

**Transmission Price Control Review: Initial Proposals**  
**Response from the Northern Ireland Authority for Energy Regulation**  
**("NIAER")**

**1 Introduction**

- 1.1 NIAER welcomes and thanks Ofgem for this opportunity to respond to the above named consultation. This response will focus on one particular aspect of the review that is causing concern for NIAER, namely the proposed reforms to the NGG NTS exit regime.
- 1.2 The proposed reforms to the NTS exit regime will result in significant changes to the exit arrangements at the Moffat connected system exit point ("CSEP"), and that these changes are of particular concern to all parties in Northern Ireland ("NI"), the Republic of Ireland ("RoI") and the Isle of Man ("IoM").
- 1.3 Ofgem is actively involved in the Gas Regional Initiative ("GRI") and is part of the same Regional Coordination Committee ("RCC") as NIAER and the Commission for Energy Regulation ("CER"). The premise of the GRI is that market integration is in the long-term interests of all consumers. Logically, a regulator must be careful to weigh that long-term benefit before taking steps which hinder cross-border gas flows. NIAER is hopeful that Ofgem will consider the proposed reforms against the wider RCC goals of improving cross-border trade, and facilitating closer integration and harmonisation of gas markets across the North North-West region.

**2 Our concerns**

- 2.1 In the past 12 months stakeholders from all three jurisdictions have met regularly with Ofgem and National Grid ("NG") to discuss our concerns, the possibility of alternative arrangements and/or possible solutions. The concern for all parties that use the Moffat CSEP can be summarised under three headings:

2.1.1 Security of supply

The proposed reforms guarantee capacity at regulated prices if shippers book 3 years or more in advance and commit to pay for this capacity for at least 4 years. This means shippers need to forecast their capacity requirements and commit to pay for capacity at least 7 years in advance.

As NI's gas market is still expanding it is impossible for shippers to forecast capacity requirements this far into the future. Therefore NI shippers are likely to continue booking only 1 year ahead. However with only long-term capacity guaranteed, and short-term capacity (and flow flexibility, possibly) to be allocated by way of auction, it is feasible that NI shippers may fail to secure all the capacity they require.

There is also the possibility of new power stations being built or existing non-gas fired stations converting to gas. As construction or conversion could be completed in less than 7 years, failure to secure adequate capacity is again a possibility. Dependence on a single CSEP greatly magnifies the risk in NI when compared to the risk faced by possible new power stations in GB.

In addition, the introduction of a flow flexibility product could reduce the capacity available at Moffat. However, we do not yet have sufficient information about flow flexibility to assess the materiality of this concern.

#### 2.1.2 Impact of long-term capacity bookings on competition

The regulators in NI and the RoI are encouraging market opening in the gas market. However the requirement to book capacity for 7 years or more in advance is a major barrier to entry for any shipper, and is likely to discourage new market entrants.

#### 2.1.3 Impact on costs

The proposed reforms will impose significant costs on all parties that use the Moffat CSEP. The flow flexibility reforms could cost NI shippers millions of pounds per annum. Although other costs are difficult to quantify at this stage, it is known that significant changes will be needed to both IT systems and administrative/commercial agreements, and that the cost of these changes will be considerable.

2.2 The above concerns have already been put to Ofgem. NIAER notes your response that it is beyond Ofgem's remit to consider the preservation of security of supply, the promotion of competition and the minimisation of costs for jurisdictions downstream of Moffat<sup>1</sup>. However, we feel this fails to recognise that cross-border integration is a matter of substantial importance to GB consumers.

2.2.1 GB is increasingly reliant on gas imports from Europe. It is of great importance to GB consumers that regulation promotes free flows of gas across European borders, unhindered by excessively national-focused regulation of transit flows.

2.2.2 The proposed approach to NTS reform sets an example of imposing changes, without taking account of the impact on users in other jurisdictions. This sets a precedent for future regulator-to-regulator disagreements.

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<sup>1</sup> In a letter to Avian Egan of BGE on 21 April 2006 Ofgem states: "*Not only is the [Gas and Electricity Markets] Authority under no duty to take account of such costs, it would not, in our view, be appropriate for the Authority to seek to do so. The Authority's principal objective and general duties under the Gas Act concern the gas industry in Great Britain and gas consumers within Great Britain.*"

- 2.3 NIAER would urge Ofgem to proceed with caution and reconsider whether the proposed reforms as they stand really are in the long-term interests of GB consumers.

### **3 Distinguishing the Moffat exit point**

- 3.1 Parties from NI, the RoI and the IoM have put forward arguments for different arrangements to apply to the Moffat CSEP. The arguments have centred on the case for “due discrimination” given Moffat’s unique circumstances. The arguments have focused on:
- 3.1.1 Security of supply (with reference to an inter-governmental treaty<sup>2</sup>). Under the treaty, the government of the RoI is committed to providing NI with capacity and pressure through the Moffat exit point. The current arrangements at Moffat ensure compliance with this aspect of the treaty, but the reforms could put this in jeopardy.
  - 3.1.2 Moffat as a unique exit point acting as an entry point to three separate jurisdictions (NI, the RoI and the IoM) with 31 different parties using Moffat as access to the NTS. There are a suite of agreements governing the arrangements at the Moffat exit point, and it would be very difficult to change these agreements quickly.
  - 3.1.3 NI, the RoI and the IoM having embryonic gas markets which need different arrangements to that of GB’s mature gas market.
  - 3.1.4 Moffat is the only exit point on the NTS with downstream gas production (from the Corrib gas field) and possibly a storage facility.
- 3.2 Ofgem has not explained why these arguments are wrong. Ofgem has suggested that allowing special arrangements for Moffat would be difficult given that an objective of the reforms is to ensure that arrangements for access to NTS off-take rights are not unduly discriminatory. Ofgem has also argued that allowing special arrangements to apply to Moffat would be inconsistent with the principles of non-discrimination as outlined in Directive 2003/55/EC and Regulation (EC) No 1775/2005. However, since our argument is that discrimination would in the particular circumstances be appropriate (“due” in the context of UK law; “proportionate” and “objectively justified” in the language of EC law), these responses appear to miss the point.
- 3.3 Moffat is a unique exit point on the NTS and we would very much require that Ofgem articulate a convincing counter argument instead of simply stating different arrangements would be unduly discriminatory. Given the very high stakes for the Irish market, Ofgem may invite legal challenge if it ignores some relevant considerations as it takes this decision.

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<sup>2</sup> Article 10 of the Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Ireland to the transmission of natural gas by pipeline between the UK of GB & NI and the RoI, 30<sup>th</sup> April 1993 and 24<sup>th</sup> September 2004.

## **4 Alternative solutions**

- 4.1 In light of Ofgem's reluctance to distinguish the Moffat exit point relevant parties from NI, the RoI and the IoM have worked with Ofgem and NG to come up with two alternative solutions. Both solutions, referred to as Option A and Option B, would see a single party ("the aggregator") either book or 'reserve' capacity on behalf of all shippers downstream of Moffat.
- 4.2 Both options have substantial disadvantages. Option A would see the aggregator book and pay for capacity on behalf of all shippers downstream of Moffat. However the aggregator will not be a licensed shipper on the NTS and would therefore require an exemption from the need to hold a shipper licence from the Department of Trade and Industry ("DTI").
- 4.3 Option B would see the aggregator 'reserve' capacity on behalf of all shippers downstream of Moffat, but it would be the shippers that actually book and pay for capacity themselves. In effect the aggregator will act as a guarantor to NG, and will pay NG for any shortfall if bookings are less than 'reserved' capacity. Option B does not require an exemption from DTI. However, this role as financial guarantor will require substantial information flows between shippers and the guarantor. The most likely candidate is one of the Irish TSOs, which are not companies that currently have management competences or regulatory cover to take commercial risks of this nature.
- 4.3 As it is expected to take up to a year for the exemption from DTI to come through, Ofgem is applying pressure for a quick decision to be reached on whether we pursue Option A or Option B. However as the details of exactly how each option would be applied have not been finalised it is not yet clear which option is the preferred choice.
- 4.4 Ofgem and NG have also not provided sufficient information to help us make our decision. For example, details on how the flow flexibility product will work have yet to be made available. Until we have all the information needed to properly analyse each option we will not be able to make a decision on which option is preferred. Therefore NIAER would kindly request that Ofgem make available the following information as soon as possible:
- Detailed proposals on the flow flexibility product;
  - Detailed proposals on how the guarantor arrangements will work.

The arrangements at Moffat under either option will be complex and further questions may arise as the analysis of each option develops.

## **5 Conclusion**

- 5.1 NIAER, in conjunction with key industry players and our local government Department, has been working diligently over the last number of years to reduce NI's high cost of energy. The proposed reforms to the NTS exit regime risk setting back these efforts.

- 5.2 NIAER is of the view that the proposed reforms have the potential to stifle cross-border flows and may be harmful to the long-term interests of GB consumers. Ofgem has failed to take due account of relevant considerations, in particular why the Moffat CSEP is different than all other exit points. NIAER therefore urges Ofgem to carefully consider the effect of the reforms on stakeholders downstream of Moffat. NIAER reiterates the request that the Moffat exit point be distinguished from other exit points.
- 5.3 Failing this, it is very difficult to choose between Options A and B as discussed above. Naturally we wish to select the option that works most effectively with the NTS exit regime, but this is proving impossible given that the proposed regime is still a moving target.
- 5.4 Assuming we do manage to select an option to progress, we will then need to allocate resources and consult with shippers before we begin the process of modifying licences, network codes and agreements surrounding the current Moffat arrangements. NIAER will then need to work with the regulatory authorities in the RoI and the IoM in drawing up a tri-party regulatory agreement. This whole process will take considerably more time than Ofgem has factored into the timetable.