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San Donato Milanese, 15th December 2010

Subject: Guidance on the Third Party Access regulatory regime for gas storage facilities in Great Britain.

By means of this non confidential letter **eni** is pleased to reply to your consultation on guidance on the Third Party Access regulatory regime for gas storage facilities.

We welcome this consultation because we believe that it's important to define a clear framework in which market operators could operate.

About the questions presented in the document, hereinafter you can find our position.

Should you require any clarification or further information, please do not hesitate to contact us.

Yours sincerely,

eni spa
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Regulatory Affairs
Vice President
Michele Pizzolato




eni's response:

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?

The section about the Third Party Access to Storage Facilities of the Interpretative Note on Directive 2009/73/EC says: "*Article 15 of the Gas Directive requires SSOs which are part of a vertically integrated undertaking to be legally and functionally unbundled from other activities not related to transmission, distribution, and storage*".

Coherently with this provision, within the 3rd March 2011 SSOs of facilities not exempted from TPA have to be legally and functionally unbundled. This means that a vertical integrated company will not control SSO operational activities.

For this reason we are strongly against this proposal that appears an unnecessary additional regulation in an already highly competitive natural gas market, and moreover with the implementation of the new European regulation for storage.

Believing in the importance to not create redundant regulation, we think that your proposal about the significant market power (SMP) perhaps may be discussed only with reference to the process to grant an exemption from TPA, as a test to evaluate the viability of exemptions.

Given the expressed adversity to the proposal, hereinafter we present some considerations concerning the consultation document.



In eni's view, the information included is insufficient to allow us to provide detailed comment on whether the use pivotal gas volume as one of the SMP assessment criteria is appropriate.

In particular, it does not provide enough details on how the pivotal indicator would be calculated: for example, although the document focuses on storage, it seems that the pivotality should be referred to the overall position of each market player (including SSO) on the whole gas market. Furthermore it's absolutely unclear how this mechanism works in case of joint ventures in storage facilities.

In our experience, pivotality is one technique used to assess market power in the power sector, not in the gas sector. Further the EU sectoral inquiry report while using pivotality in its analysis of power markets, did not provide pivotality analysis in relation to the gas market. In this context, we note that it is relatively easy to conduct pivotal analysis in respect of the power market as

- delivery in one time period does not typically affect delivery in another time period, so time periods can be considered independently, and
- declared available capacity is in general a good estimate of potential supplies, which allows a straightforward, robust calculation of pivotality (which does not exist in the gas market).

Regardless of the calculation method, we do not really understand why this kind of analysis should be taken into account to discriminate among SSO's. We believe that it's no use introducing any asymmetric regulation on storage operators and, for this reason, we do not support this proposal. Further, we would like to underline that such a proposal entails a different and asymmetric treatment for market operators, whose introduction would go beyond the scope of Ofgem.

About the time spread, the document says that time periods should be considered independently. Ofgem's guidance states that a market player is "pivotal" if their index is greater than 10% of the demand for the relevant period. With this provision a market player could be evaluated as with SMP even if he is pivotal in the coldest month, quarter or season (when supply constraints are most likely to apply). In our opinion different time periods



should be analysed in aggregated way, because it is the persistence of SMP the element to be avoid.

Determining the achievement of the threshold level it has to be considered not the normal level of use but the maximum level; because in a rational model an eventual pivotal strategy of a single player trying to influence the market, would cause the reaction of all the available flexible resources and not only to the ones utilized in a normal or historical context.

About the proposed figure of 10% of pivotal gas volume we would like to know why Ofgem decides to adopt a different level from that fixed in the antitrust procedure. In our opinion this threshold should be fixed at an higher level for the follow reasons. The achievement of this level could be determined by exogenous and temporary elements out of the control of the market operator. Further, in the Winter Supply Outlook 2010-2011 ENTSOG, assessing the flexibility of the system under severe conditions (reference is made to the 1-in-20 climatic conditions coming from the future Regulation concerning measures to safeguard security of gas supply), affirms that for a high daily demand in January 2011 the level of remaining flexibility in UK is 24%. Coherently with these assumptions, it's our opinion that the threshold of 10% should be raised up at least at 25%.

Regarding the other structural factors that could be considered to determine the SMP, we understand your purpose to cover a bigger as possible spectrum of cases, but we believe that the definition of other elements could reduce the benefits related to the individuation of a threshold value. In our opinion it's crucial for the development of the market to define clear rules for market operators. Therefore of the list detailed in paragraph 3.26 of the document only the market player's position across all related markets should be considered in determining the existence of a SMP with lower volumes of pivotal gas.



CHAPTER: Four

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

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?

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?

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.

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.

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.

Answering to these questions we refer specifically to allocation mechanism for available storage capacity; we do not refer to allocation deriving from exemption or procedures for new investments.

We don't believe that auctions are the only mechanism to sell standard products reaching the goals of transparent and not discriminatory allocation procedures as prescribed from Third Energy Package. We think that the imposition of auctions as CAM for storage facilities is out of step with commercial reality and could create an unnecessary barrier to investment. In our opinion essential elements are the fact that the allocation starts with an open subscription period and that the SSO provides all the necessary information for the shippers clearly and in time, maybe through a platform



in which should be sold both the primary and the secondary short term capacity. We believe that auctions are necessary to grant the transparency of the process and to send a clear economic signal to the market only in case that the open subscription period has revealed congestion.

Regarding the reserve price of the auction, we don't understand the Ofgem necessity to regulate this aspect given that:

- the Third Package doesn't require any provision in this field, and
- the Britain gas market is a competitive market.

Further we believe that if Ofgem decide to implement this proposal with reference of the new storage facilities this provision will have a dramatic effect on the investment in gas infrastructure.

In any cases, it's our opinion that the relevant marginal cost isn't an appropriate reference. In the case that all the capacity is sold at this price the SSO wouldn't be able to cover its costs. In order to underpin the investments and grant the correct profitability of the storage activity, we think that the reserve price should be fixed in order to cover all the costs of the storage activity (not only marginal costs) included a minimum level of remuneration for the invested capital.



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?

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?

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.

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?

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.

In our opinion when a SSO amending/developing its main commercial conditions, it would be open a consultation to all the market participants. To give the elements to participate at the higher number of shipper, the notice of the consultation should be published not only to the SSO website but also to an appropriate institutional website (Ofgem or DECC – coherently with the creation of licence system for SSO). The duration of the consultation should be coherent with the significance of the proposed changes and it should last at least 4 weeks.