



Gas storage facility owners and operators, gas shippers, gas suppliers and other interested parties

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26 May 2010

Dear Colleague,

**Final Decision: EDF Energy Plc's application for an exemption from section 19B of the Gas Act 1986 for the proposed Hill Top Farm storage facility**

On 18 December 2009, Ofgem published a consultation document (the December Consultation) setting out its initial view that an exemption should be granted from requirements regarding third party access for the proposed Hill Top Farm storage facility.

This letter sets out Ofgem's final view and decision on EDF Energy Plc's (EDFE) application.

**Background**

In February 2009, EDFE submitted an application under section 19A(6)(a) of the Gas Act 1986 (the Gas Act) requesting an exemption<sup>1</sup> from section 19B of the Gas Act in relation to the Hill Top Farm salt cavern storage facility<sup>2</sup> which is currently under construction in Warmingham, Cheshire, North-West England. Section 19B of the Gas Act concerns the requirement to provide third party access to gas storage facilities.

The Hill Top Farm gas storage facility will consist of a number of existing brine cavities being converted into ten gas storage cavities in total. It is expected to become operational in a number of stages from Q1 2011<sup>3</sup>. The whole facility is expected to be completed by Q4 2016. EDFE anticipates that the staggered commercial start dates for the ten caverns will be evenly spread over this period.

The expected final total capacity of the facility is 1,070GWh of gas storage space, with an expected maximum injectability of 175GWh/day and a maximum delivery rate of 160GWh/day. The facility is classified as medium range<sup>4</sup> due to its ability to deliver gas from its maximum stock at full capacity for up to six days. However, it is considered to be a relatively small facility within this category.

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<sup>1</sup>Section 19A(6)(a) of the Gas Act states that the Authority shall give an exemption with respect to a new facility where it is satisfied that the "use of the facility by other persons is not necessary for the operation of an economically efficient gas market".

<sup>2</sup> The Hill Top Farm facility is referred to in the application as "Project Revolution".

<sup>3</sup> Note that this is a reference to the calendar year and not the financial year.

<sup>4</sup> Short, Medium and Long range storage facilities are distinguished according to the length of time during which the facility can theoretically deliver gas from its maximum stock at full capacity: Short Range Storage (SRS) - up to 5 days; Medium Range Storage (MRS) - between 5 and 70 days; Long Range Storage (LRS) - more than 70 days.

## Exemption Criteria

The Gas and Electricity Markets Authority (the Authority) exempts storage facilities from the requirements of negotiated Third Party Access (nTPA) when it considers that the use of the facility by other persons is not necessary for the operation of an economically efficient gas market in GB. This provision is contained within Section 19A(6)(a) of the Gas Act.

Ofgem is also required to interpret national law in the context of European legislation. Therefore, when assessing an exemption application under Section 19A(6)(a) of the Gas Act, we have considered, as set out in Article 19 of the Second Gas Directive<sup>5</sup>, whether nTPA is technically and/or economically necessary to provide efficient access to the system for the supply of customers<sup>6,7</sup>.

In June 2009 Ofgem issued an Open Letter<sup>8</sup> setting out what factors may be considered in order to determine whether nTPA at a minor facility is technically and/or economically necessary for providing efficient access to the system for the supply of customers. That is, we will examine whether the exemption is likely to distort the market and provide a materially worse outcome than if the exemption is not granted. As stated in the letter, whilst there is no single test, we will examine a number of indicators to assist us in forming a view on whether an exemption should be granted.

## The December Consultation

As indicated above, our initial view was that an exemption should be granted to EDFE in relation to the proposed Hill Top Farm storage facility. The December Consultation explained the grounds on which we considered that EDFE had met the criteria for the exemption to be granted.

Ofgem received five responses to the December Consultation<sup>9</sup>. All five respondents agreed with Ofgem's overall analysis that nTPA at the facility is not technically or economically necessary for providing efficient access to the system for the supply of customers and that an exemption should therefore be granted in this instance.

## Ofgem views on consultation responses

This section sets out our views on the responses received. This includes our views on the comments received in respect of: our assessment of technical necessity; the relevant market definition for the Hill Top Farm facility and related analysis of economic necessity; our analysis for EDFE's operation of the facility; other areas where points were raised; and our conclusion that use of the facility by other persons is not necessary for the operation of an economically efficient gas market.

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<sup>5</sup> Directive 2003/55/EC concerning common rules for the internal gas market, 26 June 2003  
[http://energy.eu/directives/I\\_17620030715en00570078.pdf](http://energy.eu/directives/I_17620030715en00570078.pdf)

<sup>6</sup> Although the Third Gas Directive was adopted on 3 September 2009, the provision relating to storage will not come into effect until March 2011.

<sup>7</sup> We consider that the requirements of the Gas Act for when a minor facility exemption can be granted do not require additional analysis to that which we propose to undertake when considering whether nTPA is technically and/or economically necessary.

<sup>8</sup> See Open Letter of 16 June 2009:

[http://www.ofgem.gov.uk/Markets/WhlMkts/CompanEff/TPAccess/Documents1/Storage%20Exemptions%20Open%20Letter%2009%20\\_For%20publication\\_.pdf](http://www.ofgem.gov.uk/Markets/WhlMkts/CompanEff/TPAccess/Documents1/Storage%20Exemptions%20Open%20Letter%2009%20_For%20publication_.pdf)

<sup>9</sup> These responses were from Eni Spa Gas and Power, Centrica Plc (excluding Centrica Storage Ltd), EDF Energy Plc (the parent company/owner of the Hill Top Farm facility), Scottish and Southern Energy, and National Grid Gas Plc. They are available from the Ofgem website at [www.ofgem.gov.uk](http://www.ofgem.gov.uk).

### *Assessment of “technically necessary”*

No respondent expressed concerns with Ofgem’s assessment criteria for whether nTPA is technically necessary. One respondent welcomed Ofgem’s scenario based approach as a way of mitigating potential forecast risks and agreed it would take a very significant permanent loss of supply across the entire winter period for the facility to become technically necessary.

The December Consultation set out the limitations of our assumptions when assessing the technical necessity of a facility<sup>10</sup>. We therefore acknowledge that such tests may evolve over time in line with the market. Nevertheless, we consider that such tests serve as a robust initial indicator as to whether a facility is technically necessary or not. If there are specific circumstances<sup>11</sup> associated with a facility then we expect to take these into account and were we to find that a facility failed such initial tests it may be necessary to conduct further analysis as merited.

### *Assessment of “economically necessary”*

#### *1. Market definition*

To support our assessment of the Hill Top Farm exemption request in the December Consultation we took a view that the relevant product market for our market share, winter period market power and market concentration analysis was the flexibility market. We further considered that the relevant geographic market is Great Britain. This view was not opposed by respondents. We acknowledged in the December Consultation that the product definition of gas flexibility is not straightforward, and this was reflected in the views of some respondents that challenged our assumptions on the omission of specific supply sources.

In the December Consultation we noted that the characteristics of EDFE’s Hill Top Farm facility mean that it constitutes a Medium Range Storage (MRS) facility. We then discussed other sources of gas which have flexibility characteristics and whether it was appropriate to consider them in relation to Hill Top Farm. These included consideration of Short Range Storage (SRS); Long Range Storage (LRS); Interconnector UK (IUK); Balgzand Bacton Line (BBL); LNG imports; UK Continental Shelf (UKCS); Pipeline Imports; and Demand-Side Response.

Having carefully considered the past behaviour of these gas supply sources, as well as their characteristics and given the difficulties in establishing a robust market definition, we identified three potential market definitions in the December Consultation. These market definitions are set out below:

1. MRS+LRS+43%IUK+Flex Beach
2. MRS+LRS+43%IUK+Flex Beach+50%LNG imports
3. MRS+LRS+43%IUK+Flex Beach+100%LNG imports

Several respondents to our December Consultation expressed the view that such market definitions constituted an underestimation and was therefore a conservative view of the flexible market. Most notably, comments centred around our assumptions of Norwegian

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<sup>10</sup> For example, in the demand analysis undertaken we did not analyse all possible demand scenarios going forward. Instead, we assessed whether the Hill Top Farm facility would be technically necessary based on data from National Grid Gas’s (NGG’s) Ten Year Statement (TYS) to reflect normal market conditions. We recognise that under alternative demand conditions, the conclusions from our analysis may be subject to change. Further caveats included the recognition that changes to our underlying supply assumptions may also change the conclusions from our analysis.

<sup>11</sup> We consider some of these circumstances in Ofgem’s Open Letter of 16 June 2009.

pipeline imports, BBL, LNG imports and IUK flows and the exclusion of SRS and Demand-Side Response. These issues are addressed below:

*(a) Norway*

Several respondents disagreed with Ofgem's assumption to discount Norwegian supplies as a source of flexibility, arguing that the observed variability in import patterns was a direct function of such flexibility.

We note that supplies from Norway are clearly observable as variable on a day to day basis. However, we do not consider that such flows should be considered as flexible given the variability in such supplies appears to be determined more by interactions between contractual and production restrictions<sup>12</sup> rather than being directly responsive to demand and/or price signals in the GB market.

*(b) BBL*

In response to the December Consultation, some respondents expressed the view that operations from BBL have increasing potential to be more flexible, citing the proposed development of a non physical reverse flow facility as a prime example of such future ability. One respondent considered that existing flows have exhibited a degree of flexibility, pointing out that NGG's current Winter Outlook showed a more marked seasonal profile in recent years.

Significant contractual delivery obligations mean that capacity on BBL continues to provide predominantly base load supplies. Whilst we have recently observed variability, we consider that there is insufficient evidence to suggest this is necessarily a function of increased flexibility.

Whilst we therefore consider BBL flows as a baseload source of supply, we do recognise the potential for BBL to become increasingly more commercially responsive, especially given the potential of non-physical reverse flows in the future and the staggered removal of its current third party access exemption in 2016 and 2022. Ofgem therefore expects to review the composition of gas supply as the market continues to evolve and to take account of this in our continued monitoring of exemptions.

*(c) LNG imports*

In the December Consultation, Ofgem considered three scenarios for LNG imports, covering 0%, 50% and 100% of deliverability. Recent completion of LNG importation infrastructure, such as that at Milford Haven, makes it appropriate to consider a range of available capacity scenarios. Moreover, given the recent commissioning of such infrastructure we do not have sufficiently robust observable data to base our assumptions on, and thus consider these three scenarios provide evidence on a range of eventualities.

Flows from LNG imports are also, arguably, more exposed to global exogenous influences than other sources of supply and therefore its scope to act as a flexible source of supply in the GB market, as opposed to other geographical markets, may be limited.

Given these issues we therefore consider that our assumptions with respect to LNG flows are reasonable. We expect to use observed behaviour, and any other information available, to inform our views on the extent to which LNG supply should be included in any future definition of the flexibility market.

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<sup>12</sup> Such as the flexible clauses in continental contracts and the terms of the Norwegian production permits as well as external factors such as production disruptions.

*(d) IUK*

Ofgem's market definition considered that only a proportion<sup>13</sup> of IUK should be included in the flexibility market. This view was not shared by several respondents who argued that our assumption of 43% of IUK deliverability significantly underestimates IUK's potential contribution in response to price differentials. One respondent suggested that this figure should be closer to the maximum import levels that have been observed more recently.

Given current conditions and prevailing expectations for the GB gas market, Ofgem considers that the assumptions made for IUK flexibility are fit for purpose and are again consistent with other industry views including NGG's Winter Outlook. However, again we acknowledge that such views may evolve over time in light of observable behaviour and any other new information.

*(e) SRS*

In response to the December Consultation, one respondent expressed the view that SRS should be included in Ofgem's definition of the flexible market given its similar behaviour to flexible beach, despite its limited duration. They suggested that it should be possible to capture SRS's limited duration through adjusting parameters of other sources of supply to give the effect of its inclusion rather than excluding it altogether.

In the December Consultation, Ofgem set out its view that inclusion of SRS was not appropriate in this instance given the characteristics of the Hill Top Farm facility, such as its greater ability to cycle gas than SRS<sup>14</sup>. This is further supported by the Competition Commission's view expressed in the Centrica/Dynergy merger case that the cost of cycling SRS is expensive as a simple alternative to MRS and LRS<sup>15</sup>.

Again, Ofgem expects to review its assumptions in line with changes to the market, such that the potential contribution of SRS to flexible deliverability is not overlooked.

*(f) Demand-Side Response*

It has been argued that the omission of Demand-Side Response from Ofgem's market definition scenarios has provided an overly conservative view of the flexible market.

Ofgem acknowledged in its December Consultation that Demand-Side Response has not been included in its markets scenarios and the analysis presented is likely to be conservative in this respect given its focus solely on the supply side. However, in this instance, we do not consider this to have materially impacted the outcome of our decision. We expect to give further consideration to the potential impact of Demand-Side Response in the future, particularly in light of any observable behaviour.

*2. Economically necessary criteria*

As set out in our December Consultation, we have relied upon no single test to demonstrate whether it is economically necessary to offer nTPA at the Hill Top Farm facility. Instead we have examined a series of indicators to help us come to a view on whether an exemption should be granted.

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<sup>13</sup> We used the figure of 43% of IUK deliverability or 325GWh/d. This was based on a maximum IUK import level of 30mcm/day (in the context of approximately 70mcm/day total capacity) based on NGG's preliminary assessment of maximum Winter Outlook capacities for 2009/10.

<sup>14</sup> For example the Hill Top Farm facility will have the ability to potentially cycle (i.e. fill and empty) up to 30 times in a year (taking into account maintenance and lower flow rates), compared to SRS facilities which, being based on LNG technology, can deliver up to 200GWh/day for 5 days but may take over 400 days to refill.

<sup>15</sup> See the Competition Commission's report on the acquisition by Centrica plc (Centrica) from Dynergy Inc (Dynergy) of the Rough gas storage facility, 2003. Centrica plc and Dynergy Storage Ltd and Dynergy Onshore Processing UK Ltd: A report on the merger situation. [http://www.competition-commission.org.uk/rep\\_pub/reports/2003/480centrica.htm](http://www.competition-commission.org.uk/rep_pub/reports/2003/480centrica.htm)

Our first test area is market power in which we consider four potential indicators: market shares; winter period market power; market concentration; and vertically linked markets. The second test area, on market operation, considers the likely impact of an exemption on effective market signals, including for example the ability to affect the price formation mechanism.

One respondent to the December Consultation expressed concern that such tests contained certain weaknesses that compromised the robustness of any conclusions drawn. These issues are addressed below.

*(a) Winter period market power and market shares*

The use of the winter period test as a market power indicator was cited as one such weakness, in which the respondent argued that non-critical capacity holders may also have an incentive to withdraw supply in order to drive up prices.

Ofgem agrees that certain circumstances may exist in which a non-critical player may also withhold gas from the market. However, given that demand can still be met without any of the non-critical capacity holder's flexible gas they are unlikely to have any effect/influence on prices by restricting their flows.

Another respondent questioned whether Ofgem employed a specific threshold with respect to analysing market shares. Ofgem does not have or use an explicit market share threshold. In this respect it is important to re-iterate that no single test we consider should be relied upon to demonstrate whether an exemption should be granted<sup>16</sup>.

*(b) Vertical Integration*

One respondent questioned why Ofgem's analysis considered vertical integration to be generally problematic.

As set out in the December Consultation, we note that vertical integration in itself may not necessarily lead to market distortion, nor does it provide conclusive evidence of the level of competition. However, this does not detract from the fact that such tests are important initial steps towards establishing whether the potential to leverage such integration and exert market power is present in both upstream and downstream related markets. If such initial analysis established, for example, a significant level of market power in related markets, any conclusions drawn may then be supported by additional analysis to understand the implications and theory of harm<sup>17</sup>, including any unilateral effects and potential to foreclose.

As stated above, Ofgem does not rely on any single test to establish whether it is economically necessary to offer nTPA at the Hill Top Farm facility. Our analysis of the impact on market power and market signals forms a fundamental basis to assess whether any further analysis is warranted.

*(c) Market Operation*

In response to the December Consultation, one party expressed disappointment that EDFE's proposed information and transparency arrangements did not go further towards

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<sup>16</sup> In the Open Letter we further noted that the published tests represented our view, at that point in time, of the criteria that we would generally expect to use but that this list was not exhaustive and may be reconsidered based on the specifics of the case.

<sup>17</sup> When a market is highly concentrated a strong presumption of harm may exist in which either co-ordinated or unilateral efforts are employed to raise prices.

fully complying with all the recommendations under the GGPSSO<sup>18</sup> and that the Third Package requirements would only be provided when the provision becomes necessary.

We recognise that the information provided by EDFE on its anticipated transparency arrangements represents EDFE's initial view at this point in time and may be subject to change in the future following the provisions of the Third Package for example. Nonetheless, Ofgem welcomes the commitment from EDFE to provide transparency of information in a market responsive manner and this is the basis upon which we have assessed the exemption application.

In terms of the provision of specific information to the market, EDFE, in its exemption application, indicated that it intends to provide information on entry and exit flows, and stock levels, as per the Uniform Network Code rules in force at the relevant time. In addition, the peak delivery of the Hill Top Farm facility from 2012 is large enough for its flows to be displayed on the real time information on NGG's website. As noted by EDFE, this will add an element of transparency and enable the market to observe its use.

In addition, Article 19(4) of Regulation (EC) 715/2009 will require EDFE as the operator of Hill Top Farm to publish information, at least daily, on the amount of gas in its storage facility, inflows and outflows and the available storage. The Article also requires this information to be given to NGG so that it can be made public, at an aggregate level.

EDFE has committed to provide the above noted information. EDFE has indicated that it will be published on its website or the relevant website once the provisions of the Gas Regulation apply from March 2011. As with other commitments made, if such commitments to transparency arrangements are not met, the Authority may review the impact of an exemption and potentially revoke any exemption granted.

Finally, it should be noted that as part of our ongoing market surveillance activities, Ofgem will continue to look at the effects of exemptions on the market. We recognise that whilst the information provided by EDFE on its anticipated use of the facility represents EDFE's initial view at this point in time this may be subject to change in the future. Given this, we expect that should capacity be offered to third parties in the future, that arrangements are put in place to ensure that capacity is effectively used in the absence of formal nTPA requirements and which adhere to the principles of open, transparent and non discriminatory access.

#### *Other Issues*

One respondent questioned whether the granting of minor facility exemptions could potentially limit the system operator's ability to source storage capacity for use in meeting its operating margin (OM) requirements. We do not consider that the exemption status of a facility has such a bearing and would note that in the current OM tender process all storage facilities, whether exempt or not, (and any other qualified OM party) are free to participate to the full extent that they wish to. Clearly this is a commercial decision for the relevant party that we would encourage them to consider. Further, granting Hill Top Farm an exemption from nTPA requirements does not prevent it from participating in the OM tender process.

#### **Summary**

As indicated above, we have considered the issues raised in response to the December Consultation. We note in particular the comments on the definition of the relevant market and that our approach has typically been conservative. However, we do not consider, for

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<sup>18</sup> Guidelines for Good Practice for Storage System Operators. See [http://www.energy-regulators.eu/portal/page/portal/EER\\_HOME/EER\\_PUBLICATIONS/CEER\\_ERGEG\\_PAPERS/Guidelines%20of%20Go od%20Practice/Gas/E04-PC-01-14\\_GGPSSO\\_2005-03-23\\_FINAL%20-%20March%202005.pdf](http://www.energy-regulators.eu/portal/page/portal/EER_HOME/EER_PUBLICATIONS/CEER_ERGEG_PAPERS/Guidelines%20of%20Go od%20Practice/Gas/E04-PC-01-14_GGPSSO_2005-03-23_FINAL%20-%20March%202005.pdf)

the reasons above, that such views require Ofgem to alter its decision. Ofgem's view therefore remains that nTPA at the Hill Top Farm facility is not technically and/or economically necessary for providing efficient access to the system for the supply of customers and that a minor facility exemption should be granted.

However, Ofgem will continue to appraise its approach and consider how best to identify whether a facility is technically and/or economically necessary, as part of its ongoing work to keep exemptions under review as the market evolves.

### **Ofgem's decision**

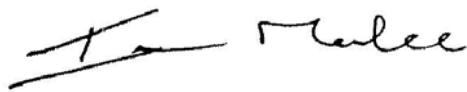
After giving due consideration to the responses received to the December Consultation, and for the reasons set out in this letter, we believe that the criteria under Section 19A(6)(a) of the Gas Act are met by the EDFE exemption application<sup>19</sup>. Ofgem is therefore of the view that an exemption should be granted from the nTPA requirements set out under section 19B of the Gas Act for the proposed capacity of the Hill Top Farm facility owned by EDFE.

For the avoidance of doubt, any views expressed, or decisions made, in respect of the giving of exemptions from section 19B of the Gas Act are expressed or made solely in relation to the relevant criteria for the giving of exemptions set out in section 19A. Any decisions that Ofgem may make, or views that Ofgem may express, in relation to this application for an exemption does not preclude or impact in any way on the operation of the Competition Act 1998 or the Enterprise Act 2002. Further, as the analysis contained in this document and the December Consultation is in relation to a specific situation, the analysis may or may not necessarily be relevant to a consideration of any related issues that may arise, for example under the Gas Act, the Competition Act 1998 or the Enterprise Act 2002.

Finally, it should be noted that as part of its ongoing market surveillance activities, Ofgem takes into account the effect of exemptions on the market and that this exemption, as is the case with all other exemptions granted under section 19A(6)(a) of the Gas Act, may be amended or revoked if the Authority considers that nTPA at the Hill Top Farm facility is technically and/or economically necessary for providing efficient access to the system for the supply of customers.

Attached to this letter is a copy of the exemption order granted by the Authority.

Yours sincerely,



Ian Marlee  
**Partner, GB Markets**

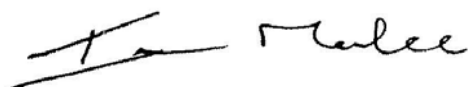
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<sup>19</sup> As noted above, Ofgem is required to interpret national law in the context of European legislation. We have therefore assessed whether, as set out in Article 19 of Gas Directive 2003/55/EC, nTPA at the Hill Top Farm facility is technically and/or economically necessary for the provision of efficient access to the system for the supply of customers.



**GAS ACT 1986**  
**SECTION 19A**  
**EXEMPTION**

Pursuant to sub-section 19A(6)(a) of the Gas Act 1986 (the "Act"), the Gas and Electricity Markets Authority hereby gives to EDF Energy Plc, as a person who expects to be an owner of a storage facility, an exemption from the application of section 19B of the Act, in respect of the Hill Top Farm storage facility located in Cheshire, North-West England, subject to the attached Schedule.

A handwritten signature in black ink, appearing to read 'Ian Marlee', with a horizontal line drawn underneath the signature.

Ian Marlee

Partner, GB Markets

Authorised in that behalf by the Gas and Electricity Markets Authority

26 May 2010

**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, as amended from time to time
"the Act"	means the Gas Act 1986, as amended from time to time
"the facility"	means the Hill Top Farm gas storage facility located in Cheshire, North-West England, being a capacity of 1,070GWh
"facility owner"	means EDF Energy Plc in its capacity as owner of the facility
"facility operator"	means EDF Trading Plc in its capacity as operator of the facility

**B. Full description of the storage facility to which this exemption relates**

On completion, the facility will provide 1,070GWh of space, a maximum injection rate of 175GWh/day and 160GWh/day of deliverability. This deliverability rate is the maximum which can be achieved when the facility is full.

**C. Period**

Subject to section E below, and pursuant to section 19A(3)(a) of the Act, this exemption shall come into effect on the date that it is issued and will continue until it is revoked in accordance with Section E.

**D. Conditions**

Pursuant to sub-section 19A(3)(b) of the Act, this exemption is made subject to the following conditions:

1. The material provided by the facility owner to the Authority in respect of this exemption is accurate in all material respects.

2. 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 as may be necessary, for the purpose of:

(a) performing the functions assigned to it by or under the Act, the Utilities Act 2000, or the Energy Act 2004, each as amended from time to time; or

(b) monitoring the operation of this exemption.

3. 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.

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 pipe-line 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

4. 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.

5. The Authority may, with the consent of the facility owner, amend this exemption.

6. 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 (and as if the transferee was substituted in the definition of "facility" and "facility owner").

## **E. Revocation**

Pursuant to sub-section 19A(4) of the Act, this exemption may be revoked in the following circumstances:

1. This exemption may 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) the Authority considers that the use of the facility by other persons is necessary for the operation of an economically efficient gas market;

(ii) the facility owner has a receiver (which expression shall include an administrative receiver within the meaning of section 251 of the Insolvency Act 1986, as amended from time to time) of the whole or any material part of its assets or undertaking appointed;

(iii) the facility owner has entered administration under section 8 of and Schedule B1 to the Insolvency Act 1986;

(iv) the facility owner is found to be in breach of any national or European competition laws, such breach relating to the facility; or

(b) the facility owner has failed to comply with a request for information issued by the Authority under paragraph D2 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 D3 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.

2. This exemption may be revoked by the Authority with the consent of the facility owner.