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Dear Philip

Ofgem Consultation 118/07: SSE Hornsea Limited's application for an exemption from Section 19B of the Gas Act 1986"

EDF Energy welcomes the opportunity to respond to this consultation, and supports SSE Hornsea Limited's (SSEHL's) application for an exemption from the negotiated Third Party Access (nTPA) regime.

While we agree with the outcome of Ofgem's analysis that Third Party Access (TPA) to SSEHL's share of the Aldbrough facility is not necessary for the operation of an economically efficient gas market, we are concerned about some of the analysis undertaken. As noted by Ofgem in paragraph 1.6, SSEHL is a separate legal entity from SSE, and as recognised in paragraph 3.8 it is not SSEHL that holds the capacity in Hornsea but SSE Energy Supply Limited (SSESL). However, under Scenario B Ofgem has conducted the analysis based on "SSEHL's holding of capacity at Hornsea"¹. It would appear that Ofgem's three scenarios for determining market share aim to identify the proportion of assets that SSEHL would own, the volume of capacity that SSESL would control, and the market share of assets that would be under SSEHL's direct control. However, it is not clear that this is what Ofgem has in fact assessed, probably because of the complicated ownership structure present within SSE. We therefore request clarification of this point.

As it appears that SSEHL will only be the asset operator for both Hornsea and Aldbrough, with SSESL holding capacity at both facilities and therefore determining how this capacity is utilised, it could be argued that SSEHL's control of the market for flexibility amounts to zero. SSESL's control of market share under Scenario B therefore appears significant until 2009/10. However, given that the capacity in Hornsea will have been acquired through an open market process regulated by Ofgem, it appears reasonable to exclude this capacity from the analysis. This is especially the case given that SSESL's future share of capacity at Hornsea remains uncertain and that they will have to "compete" with other relevant market participants to secure this capacity.

However, it is not SSESL that is applying for the nTPA exemption, but SSEHL. Therefore we request clarification from Ofgem as to how it will treat nTPA exemption applications with regard to company structures and asset and capacity holdings. It seems appropriate that in instances when there is little actual separation of companies within a group these should be treated

¹ Paragraph 3.13 of Ofgem's Consultation 118/07.

equivalently. However, when there is significant separation (as can clearly be demonstrated between Centrica and Centrica Storage Limited) these companies should be viewed as unrelated.

We therefore believe that SSEHL's control of the flexibility market, as identified by Ofgem, is sufficiently small, at less than 5% under scenario C, to ensure that nTPA access is not required. We further concur with Ofgem's view that the ownership of capacity within TPA facilities should not be included in market assessment. In particular, we believe that:

- Ofgem's market definition is appropriate, especially following experiences from last winter. It seems that the fundamental nature of UK gas supplies is changing, with new supply sources and infrastructure coming onstream in response to declining UKCS gas supplies. Last winter saw a shift in the operation of the Belgium–Zeebrugge Interconnector (IUK), which can now be viewed as a flexible source of gas, akin to Rough storage, for example. But it would seem prudent to keep this under review for any future exemption applications to ensure that accurate market definitions are applied.
- The flexible gas market as currently defined by Ofgem remains appropriate for considering the effect on competition of the development of a new medium range storage facility.
- TPA regulation in the UK is functioning effectively, with many non-asset owners utilising these arrangements to access capacity contracts in certain facilities.
- Ownership of TPA facilities should not be included in the market share used in these assessments. The TPA arrangements are working effectively in supporting a competitive market for flexibility and ensure that asset owners in these facilities do not hoard capacity. Any capacity acquired in these assets will have been done so through a competitive process, and the duration of this capacity will vary between assets.
- We welcome SSEHL's indication that the Aldbrough Storage Facility will be governed by robust Use It or Lose It (UoLI) provisions, although we would note that this was absent from Statoil UK Limited's application. We would therefore request clarification as to whether this was an oversight within Statoil UK Limited's application or whether the UoLI provisions will only be applied to SSEHL's share.
- The proposed exemption should therefore be granted to SSE Hornsea Limited.

It is also important to note that access to short-term entry capacity is essential for storage contracts and gas markets to operate efficiently. In particular, the duration of the storage capacity contract will determine which entry capacity product or auction users will enter into and the period that they will acquire capacity for. It is therefore necessary to ensure that any entry capacity regime reflects this and ensures that the capacity required to support these assets is available. Failure to reflect this could have a negative impact on the UK's security of supply and market prices if part of these assets became stranded.

I hope that you find these comments useful. If you wish to discuss them in more detail, please contact our Gas Market Analyst, Stefan Leedham (0207 752 2145, stefan.leedham@edfenergy.com).



Yours sincerely

Roger Barnard

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