

LNG facility operators, primary
capacity holders, shippers,
upstream and downstream
market participants and other
interested parties

Email: Tom.Corcut@ofgem.gov.uk

Date: 11 May 2020

Dear Colleague,

Ofgem decision on South Hook LNG Terminal Company LTD's application for an exemption for the Incremental Capacity from regulated third party access (section 19D of the Gas Act 1986)

This letter sets out Ofgem's decision on South Hook LNG Terminal Company LTD's ("SHT") application¹ for an exemption of at least 25 years from regulated Third Party Access (rTPA) for additional Liquefied Natural Gas (LNG) processing capacity, estimated to be ~5.3 billion cubic meters per year (bcm/yr) ("Incremental Capacity") of natural gas. The application, submitted on 9 October 2018, was made consistent with section 19C(2) of the Gas Act 1986 (as amended) ("the Gas Act").

Background

Directive 2009/73/EC (the "Third Gas Directive")² provides for a system of rTPA to LNG facilities and the circumstances in which exemptions from such provisions can be granted. The terms of the Third Gas Directive have been transposed into national law via the Gas Act. The rTPA provisions in relation to LNG import facilities are contained in section 19D of the Gas Act. The Gas and Electricity Markets Authority ("the Authority")³ can exempt certain new or modified gas infrastructure facilities, including LNG importation terminals, from rTPA where the requirements of section 19C of the Gas Act are satisfied.

¹ [SHT's application for exemption from regulated third party access for additional capacity.](#)

² [Directive 2009/73/EC.](#)

³ References to the "Authority", "Ofgem", "we" and "our" are used interchangeably in this document. The Authority refers to GEMA, the Gas and Electricity Markets Authority. The Office of Gas and Electricity Markets (Ofgem) supports GEMA in its day to day work. This decision is made by or on behalf of GEMA.

SHT LNG facility commenced operations in 2009, and currently has an annual exempt send out capacity of 21bcm/yr. We granted an rTPA exemption in respect of this original capacity in 2004 for a period of 25 years from the start of commercial operations⁴. This exemption decision has no impact on the exemption granted in 2004.

In January 2019, the majority owners of SHT took a Final Investment Decision (FID) on the Golden Pass LNG Project ("the Project"). These owners ("Sponsors") (Qatar Petroleum ("QP") and ExxonMobil Corporation ("EM")) plan to construct an export LNG terminal ("Golden Pass") in the United States of America (US). The Sponsors plan to use the Incremental Capacity at SHT as an outlet for a proportion of volumes from Golden Pass. SHT has stated that without an exemption from rTPA, the investment to create the Incremental Capacity would not take place (as the requirement to offer the Incremental Capacity to the wider market would mean the Sponsors would not be able to guarantee this outlet for volumes from Golden Pass).

On 14 February 2020, Ofgem published a consultation document⁵ on the exemption application. In the consultation document we set out our initial view that, based on our analysis of SHT's application against the exemption criteria set out in the legislation⁶ ("the criteria"), an exemption from rTPA requirements for the Incremental Capacity should be granted subject to the conditions included within the draft Exemption Order.

Consultation Responses

We received three responses to the consultation, including a response from ExxonMobil Qatargas (II) Terminal Company Limited (hereafter ExxonMobil), a shareholder in the South Hook LNG Terminal. All three responses were non-confidential and are published on Ofgem's website alongside this decision.

Two respondents, ExxonMobil and South Hook Gas Company Ltd (South Hook Gas), expressed clear support for Ofgem's decision to grant an exemption. ExxonMobil believe natural gas imports to the United Kingdom (UK) have a vital role to play in future years and the extension of capacity at the SHT LNG Terminal facilitated by the granting of an exemption, assists this. South Hook Gas highlight that they concur with Ofgem's initial views and make reference to the mechanisms in place to efficiently utilise spare capacity.

⁴ [Application by South Hook LNG Terminal Company Ltd \(SHTCL\) \(owned by Qatar Petroleum and ExxonMobil\) under section 19C of the Gas Act 1986 for an exemption from section 19D of the Gas Act 1986 Ofgem final views.](#) November 2004.

⁵ [SHT's application for exemption from regulated third party access for additional capacity - Our initial views and questions for consultation.](#)

⁶ These criteria are set out in Section 19C (7) and Section 19DB of the Gas Act 1986 (as amended).

The other respondent, BBL Company (BBLC) is one of several potential competing flexibility assets as described in Section 4 of our consultation. BBLC states that it accepts that the exemption could well be necessary to enable the shareholders to take the final investment decision in the project and acknowledges the benefits that the incremental capacity would bring to the GB market including increased security of supply. BBLC states it does not have any overriding objection to the granting of the exemption and in view of this, they did not wish to make any comments on the analysis that Ofgem has undertaken on the application or the questions that Ofgem included in the consultation document.

For completeness, we note that BBLC also made reference to the fact that the majority of their competitors, including SHT, (in contrast to them) are not subject to EU Network Codes such as the Tariff Network Code⁷ and Capacity Allocation Mechanism⁸. BBLC is a certified Transmission System Operator (TSO) subject to the European Network Codes. We do not consider that this affects our assessment for this decision.

Final Decision

After giving due consideration to the responses received to the recent consultation, we consider that an exemption from rTPA should be granted in respect of the Incremental Capacity for a period of 25 years. Ofgem continues to believe that all the criteria are met for the reasons set out in our consultation document. The final exemption order granted by the Authority can be found at Appendix 1 below.

The terms of the exemption order have been updated slightly as compared to the draft order published as part of the consultation. The amendments (to C and D2) are stylistic and do not alter the substance of the exemption order.

We note certain provisions contained within the Exemption Order (sections D10, E1 and E2) which refer to the Commission's entitlement to require amendments to, or revocation of, the exemption (under Article 36(9) of the Third Gas Directive) shall only apply for as long as those provisions have any legal effect in the UK. Currently, such legal effect is provided for under section 19CA(2) of the Gas Act⁹. For the avoidance of doubt, the exemption will continue to apply beyond the UK's exit from the EU.

When the exempt period for the Incremental Capacity ends, the capacity will fall within the rTPA regime.

⁷ [Commission Regulation \(EU\) 2017/460](#).

⁸ [Commission Regulation \(EU\) 2017/459](#).

⁹ Regulation 27(4) of the Electricity and Gas etc (Amendment etc) (EU Exit) Regulations 2019/530 provides that section 19CA(2) shall be repealed after 'exit day', updated to 'IP completion day' as per schedule 5(1) of The European Union (Withdrawal Agreement) Act 2020) to coincide with the end of the transition period.

Way forward

We will notify the European Commission of our decision. The Commission will then have two months from the day following receipt of our decision, to request us to withdraw or amend it¹⁰.

If you have any questions or comments on the content of this letter, please contact Kevin Hughes at Kevin.Hughes@ofgem.gov.uk.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Tom Corcut', is centered on a light gray rectangular background.

Tom Corcut
Deputy Director, Wholesale Markets

¹⁰ See Article 36(9) of the European Gas Directive of 13 July 2009.

Appendix 1 – Exemption Order

GAS ACT 1986
SECTION 19C
EXEMPTION

Pursuant to section 19C(5) of the Gas Act 1986 (the Act), the Gas and Electricity Markets Authority hereby gives to South Hook LNG Terminal Company Ltd¹¹, as owner of an LNG import facility, an exemption from the application of section 19D of the Act in respect to the LNG import facility located at Dale Road, Herbrandston, Milford Haven, Pembrokeshire, SA73 3SU subject the attached Schedule.



Tom Corcut

Authorised in that behalf by the Gas and Electricity Markets Authority

Dated 11 May 2020

¹¹A Company registered in England and Wales with registration no. 04982132

Appendix 2 – Schedule

SCHEDULE PERIOD, CONDITIONS, AND REVOCATION OF EXEMPTION

A. Interpretation and Definitions

In this exemption:

"the Authority"	means the Gas and Electricity Markets Authority established by section 1(1) of the Utilities Act 2000
"the Act"	means the Gas Act 1986 as amended from time to time
"the facility"	means LNG import facility located at Dale Road, Herbrandston, Milford Haven, Pembrokeshire, SA73 3SU
"facility owner"	means South Hook LNG Terminal Company Ltd in its capacity as owner of the facility
"facility operator"	means South Hook LNG Terminal Company Ltd in its capacity as operator of the facility
"throughputter"	means any user of the facility

B. Full description of the LNG import facility to which this exemption relates

The exemption relates to the incremental capacity at South Hook LNG Terminal Company Ltd import facility comprising 5.3 bcm/yr (the "Incremental Capacity").

C. Period

Subject to Section E below, and pursuant to section 19C(3)(a) of the Act, this exemption will cease to have effect in respect of the Incremental Capacity, 25 years from the date that commercial operation commences in respect of the Incremental Capacity.

D. Conditions

Pursuant to section 19C(3) of the Act, this exemption is made subject to the following conditions:

1. That the material provided by the facility owner to the Authority in respect of the exemption is and remains accurate in all material respects.
2. The facility owner notifies the Authority within ten days of the commencement of the commercial operations in respect of the Incremental Capacity.
3. That the intended agreements described in a Letter of Intent from South Hook Gas Company LTD to Ocean LNG Limited, dated 11 July 2019 (and shared with the Authority), representing the Golden Pass value chain, or such other agreements as the Authority considers to be equivalent, are executed.

4. That the export LNG terminal currently known as 'Golden Pass', under consideration for construction in the US, continues to be licensed to export LNG to the facility throughout the period of this exemption.

5. The facility owner has effective anti-hoarding measures in place approved by the Authority. Such measures shall be subject to periodic review and approval by the Authority.

6. The facility owner furnishes the Authority in such manner and at such times as the Authority may reasonably require, with such information as the Authority may reasonably require, or may be necessary, for the purpose of:
 - (a) performing the function assigned to it by or under the Act, the Utilities Act 2000, or the Energy Act 2004; or
 - (b) monitoring the operation of the exemption.

7. The facility owner complies with any direction given by the Authority (after the Authority has consulted the relevant gas transporter and, where relevant, the Health and Safety Executive) to supply to the relevant gas transporter such information as may be specified or described in the direction –
 - (a) at such times, in such form and such manner; and
 - (b) in respect of such periods, as may be so specified or described.

8. Where the facility owner is prevented from complying with such a direction by a matter beyond its control, it shall not be treated as having contravened the condition specified in this paragraph.

In this condition:

"information"	means information relating to the operation of the pipeline system which is operated by a relevant gas transporter
"relevant gas transporter"	means any holder of a gas transporter licence under section 7 of the Act owning a transportation system within Great Britain to which the facility is connected or with whom the facility operator interfaces with as a system operator

9. Should any of the grounds for revocation arise under section E of this exemption, the Authority may, with the consent of the facility owner, amend this exemption rather than revoke the exemption.

10. The Authority may, with the consent of the facility owner, amend this exemption where the Authority has been requested to amend the decision to grant this exemption by the European Commission (such request being made in accordance

with Article 36(9) of Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009).

11. This exemption is transferable to another facility owner where the Authority has given its written consent to such a transfer. For the avoidance of doubt, all of the conditions contained in this exemption order continue unaffected in respect of any facility owner to whom this exemption order may be transferred.

E. Revocation

Pursuant to section 19 CA(5) of the Act, this exemption may be revoked in the following circumstances:

1. The Authority may revoke this exemption where the European Commission has requested (in accordance with Article 36(9) of Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009) that the Authority withdraw the decision to grant this exemption.
2. The Authority may revoke this exemption where the European Commission has requested (in accordance with Article 36(9) of Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009) that the Authority amend the decision to grant this exemption and the facility owner does not agree (under paragraph D10 above) for this exemption to be amended in the manner so requested by the European Commission.
3. The Authority must revoke this exemption if the construction works required at the facility for the Incremental Capacity have not been started within 2 years from the date of this exemption or if commercial operations in respect of the Incremental Capacity at South Hook have not commenced within 5 years of the date of this exemption decision in accordance with Section 19CA(3) of the Act.
4. This exemption may also be revoked by the Authority by giving a notice of revocation to the facility owner not less than four months before the coming into force of the revocation in any of the following circumstances:
 - (a) Where:
 - i. in the Authority's reasonable opinion there is a material change in the degree to which the requirements of section 19C (7)(a), (c), (d) or (e) of the Act are met with respect to the facility as the result of any action or omission of the facility owner, facility operator or throughputter;

- ii. any of the conditions in paragraphs D1, D2, D3, D4 and D5 above is not (or does not continue to be) fulfilled, and remains outstanding beyond the period specified in the notice;
- iii. the facility owner has a receiver (which expression shall include an administrative receiver within the meaning of section 251 of the Insolvency act 1986) of the whole or any material part of its assets or undertaking appointed;
- iv. the facility owner has an administration order under section 8 of the Insolvency Act 1986 made in relation to it;
- v. the facility owner is found to be in breach of the Competition Act 1998; or
- vi. there is merger or acquisition activity in relation to, or by the facility owner, that is detrimental to competition.

(b) the facility owner has failed to comply with a request for information issued by the Authority under paragraph D6 above and the Authority has written to the facility owner stating that the request has not been complied with and giving the facility owner notice that if the request for information remains outstanding past the period specified in the notice, the exemption may be revoked; or

(c) the facility owner has failed to comply with a direction issued by the Authority under paragraph D7 above and the Authority has written to the facility owner stating that the direction has not been complied with and giving the facility owner notice that if the direction remains outstanding past the period specified in the notice, the exemption may be revoked.