

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

Email: Tom.Corcut@ofgem.gov.uk

Date: 18 December 2020

Dear Colleague,

**European Commission decision on Ofgem's decision to grant South Hook LNG Terminal Company LTD an exemption under section 19C(5) of the Gas Act 1986 (the "Gas Act") from the application of section 19D of the Gas Act 1986**

The European Commission ("the Commission") has taken a decision pursuant to Article 36(9) of Directive 2009/73/EC (the "Directive")<sup>1</sup> that requires Ofgem to amend its original decision<sup>2</sup> regarding South Hook LNG Terminal Company LTD's ("SHT") application<sup>3</sup> for an exemption from regulated Third Party Access (rTPA) rules. This letter sets out the amendments made to Ofgem's original decision.

On 9 October 2018, SHT submitted an application for an exemption of at least 25 years from rTPA for additional Liquefied Natural Gas (LNG) processing capacity, estimated to be ~5.3 billion cubic meters per year (bcm/yr) of natural gas (the "Incremental Capacity"). The application was made consistent with section 19C(2) of the Gas Act 1986 (as amended) ("the Gas Act").

## Background

The Directive<sup>4</sup> 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 Directive have

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<sup>1</sup> [Directive 2009.73/EC](#).

<sup>2</sup> [Ofgem's original decision](#).

<sup>3</sup> [SHT's application for exemption from regulated third party access for additional capacity](#).

<sup>4</sup> [Directive 2009.73/EC](#).

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")<sup>5</sup> can exempt certain new or modified gas infrastructure facilities, including LNG importation terminals, from rTPA where the requirements of section 19C(5) of the Gas Act are satisfied.

SHT LNG facility commenced operations in 2009, and currently has an annual exempt send out capacity of 21bcm/yr ("base capacity"). We granted an rTPA exemption in respect of the base capacity in 2004 for a period of 25 years from the start of commercial operations.<sup>6</sup> This exemption decision has no impact on the exemption granted in 2004.

On 9 October 2018, SHT submitted an application for an exemption rTPA rules with respect to the Incremental Capacity, for a period of at least 25 years from the start of commercial operations in respect of the Incremental Capacity.<sup>7</sup>

## **Original Decision**

On 11 May 2020, Ofgem published its decision on SHT's application under section 19C of the Gas Act to grant the exemption for the Incremental Capacity for a period 25 years subject to various conditions.

On the same day, Ofgem notified the Commission of its decision. The decision letter, together with the exemption order and all supporting documents were submitted to the Commission pursuant to the obligations set out in Article 36(8) of the Directive. In accordance with Article 36(9) of the Directive, the Commission may decide to require the relevant regulatory authority to amend or withdraw their decision to grant an exemption within a period of two months of being notified. This two month window can be extended in the event where further information is sought by the Commission.

On 4 June 2020, the Commission published a notice on its website informing the public of the notification and inviting third parties to send their observations by 17 June 2020. The Commission did not receive any observations in response.

On 24 June 2020 the Commission requested additional information from Ofgem. We provided further information to the Commission on 28 August 2020 and 16 October 2020.

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<sup>5</sup> 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.

<sup>6</sup> [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.](#)

<sup>7</sup> SHT's application has been published on Ofgem's website and is available [here](#).

## **The Commission's Decision**

On 8 December 2020, Ofgem received a decision from the Commission.<sup>8</sup> The Commission decided that the exemption should be granted provided that it is amended as set out in accordance with Article 3 of its decision.

The Commission noted in its decision that the exemption for 25 years refers to the Incremental Capacity, which is subordinate to the current base capacity. Thus, once the exemption for the base capacity ends, the quality of the Incremental Capacity is not to be improved to the detriment of the base capacity as this would constitute a tacit prolongation of parts of the exemption granted in 2004.

As a result, the Commission requires the following condition to be added to the Ofgem's decision of 11 May 2020.

*"Ofgem shall add as condition to the exemption decision that the incremental capacity subject to the exemption does not negatively effect the base capacity, neither in terms of volume nor quality, once the exemptions provided in 2004 and 2005 expire."*

The Commission decision also provides that *"Ofgem shall, when approving the anti-hoarding mechanism, make sure that the tariff or price for the capacity offered in the secondary market is made public."*

## **Amended Decision**

In order to comply with the Commission's decision, Ofgem hereby amends its decision dated 11 May 2020 by updating the terms of the exemption order as per the changes shown in track in Appendix 2 below.<sup>9</sup> The amended exemption order granted by the Authority can be found at Appendix 1 below. For the avoidance of doubt, the exemption order set below supersedes the exemption order included in our decision dated 11 May 2020.

## **Way forward**

We will notify the Commission of this amendment to our original decision in accordance with Article 36(9) of the Directive.

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<sup>8</sup> The Commission's decision can be found [here](#).

<sup>9</sup> Conditions D 5 and 5A of the Schedule have been added. The other conditions remain unchanged.

If you have any questions or comments on the content of this letter, please contact Lea Slokar at [Lea.Slokar@ofgem.gov.uk](mailto:Lea.Slokar@ofgem.gov.uk).

Yours faithfully,

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

Tom Corcut  
Deputy Director, Wholesale Markets

## 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 amends its decision<sup>10</sup> dated 11 May 2020 and grants to South Hook LNG Terminal Company Ltd<sup>11</sup>, 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 terms of the amended attached Schedule.



Tom Corcut

Authorised in that behalf by the Gas and Electricity Markets Authority

Dated 18 December 2020

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<sup>10</sup> <https://www.ofgem.gov.uk/publications-and-updates/final-decision-south-hook-lng-terminal-company-ltd-s-application-exemption-regulated-third-party-access-additional-capacity>.

<sup>11</sup>A 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 base capacity exemption" | means the exemption provided by the Authority to South Hook LNG Terminal Company Ltd in respect of the initial capacity of the facility and the expansion capacity of the facility dated 29 November 2004; |
| "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. As part of such review, the Authority shall make sure that the tariff or price for the capacity offered in the secondary market is made public.
- 5A. Upon expiry of the base capacity exemption, the Incremental Capacity shall not negatively affect the base capacity neither in terms of volume nor quality.
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.