Gazprom, Moscow (Russia).

⁴ ZGHG is controlled by the Gazprom group of companies.

WSUK's current estimate is that the Saltfleetby gas storage facility will have about 715 mcm (7,650 GWh) of operational space with 8 mcm/day (85 GWh/day) of maximum daily withdrawal and 4.2 mcm/day (45 GWh/day) of maximum daily injection.

WSUK has also stated that the primary purpose of the facility is the provision of flexibility to support the expanding gas marketing and trading activities of WINGAS and the Gazprom Group in UK gas supply. It is proposed that the shareholders would each have long term rights to 40% of the Saltfleetby storage capacity. Any capacity not offered to or accepted by the shareholders would be marketed by WSUK to any signatories of its standard Storage Services Contract. Also, WSUK would operate use it or lose it rules in relation to unused booked capacity and would sell any additional short term capacity on a firm or interruptible basis. WSUK has stated that these activities would be carried out in a non-discriminatory manner.

On 13 June 2006, WSUK wrote to Ofgem under section 19A(2) of the Gas Act applying for an exemption under section 19A(6)(a) of the Gas Act from the application of section 19B of the Gas Act for the planned Saltfleetby gas storage facility on the basis that 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,⁵ the Saltfleetby gas storage facility, with an estimated 715 mcm of space, would constitute around twelve per cent of the overall market for gas storage and LNG storage space in Great Britain in 2008. The facility's estimated deliverability of 8 mcm/day would constitute about four per cent of the total deliverability of GB storage facilities in 2008.

It is Ofgem's initial view that, due to the relatively low market share that the Saltfleetby gas storage facility would represent in the market for storage space and flexibility, 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 WSUK under section 19A(6)(a) of the Gas Act from the TPA requirements in section 19B of the Gas Act in respect of the whole capacity of the Saltfleetby 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 decisions 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 the 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, the Competition Act 1998 or the Enterprise Act 2002.

Draft exemption order

A draft exemption order for the Saltfleetby gas storage facility is set out in Appendix 2. The drafting of this exemption order is, where relevant, consistent with exemptions

⁵ Please see Appendix 1 to this document for a summary of existing and potential storage facilities.

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 WSUK's exemption application. Ofgem would welcome views on the initial views contained in this document and the draft exemption order contained in Appendix 2. Any responses should be received by close of business on 4 August 2006. Unless marked confidential, all responses will be published by placing them in Ofgem's library and on its website www.ofgem.gov.uk. Respondents may request that their response is kept confidential. Ofgem shall respect this request, subject to any obligations to disclose information, for example, under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004. Ofgem prefers to receive responses in an electronic form so they can be placed easily on the Ofgem website.

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 wholesale.markets@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 WSUK under section 19A(6)(a) of the Gas Act from the TPA requirements in section 19B of the Gas Act to cover the whole of the capacity of the Saltfleetby gas storage facility. Ofgem will publish its decision in a final views document.

Yours sincerely

Steve Smith
Managing Director, Markets

Appendix 1: Table 1 - Summary of existing and publicly known proposed storage facilities⁶

Projected Start date	Storage facility	Owner	TPA status	Space (GWh)	Deliverability (GWh/d)	Injectability (GWh/d)
<i>Existing gas storage facilities</i>						
N/A	Rough	Centrica Storage Limited	Required to provide Gas Act TPA. Also provided undertakings	33200	455	160
N/A	Hatfield Moor	Scottish Power	Exempt	1260	25	25
N/A	Hornsea	Scottish and Southern Energy (SSE)	Required to provide Gas Act TPA	3495	195	21.6
N/A	Hole House	Energy Merchants Gas Storage (UK) Limited	Exempt	300	30	60
N/A	Humbly Grove	Star Energy	Exempt	3146	79	90
<i>Existing LNG storage facilities</i>						
N/A	Avonmouth	Transco LNG	Exempt	876	156	2.3
N/A	Partington	Transco LNG	Exempt	1121	219	2.4
N/A	Dynevor Arms	Transco LNG	Exempt	304	49	2.6
N/A	Glenmavis	Transco LNG	Exempt	505	101	1.6
<i>Planned storage facilities</i>						
2006	Holford H165	INEOS Enterprises	Exempt	50	75	75
First cavity Q3 2006 Second cavity Q3 2008	Hole House (increased capacity)	Energy Merchants Gas Storage (UK) Limited	Exempt	300	60	60
Mid 2007	Caythorpe	Warwick Energy	Exempt	3000	120	90
2007	Welton	Star Energy	Not applied	4720	89	Information not available
2007/08	Aldbrough	SSE/Statoil	Applied for exemption	4427	421	211
2007/08	Byley	E.ON	Exempt	1758	175	88
2008	Saltfleetby	WSUK	Applied for exemption	7650	85	45

⁶ The data in this appendix has been provided to Ofgem directly by the relevant storage facility owners.

Appendix 2: Draft exemption order

GAS ACT 1986 SECTION 19A EXEMPTION

Pursuant to sub-section 19A(6)(a) of the Gas Act 1986 (the Act), the Gas and Electricity Markets Authority hereby gives to WINGAS Storage UK Limited⁷, as a person who expects to be 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 Saltfleetby in Lincolnshire, subject to the attached Schedule.

Steve Smith

Authorised in that behalf by the
Gas and Electricity Markets Authority
Dated 21st June 2006

⁷ Registered in England No. 00953066. Registered Office: Building 3 Chiswick Business Park, 566 Chiswick High Road, London W4 5YA.

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 Saltfleetby gas storage facility
“facility owner”	Means WINGAS Storage UK Limited in its capacity as owner of the storage facility
“facility operator”	Means WINGAS Storage UK 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 7,650 GWh.

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
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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. 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.