

Ian Marlee  
Partner, Trading Arrangements  
Office of Gas and Electricity Markets  
9 Millbank  
London  
SW1P 3GE

Andy Balkwill  
Regulatory Policy Manager

[Andy.balkwill@uk.ngrid.com](mailto:Andy.balkwill@uk.ngrid.com)  
Direct tel +44 (0)1926 655988  
Direct fax +44 (0)1926 656520

[www.nationalgrid.com](http://www.nationalgrid.com)

5<sup>th</sup> February 2010

Dear Ian

**Ofgem Consultation 154/09: EDF Energy Plc's application for an exemption from section 19B of the Gas Act 1986**

Thank you for the opportunity to respond to the above consultation. This response is made on a non-confidential basis on behalf of National Grid Gas plc (NGG). NGG owns and operates the National Gas Transmission System (NTS) and also owns and operates four of the gas Distribution Networks.

EDF Energy Plc has applied for an exemption from section 19B of the Gas Act 1986 in respect of their Hill Top Farm gas storage project. We support the granting of this particular exemption and exemptions more generally for this type of project where this is the only mechanism to ensure that such storage projects are developed.

However we do have some concerns regarding the potential interaction between such exempt storage facilities generally and Ofgem's forthcoming assessment of whether competition in the provision of Operating Margin (OM) services has been demonstrated and these are set out below.

We note that where such exemptions are granted then the owner of the facility is entitled to choose not to offer storage capacity to third parties including NGG acting in its capacity as the NTS system operator (SO). The absence of direct access (or indirect access via secondary capacity owners) could limit the SO's ability to source storage capacity for use in meeting OM requirements.

As part of the Transmission Price Control Review TPCR4, NGG accepted Special Condition C25 which required it to use reasonable endeavours to promote competition in the provision of OM services by 1 April 2009. Ofgem explained that the purpose of this condition was to provide a framework for NGG to hold tenders for contracts for the services it needed so allowing competition to develop. Furthermore, that if the terms of C25 were met, then NGG LNG storage facilities should be able to tender on the same basis as other potential OM providers (i.e. the current price cap for the provision of OM services by the LNG business (specified in Special Condition C3) of NGG's licence would be removed). However, despite our efforts to promote competition in the provision of OM services, facilities with an exemption under section 19B of the Gas Act may choose not to participate (to the full extent possible, or at all) in the OM tenders and NGG has no right to expect exempt facility owners to enter into negotiations under an nTPA regime in order to obtain the necessary OM service in the most economic manner.

Ofgem has recently issued an open letter addressing the issue of contestability in the provision of OM which sets out Ofgem's views on the test that should be applied in determining whether competition in sourcing OM has been demonstrated. The relevant text is set out below (emphasis added):

*We will therefore need to assess the effectiveness of the competition resulting from the tender process. **In doing so, a key criteria we propose for our assessment is whether NGG NTS can purchase the complete volume of each of the OM requirement types from providers other than NGG LNG.** Where it cannot, we consider that the price at which NGG NTS procures volumes from the NGG LNG storage facilities will still need to be regulated given that these costs are passed directly through to shippers.*

It seems to us that it is important to differentiate between contestability and competition – especially given that where exemptions are present the party concerned can opt not to compete even where a service is contestable. We note that there are a number of storage sites (with exemptions) that could (and indeed do) currently compete to offer OM services to NGG. However the exemptions granted mean that this may not always be the case in the future.

If you have any questions in relation to this response please contact myself in the first instance.

Yours sincerely,

by e-mail

**Andy Balkwill**

Regulatory Policy Manager  
National Grid, UK Transmission