



**Andrew Pearce**

European Regulatory Affairs  
Gas Trading Europe and LNG

BP Gas Marketing  
20 Canada Square  
Canary Wharf  
London  
E14 5NJ

15 December 2010  
Ian Marlee  
Partner, GB Markets  
Ofgem  
9 Millbank  
London, SW1P 3GE

Direct: +44 (0)20 7948 4027  
Main: +44 (0)20 7948 4000  
Mobile: +44 (0)7900 654136  
Fax: +44(0)2079487844  
Main: +44 (0)20 7948 5000  
Andrew.Pearce2@bp.com

Dear Ian

**Guidance on the Third Party Access regulatory regime for gas storage facilities in Great Britain**

Thank you for the opportunity to respond to the above consultation document. BP wishes to make the following comments. These comments are not confidential.

Storage and the access to storage are rightfully seen as important areas by Ofgem and the European Commission. Being able to acquire storage capacity and injection/withdrawal rights are an important tool for shippers to use when operating in an open liquid market. The use of storage along with production gas and LNG give market participants the ability to manage their portfolios and meet their delivery obligations. Storage can also be an important tool to help market participants in balancing their portfolios. The flexibility that storage offers a market participant can also be used in helping to keep the system in balance.

The UK faces considerable challenges in developing gas storage in coming years. This storage is needed to replace indigenous production flexibility that is declining, to manage new profiles of gas availability from LNG and long distance imports, and potentially to provide greater flexibility to load-following CCGT required to support a growth in renewables and low-flexibility nuclear generation.

To date, much independent investment in UK storage has been made in respect of facilities that have been excepted from TPA under de Minimis rules. This has successfully allowed market parties to secure storage capacity through their own investment.

Ofgem now faces a difficult decision about how to incentivise construction of larger facilities that may not meet current de Minimis rules. Requirements to offer all constructed capacity to third parties without being able to retain capacity for own use, may discourage

BP Gas Marketing Ltd  
Registered in England and Wales No. 908982  
Registered Office:  
Chertsey Road  
Sunbury on Thames  
Middlesex  
TW16 7BP

all but those who are specifically interested in developing third party and regulated infrastructure. If such investors are to develop facilities which may be larger than those considered by de minimis, then further guidance will be required around the provision of exemptions under Article 36 of the European Gas Directive. As previous exemptions have typically been for LNG facilities facing regulated access, we recognise that exemptions from negotiated access may be considered differently, and we would welcome guidance on this.

### **Answers to specific questions**

#### **CHAPTER: Three**

**Question 1: Should pivotal gas volume be used when assessing SMP? If no, please explain why.**

**Question 2: Is the proposed figure of ten per cent of pivotal gas volume an appropriate threshold for defining SMP? If no, what is an appropriate threshold?**

**Question 3: Is it appropriate to also consider market outcomes to assess whether a market player may have SMP at lower levels of pivotality?**

**Question 4: Are there any additional factors that should be used when considering if a market participant has SMP?**

We note that in questions 1-4, it is unclear whether significant market power refers to the supply of gas at peak times, or the construction and offer of storage facilities.

We would suggest that for a storage developer to be considered to have SMP in the storage market, then it would need to control uncontracted storage that represents a significant proportion of either all UK storage or by a wider defined market to include other forms of flexibility. As it may compete with virtual storage offered at the NBP, this may be difficult to ascertain. We would assume that where storage has been contracted out to a third party, then this would be removed from the calculated market share.

However, the analysis instead appears to focus on supply of gas rather than storage. Presumably, Ofgem intends to look at the developer of a new facility and judge that if retaining the facility for his own use would push a deliverability capability (based on purchase contracts for gas, LNG import capability) above 10%, then he would be forced to offer some or all of the proposed facility for third party access.

For suppliers who control deliverability of more than 10% of the market at peak times (on the periods specified), we assume that this would be addressed under competition law, whether or not some of this supply came from storage, but it would not actually prevent them from contracting storage from a developer.

In any case, appropriate and current competition tests should be used and Ofgem should be free to update the tests as appropriate without being locked into a particular methodology. Nevertheless, it should be clear to any applicant what test is being used, such that they are able to calculate for themselves how they would be scored using that technique.

## **CHAPTER: Four**

### **Question 1: What factors should be taken into consideration when defining the maximum capacity of a group of facilities?**

As stated in the consultation, each facility's maximum capacity should be calculated on an individual basis and the results aggregated for the group of facilities. The calculation should be done using a clear and transparent methodology. The methodology to define the maximum capacity should be published to assist market participants to understand how these maximum capacities were derived.

### **Question 2: What concerns, if any, do market participants have with Ofgem's preliminary views on capacity allocation? What concerns, if any, do storage users have with the use of allocation mechanisms other than auctions to allocate capacity, particularly standard services?**

Auctions and open seasons should both be seen as efficient ways of allocating storage capacity. Where capacity is not congested then allocating short term capacity on a first come first served basis should not be an issue, provided the capacity has previously been offered for sale in an auction/open season.

### **Question 3: Does the use of auctions provide market participants with sufficient safeguards that any market player with SMP will provide standard services to the market on a non discriminatory basis? What other measures/safeguards in relation to how any market player with SMP allocates capacity could be considered?**

The use of auctions should provide the safeguard needed as they are a fair allocation method, as long as they are carried out in a transparent manner. As previously stated other allocation methods should be allowed provided they are also carried out in a transparent manner. If market players have a clear picture of how the reserve price was set there should be no issue with this form of allocation method. However the regulator should also ensure that a market player with SMP is allocating capacity on a non discriminatory basis. If market players have concerns on the setting of the reserve price or the capacity allocation they should take them up with the regulator.

### **Question 4: Do market participants consider that the prevailing anti hoarding arrangements currently in place at GB storage facilities that are subject to the TPA regime are appropriate and compatible with the requirements of the Gas Regulation? If no, please explain why.**

We agree with Ofgem that the anti hoarding arrangements that are currently in place at GB storage facilities that are subject to nTPA are generally consistent with the Gas Regulation.

### **Question 5: Do market participants consider that the mix of interruptible and firm storage services is appropriate and compatible with the requirements of the Gas Regulation? If no, please explain why.**

Having a mix of products both firm and interruptible, long and short term and bundled and unbundled would meet the requirements set out within Article 15 of the Regulation.

### **Question 6: Do market participants consider that the existing arrangements for the secondary trading of storage capacity are appropriate and compatible with the requirements of the Gas Regulation? If no, please explain why.**

We agree with Ofgem that the arrangements in place at facilities that are subject to the nTPA regime are generally consistent with the requirements of the Gas Regulation.

## **CHAPTER: Five**

### **Question 1: What levels of consultation should SSOs undertake when developing main commercial conditions for the first time and when proposing amendments to the standard terms and conditions?**

As stated in the consultation, it should depend on the type of change being proposed as to the duration and detail of any consultation. For new facilities where SSOs are developing commercial conditions for the first time then the level of consultation should be greater than for amendments to existing facilities. The duration of a consultation should also depend on the level of change being consulted on. If the consultation is for a new facility or if an existing facility is making a significant change, the consultation should give respondents adequate time to carry out analysis of the proposals. .

### **Question 2: Are there aspects of an SSO's main commercial conditions where small changes are likely to have a significant impact on system users?**

If it were a change to capacity availability, that would be deemed as significant. Even a change to the nomination time could be deemed as significant if it were to reduce the nomination window for a market participant. However changes to the way information is provided may be deemed as a small change. Each change should be looked at individually to assess whether it is a significant change or not.

### **Question 3: Should SSOs be expected to formally consult or test the market before changing existing services or offering any new services to the market? If no, please explain why.**

It would seem reasonable that the SSO would want to at least test the market before changing existing services. Whether they also consult the market would depend on how opinion in the market was. If a SSO tested the market and found no differing views from market participants then one would have to assume that there was no need to consult on the change. However if the SSO felt that the proposed change could be deemed as having a significant commercial impact then it would seem sensible that the SSO consult the market and gather opinions before any change is made to existing arrangements.

### **Question 4: Should SSOs be expected to offer a minimum threshold of capacity on a short term basis? How should SSOs determine the minimum proportion of capacity that should be sold on a short term basis?**

Offering a minimum of ten per cent to the market on a short term basis would appear to be appropriate. This is in line with the ten per cent of baseline entry capacity that is held back from the long term auctions to be sold in the short term auction. However if it is found that this capacity is not being allocated then the TSO should be free to market it in a long term auction.

### **Question 5: Should SSOs be expected to offer bundled capacity as part of their standard services? Should SSOs be expected to also offer unbundled capacity as part of their standard services? Please explain your views.**

Article 15 2(c) of the Gas Regulation states that the SSO has to offer both bundled and unbundled products to the market. We would expect these products to be offered as part of a standard service to comply with the Regulation.

## **CHAPTER: Six**

### **Question 1: What factors should Ofgem take into consideration when assessing a market player's flexible gas requirements and, in particular, need for storage services?**

When a market participant makes the financial commitment to construct a new storage facility they will do so after consideration of the benefits that the facility will bring to them. Some developers of storage will be looking to build a facility with the sole intention of marketing all the capacity for commercial use. Others will be looking at using the facility as part of their own flexibility portfolio. Indeed it could be argued that some projects would not get off the ground without the developer having this flexible option for their own use.

The consultation implies that if nTPA were to apply to the facility, they would not be able to hold back any capacity for own use, all capacity would have to be offered via transparent allocation mechanisms to the market. Having this rigid approach could deter certain storage projects from being developed which in turn would have a detrimental effect on the security of supply situation.

## **CHAPTER: Seven**

### **Question 1: Do SSOs provide sufficient information on the services they offer and the terms and conditions of access? Is any further information required? Are there any improvements that could be made to how information is provided by SSOs?**

We have no issues with the quality and amount of data that is published by the SSOs.

### **Question 2: Do SSOs provide sufficient information on the maximum capacity and the level of utilisation? What further information is required? Are the current timeframes for providing this information appropriate?**

As stated above we have no issue with the quality of the data published.

### **Question 3: Should SSOs publish the information required under section 19(4) on their websites or should NGG undertake this role for all SSOs?**

It would seem sensible if the information was all in one place i.e on NGGs website. Publishing the information in this way would also mean that it was published in a consistent manner, so market participants could easily compare options open to them at different facilities. This option would also seem to be the most transparent option available. However this should not stop the individual SSO for publishing the information as well if they so wish. If this were the case it would be hoped that the SSO publish the information in the same format as published on NGGs website.

We hope that you find these comments helpful. If you wish to discuss further please don't hesitate to contact me on the number above.

Yours sincerely

**Andrew Pearce**  
**Regulatory Affairs**