



# **Gas Storage Licence Conclusions Paper**

**7<sup>th</sup> March 2012**

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# 1. Introduction

## Background

The Utility Regulator published a Gas Storage Licence Consultation paper and supporting Final Draft Licence on 7<sup>th</sup> December 2011. The consultation paper sought comments on the final draft licence and responses to the specific questions contained within the consultation paper.

The Utility Regulator received four responses to the consultation which are published alongside this paper on the Utility Regulator's website. Responses were received from:

- BGE/Storengy Ltd
- Endessa Ireland
- Islandmagee Storage Ltd.
- Shannon LNG

## Purpose and structure of this paper

The purpose of this Gas Storage Licence Conclusions Paper is to confirm the final conditions for a gas storage licence in Northern Ireland. As such a final licence accompanies this paper (presented as a separate document).

Industry comments on the final draft licence have been considered in confirming the final licence conditions. The final licence represents a 'standard' final licence. The conditions relating to a specific gas storage facility will be confirmed when a gas storage licence is granted. For example the confirmed TPA regime and any special conditions relating to the specific facility would be updated when the licence is granted.

Section 2 of the paper provides a summary of the changes to the final licence from the previously published licence.

Section 3 reviews the licence conditions relating to the provision of information.

Section 4 discusses the approach with respect to standard licence conditions.

Appendix A reviews industry comments and provides a response on the issues that have been raised.

The final gas storage licence accompanies this paper as a separate document.

## 2. Review of changes to the licence

Following industry responses and further review, we have made some changes to the following licence conditions. There are further changes to the licence, with respect to conditions relating to the provision of information requirements. These are noted here but discussed further in section 3. All of the changes discussed are included in the storage licence that accompanies this paper.

### **Condition 2.2.2 Independence of Gas Storage Business**

The gas storage licence has been updated to reflect that this condition only applies to storage facilities that are technically and/or economically necessary.

Additionally we have adopted further drafting from the directive<sup>1</sup>. We have also made some changes to Condition 2.2.2 (c) following a review against condition 2.4.3. This is discussed in section 3, Review of information provisions contained in the licence.

Our response to the comments received on this condition is included in Appendix A.

**Condition 2.10 Licensee to comply with any directions** – this condition was previously a sub-condition under 2.4. However we have moved this to a standalone condition as it applies to all of the licence rather than just condition 2.4.

### **Schedule 1, Part 1, Special Conditions applicable to the Licensee's licensed Storage Facility:**

#### **Direction where TPA does not apply**

This proposed condition gave the Utility Regulator the power to make directions to the terms of the contract between the storage system operator and a third party when third party access did not apply.

This condition was proposed as a special condition i.e. not part of the main body of the licence and would therefore only be used in particular circumstances if required.

Following industry responses and further consideration, we have removed this special condition from the final storage licence. If, following analysis, we have concluded that a gas storage facility is not technically and/or economically necessary for providing efficient access to the market (i.e. TPA does not apply) then including such a special

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<sup>1</sup> Directive 2009/73/EC concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC

condition may contradict the findings of the analysis. If the regulatory arrangements are working correctly then such a condition should not be necessary.

Our response to the comments received on this condition is included in Appendix A.

The following conditions have been updated and are discussed following the review of information provisions contained in the licence. They are discussed further in section 3.

**Condition 1.4.1: Use of protected information**

**Condition 2.4.4: Information to be provided to the Authority**

**Condition 2.5: Maintenance of Records**

### 3. Review of information provisions contained in the licence

In their response, BGE/Storengy commented that there are multiple requirements to provide information throughout the licence. We have reviewed the licence conditions below and provided our conclusions on whether the conditions should be changed or not.

There are five main conditions relating to the provision of information:

- Condition 1.3: Provision of Information to the Authority
- Condition 1.4: Restriction on Use of Certain Information
- Condition 2.4: Confidentiality and restriction on use of certain information
- Condition 2.5: Provision of information to the Authority, records and reporting
- Condition 2.7: Provision of information requested by other licence or exemption holders

The conditions are discussed below:

#### **Condition 1.3: Provision of Information to the Authority**

This condition provides the Utility Regulator with a general power to request information that may be necessary for the purpose of carrying out the functions assigned or transferred to it under the Energy Order. Condition 1.3.3 explicitly states that this condition is in addition to the power of the Utility Regulator to call for information under any other condition.

We intend to keep this condition as currently drafted as it provides the Utility Regulator with the power to carry out its functions as set out in the Energy Order. The condition is also consistent with other gas licences.

#### **Condition 1.4: Restriction on Use of Certain Information**

This condition places an obligation regarding the treatment of protected information that the licensee has received. The licensee, or any other person, shall not obtain any unfair commercial advantage from its possession of protected information.

BGE/Storengy had also sought clarity on the intended differences of conditions 1.4.1 and 2.4.

Condition 1.4.1 relates (in general terms) to the use of 'protected information' to give third parties or other gas businesses a commercial or regulatory advantage. Whereas condition 2.4 (again in general terms) covers a wider area and relates to:

- All 'commercially sensitive' information
- The preservation of confidentiality in general
- The licensee not using commercially sensitive information obtained from third parties when negotiating access arrangements to storage

The terms 'protected information' and 'commercially sensitive' are discussed further below.

Protected information is a defined term and therefore has the meaning given to it in the definition. Under this definition, 'protected information' means commercially confidential information in relation to other holders of gas storage, conveyance or supply licences which comes into possession of the storage licensee in the course of its dealing with such other licence holders.

Whereas condition 2.4 refers to 'commercially sensitive' information rather than 'protected information'. 'Commercially sensitive' information is not specifically defined and therefore has a wider scope than 'protected information' for the purpose of the licence.

The definition of protected information is very specific and therefore paragraph 1.4.1(a) is useful in definitively covering the concern of a licensee gaining unfair commercial advantage from its possession of protected information.

As such we have concluded that, although there may be a degree of overlap, it is preferable to retain both conditions. We have slightly amended the drafting of condition 1.4.1 to acknowledge that it covers similar territory to Condition 2.4.

In general, since a gas storage facility may receive information from a number of separate businesses it is important that under condition 1.4, the use of this information is restricted so that any unfair commercial advantage is not exploited. The condition is also similar with provisions contained in gas transmission licences.

## **2.4: Confidentiality and restriction on use of information:**

### **Condition 2.4.1 Confidentiality of information obtained in the course of business**

Condition 2.4.1 requires that the Licensee shall preserve the confidentiality of commercially sensitive information obtained in the course of carrying out the Licensed Business. This condition has been included in order to comply with Article 16(1) of the Directive.

### **Condition 2.4.2 Information obtained from third parties**

Condition 2.4.2 requires that the Licensee shall not use commercially sensitive information obtained from third parties in the context of providing or negotiating access to the storage facility. Similarly condition 2.4.2 has been included to comply with Article 16(2) of the directive.

We have concluded that conditions 2.4.1 and 2.4.2 are both required in the gas storage licence as they are specific requirements of the Directive.

### **Condition 2.4.2 Exceptions to Conditions 2.4.1 and 2.4.2**

BGE/Storengy had a further query on condition 2.4.3 and whether it applies only to commercially sensitive information. This licence condition has been updated to clarify that this condition only applies to commercially sensitive information.

We have also reviewed condition 2.4.3 against condition 2.2.2 (c). The original drafting of Condition 2.2.2 (c) requires that, where the licensee is part of a vertically integrated company, the Licensee must ensure that commercially sensitive information is not disclosed to any party that is part of the same vertically integrated undertaking as the Licensee except where necessary for carrying out a business transaction.

We have reviewed this condition against condition 2.4.3 above which has a similar provision in that the licensee shall ensure that no commercially sensitive information, relating to or derived from the storage business, is disclosed for the benefit of any other separate business.

We have concluded that under the original drafting, there is some potential conflict with condition 2.2.2 (c) and 2.4.3. Condition 2.2.2 (c), as originally drafted, allowed the licensee to disclose information to any party that is part of the same vertically integrated undertaking as the licensee when necessary for a carrying out a business transaction. However this exception (of allowing disclosure when carrying out a business transaction) is not included under 2.4.3 so, as previously drafted, condition 2.2.2 would appear to give the licensee wider scope to disclose information than condition 2.4.3.

The drafting has been updated to link the two conditions in so far as the licensee may disclose information to any party that is part of the same vertically integrated undertaking as the Licensee under condition 2.2.2 (c) only where this is permitted under condition 2.4.3. So for example the licensee could disclose information to any party that is part of the same vertically integrated as long as the Utility Regulator has consented to its disclosure.



#### **2.4.4 Information to be provided to the Authority**

This condition has been changed to require that the licensee shall provide a report to the Utility Regulator setting out how the licensee shall comply with conditions 2.4.1 and 2.4.2.

#### **Condition 2.5: Maintenance of Records**

This condition requires the licensee to keep records of its operation of the storage business and if requested, to provide the records to the Utility Regulator.

The condition has been renamed from 'Provision of information to the Authority, records and reporting' to 'Maintenance of Records' to be consistent with similar conditions in other gas licences.

We have also added a requirement to hold records for a defined period.

#### **Condition 2.7: Provision of information requested by other licence or exemption holders**

This condition allows other licence holders or exemption holders to make reasonable requests for information and the licensee is obligated to provide this information. The licensee is entitled to refuse to provide this information on the grounds that its disclosure may affect the commercial interests of the licensee. We are content to retain the condition as currently drafted.

## 4. Standard Licence Conditions

In the Gas Storage Licence Consultation Paper the Department for Enterprise, Trade and Investment (DETI) and the Utility Regulator provided an initial view with regard to the treatment of standard licence conditions. The proposed approach was to adopt all conditions in Parts 1, 2 and 3 of the draft gas storage licence as standard licence conditions.

This would have provided a 'one-size-fits-all' approach, where the standard conditions would be the same for all licence holders. However, following responses to the consultation this approach may not be appropriate. Industry responses have commented that the gas storage licence conditions should have more differentiation between the particular TPA regimes.

For example the provisions to provide information and the depth of the information to be provided may differ under the different TPA regimes. Given that the TPA access regime may differ between storage licences it may not be appropriate to apply a one-size-fits-all approach to standard licence conditions.

It would also be difficult for the storage developer, on application, to demonstrate how they would comply with the standard storage licence conditions if, at the application stage, they did not know what TPA regime the storage facility would be working under.

Therefore in order to provide flexibility for the final storage licence granted to a specific gas storage facility, DETI and the Utility Regulator have concluded that there should be no standard licence conditions for gas storage licences in Northern Ireland.

## Appendix A – Industry Responses

Question 1: Does the proposed licence condition [Condition 2.2.2 Independence of Gas Storage Business] cover the requirements of Article 15 of the Directive?			
Issue No.	Respondent	Issue	Conclusion
1	BGE/Storengy	Condition 2.2.2 – proposed licence consultation is not compatible with Article 15 of the Directive. Article 15 of the Directive only applies to storage operators of storage facilities that are technically and/or economically necessary for providing efficient access to the system.	The gas storage licence has been updated to reflect that this condition only applies to storage facilities that are technically and/or economically necessary.
2	BGE/Storengy	Condition 2.2.2 – BGE/Storengy propose that second paragraph is made subject to following qualification as stated in Article 15(2)c of the directive:  <i>“provided that this shall not preclude the existence of appropriate coordination mechanisms to ensure that the economic and management supervision rights of the parent company in respect of a return on assets within the limits envisaged by the Directive”;</i>	We do not view that this additional text is required. The focus of this licence condition is to facilitate independent decision making by minimising links between the parent company and its subsidiary.
3	BGE/Storengy	Condition 2.2.2 BGE/Storengy propose that in the third paragraph:  (i) sub paragraph (a) should be amended to reflect the scope of Article 15(2) (a) and (b) (i.e. non-participation in production/supply company structures and professional interests);	Licence has been updated to reflect comments received.

4	BGE/Storengy	Condition 2.2.2 in the third paragraph sub paragraph (b) should be deleted. This provision derives from Article 16 of the Directive. Disclosure of information is dealt with in detail elsewhere in the draft licence;	We have reviewed the conditions relating to the provision of information. A summary of the relevant conditions and the conclusions of our review are presented in section 3 of this paper.
5	BGE/Storengy	Condition 2.2.2, paragraph (b) which seeks to implement Article 16(3) should be considered in the light of the multiple provisions of the draft licence concerning the disclosure of information.	We have reviewed the conditions relating to the provision of information. A summary of the relevant conditions and the conclusions of our review are presented in section 3 of this paper.
6	BGE/Storengy	(iii) sub paragraph (c) the word “and” should be replaced with the words “in order to”.	No change to licence
7	Shannon LNG	No, the provisions in the Directive are more detailed and prescriptive than in the Licence. For example, “ <i>Persons responsible for the management of the transmission system owner and storage system operator shall not participate in company structures of the integrated natural gas undertaking responsible, directly or indirectly, for the day to day operation of the production and supply of natural gas</i> ”. The licence conditions should be identical to the provisions of Article 15 of Directive 2009/73/EC.	As suggested we have adopted more of the drafting from the directive in the rewriting of condition 2.2.2. See licence drafting attached to this paper.

<b>Question 2: Does the proposed licence condition [Condition 2.2.3, Duty to Promote Effective Competition] cover the requirements of Article 3(1) and Articles 16(3) of the Directive?</b>			
<b>Issue No.</b>	<b>Respondent</b>	<b>Issue</b>	<b>Conclusion</b>

8	BGE/Storengy	<p>Paragraph (a) of the proposed condition is misconceived. It purports to impose on licence holders a general obligation in regard to the promotion of competition which is wholly uncertain as to its meaning and scope. Neither Article 3(1) nor Article 16(3) of the Directive provides any basis to impose such a condition.</p> <p>Article 3(1) addresses the obligations of Member States and not natural gas undertakings. It requires Member States to ensure that natural gas undertakings comply with the applicable requirements of the Directive with a view to (i.e. with the purpose of on the part of the Member State) achieving a competitive, secure and environmentally sustainable market in natural gas. Member States should fulfill this obligation by imposing obligations on natural gas undertakings to comply with the specific requirements of the Directive applicable to those undertakings. It would not, however, be appropriate, in effect, to seek to delegate to natural gas undertakings the task of achieving the Member State's overall objective outlined above.</p>	<p>We view that it is entirely appropriate to include a duty to promote effective competition within the gas storage licence.</p> <p>Regulatory Authorities use licence conditions as a tool to ensure that natural gas undertakings, and therefore the Member State, comply with the requirements of national and European legislation. It is difficult to prescribe in detail what arrangements should be put in place to achieve effective competition. Hence licence condition 2.2.3 (1)(a) is not drafted in a prescriptive manner. However the promotion of effective competition may be facilitated by the availability of information. As such, condition 2.2.3(1)(b) require the licensee to make public such information that may facilitate effective competition and functioning of the gas industry in Northern Ireland. This condition is also consistent with the proposed licence modifications for gas supply and conveyance licences in Northern Ireland as proposed under the implementation measures for the EU Third Internal Energy Package (IME3)<sup>2</sup>.</p>
9	BGE/Storengy	<p>Condition 2.2.3 (b)</p> <p>(a) the words “will facilitate” should be replaced by the words “is necessary for”; and</p>	<p>No change to licence.</p>

<sup>2</sup> [Utility Regulator EU Third Internal Energy Package \(IME3\) Implementation Paper, July 2011.](#)

		(b) paragraph (b) should be made subject to the same provision as Article 16(3) (i.e. that the obligation to make information public is without prejudice to protecting commercially sensitive information).	This requirement is already captured under 2.4.1 Confidentiality of information obtained in the course of business.
10	Shannon LNG	Yes. The proposed licence condition adequately covers the requirements of Article 3(1) and Article 16(3) of the Directive.	No change to licence.

### Question 3: What are respondents' views on the requirement to contain a UIOLI condition within the licence?

Issue No.	Respondent	Issue	Conclusion
11	Endessa Ireland	Endessa Ireland supports the inclusion on UIOLI conditions to prevent capacity hoarding and to ensure that all available capacity can be fully utilised. However the timing for the application of UIOLI should be consulted upon with industry. Capacity owners must have sufficient time to sell-on capacity that they will not be using and should not lose their capacity in the event of an unforeseen force majeure situation preventing them from using it.	We will consider consulting on the proposed UIOLI arrangements when we receive the detail under a licence application.
12	Endessa Ireland	Endessa Ireland would support a licence condition limiting the percentage of storage capacity that may be held by anyone user to 40% and limiting the length of time for which a party may contract for storage capacity to 3 years.	We have ruled out including such arrangements as they may restrict a storage facility's ability to secure long term contracts which would support initial investment and the viability of the storage projects.
13	Shannon LNG	As the ERGEG Public Consultation (E10-GST-09-06) dated 28 July 2010 concluded, and as Guideline I of the amended GGPSSO provides for; we support the promotion of secondary markets for storage rather	We note Shannon's view however the ERGEG assessment is based on a review of arrangements across European gas markets which vary in maturity and complexity

		<p>than the application of UIOLI as a tool for congestion management.</p>	<p>compared to the Northern Ireland market. As such the assessment may not be relevant to the Northern Ireland market.</p> <p>We would be content to facilitate the development of a secondary market; however this does not substitute our position of requiring that UIOLI arrangements are in place.</p> <p>The ERGEG report also notes that the UK gas storage market does have UIOLI arrangements in place. The licence condition on UIOLI would therefore align with arrangements in GB.</p>
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**Question 4: What are respondents' views on the Utility Regulator approving the UIOLI condition?**

<b>Issue No.</b>	<b>Respondent</b>	<b>Issue</b>	<b>Conclusion</b>
14	BGE/Storengy	<p>A licence condition that a licence holder's standard conditions must contain a UIOLI provision seems reasonable. BGE and Storengy understand the Utility Regulator's inclination to include a requirement that the UIOLI provision is subject to approval by the Regulator.</p> <p>However it is important that it is clear on the face of the licence condition that this approval process comprises a review by the Utility Regulator of the licence holder's proposed provisions and that this review is solely for the purposes of considering the efficacy of those provisions. We do not consider that there is any need (or basis) to impose an industry standard UIOLI clause. The comments of the Utility</p>	<p>Under condition 3.1.2 there is flexibility for the licensee to propose UIOLI arrangements, which the Utility Regulator will consider. The Utility Regulator will approve the proposed UIOLI arrangements on the basis that the arrangements will encourage efficient use of the storage facility.</p>

		Regulator on this issue in the Consultation seem to accord with such an approach. In order to clarify this we would suggest that Condition 3.1.2 be amended by deleting the words “approved by the Authority” and inserting the following additional sentence: <i>“In advance of their use, the Licensee shall prepare and submit such provisions to the Authority for approval provided that the Authority shall not decline to approve such provisions otherwise than where it reasonably concludes that they are ineffective”.</i>	
15	Endessa Ireland	Endess Ireland agrees that the Utility Regulator should approve this mechanism, after a consultation process, to ensure that it is effective. Endessa Ireland considers that capacity holders must have an opportunity to sell on unused capacity before it is lost under the UIOLI mechanism.	We will consider consulting on the proposed UIOLI arrangements when we receive the detail under a licence application.

**Question 5: Where TPA does not apply, does the Utility Regulator need the authority to make directions to the terms of the contract between the storage system operator and a third party?**

<b>Issue No.</b>	<b>Respondent</b>	<b>Issue</b>	<b>Conclusion</b>
16	BGE/Storengy	It is entirely inappropriate for the Utility Regulator to seek to reserve any general power to give directions of this type and there is no basis for it to do so. These are good reasons for the creation of the three regulatory regimes that may apply to operators of different storage facilities (rTPA, nTPA and no TPA) and, as outlined in the Consultation, careful analysis is required in order to determine which regime is applicable in any case. There would seem little point in creating these distinct regimes and undertaking this	We acknowledge industry comments on this question and are aware of the distinct TPA regimes. Following industry responses and further consideration, we have removed this special condition from the final storage licence.



		analysis, and there would be no regulatory certainty for market participants, if a power like this is to be reserved by the Utility Regulator in any event. This condition should be deleted.	
17	Shannon LNG	No. We believe that if the Utility Regulator has deemed the facility exempt from Third Party Access, and there is a Use-it-or-lose-it mechanism in place, and all regulations and directives are being met, the Utility Regulator does not need to make directions between the operator and third party.	See response to issue 16 above.
<b>Question 6: Do respondents have any further comments on the draft gas storage licence or on the specific licence conditions?</b>			
Issue No.	Respondent	Issue	Conclusion
18	BGE/Storengy	<p><b>Condition 1.9 (Disposal of Relevant Assets):</b> This condition is not appropriate to operators who are not subject to TPA obligations, at least in its current form. The condition is designed for operators of infrastructure who provide a highly regulated service (e.g. rTPA) and who might be prevented by a disposal of assets from providing this service.</p> <p>Furthermore its text contains references relating to transportation assets.</p>	<p>We would still want oversight of the disposal of storage assets regardless of the TPA regime. A storage facility is required to provide the activities under its licence no matter what TPA regime is in place. This condition has been included to ensure that the licence holder will continue to be able to discharge its obligations.</p> <p>Drafting corrected.</p>
19	BGE/Storengy	<p><b>Condition 2.1.2 (Licensee to operate an efficient storage facility):</b> Please clarify the term "good industry practice". This expression is new, does not reflect the language of the Directive and seems</p>	<p>Condition 2.1.2 reflects the requirements of Article 13(1)(a) of the Directive which requires that "<i>each transmission, storage and/or LNG system operator shall operate, maintain and</i></p>

		<p>unnecessary having regard to the expectations in terms of safety and environmental matters referred to in the Criteria for Gas Licence Applications and Applications for Consent to Construct Major Pipelines or Gas Storage Facilities.</p>	<p><i>develop under economic conditions secure, reliable and efficient transmission, storage and/or LNG facilities to secure an open market, with due regard to the environment, ensure adequate means to meet service obligations”</i></p> <p>The term ‘good industry practice’ is used with the intention of covering a wide range of legislative requirements and industry working practices. It is not possible to be specific in the gas storage licence to what constitutes good industry practice as this would be an exhaustive list.</p> <p>An example of good industry practice would be following the guidelines set out in ERGEG’s Guidelines of Good Practice of Storage System Operators (GPSSO).</p> <p>Additionally since this condition relates to having due regard to all relevant environmental and public safety legislation, a number of the requirements would be overseen by other government bodies. This is a further reason for not being overly prescriptive on what constitutes good industry practice, as this may lead to duplicate regulation on areas that are overseen by other government regulatory bodies.</p>
20	BGE/Storengy	<p><b>Condition 2.1.3 (Capacity Statement):</b> Please clarify what this statement is expected to address.</p>	<p>As noted in the gas storage licence consultation paper, the intention of the</p>

			capacity statement is to provide transparency to the gas industry on the available capacity of the storage facility and to provide any further technical information that may be deemed appropriate. We did not detail what information we would require to be contained in the capacity statement as our intention is to prescribe the content prior to when the capacity statement is required.
21	BGE/Storengy	<b>Condition 2.2.1 (Undue Discrimination):</b> The words “or any other person or class” are inappropriate and should be deleted. They do not reflect the provisions of Article 13 of the Directive and there is no basis to include them.	We have not changed this condition given the general requirement not to discriminate it contains. It is not clear why this wording is inappropriate.
22	BGE/Storengy	<b>Condition 2.9 (Additional Storage Facilities):</b> Please clarify if this provision relates to one or more separate storage facilities.	Condition 2.9 allows the licensee to request that the Utility Regulator extend the application of the licence to additional gas storage facilities. This provision may apply to more than one additional storage facility.
23	BGE/Storengy	<b>Schedule 1 Part 1, Paragraph 3 (Negotiated Access):</b> In the case of nTPA the Regulator has no basis to audit the operator’s tariffs and charges and underlying costs. In this context please note the clear provisions of Article 41(1)(n) and (10) of the Directive that the national regulator has no right to review or require modifications of tariffs in the case of nTPA.	Article 41 of the directive relates to the Duties and Powers of the Regulatory Authority. Specifically Article 41(n) states that:  <i>The regulatory authority shall have the following duties:</i>  <i>(n) monitoring and reviewing the access conditions to storage, linepack and other ancillary services as provided for in Article 33. In the event that the access regime to storage is defined according to Article 33(3) [i.e.</i>

			<p><i>negotiated TPA], that task shall exclude the reviewing of tariffs;</i></p> <p>This part of the schedule had been drafted to allow the Utility Regulator to audit storage charges i.e. to seek transparency on how they were calculated but not to have any power to make changes to the tariffs or the methodology used to derive the tariff. To be clear, we do not intend to modify tariffs under a negotiated regime as this would be against the requirements of the directive. It is our view that the drafting in Schedule 1 Part 1, Paragraph 3 is consistent with Article 41(n) of the Directive.</p>
24	IMSL	<p>Information required for the grant of the licence: it is essential that the level of detail required for the grant of the licence is consistent with the stage of development at which the developer requires the licence. As noted above this needs to be before the multi-million investments in drilling and front end engineering. Consequently, the level of detail should be consistent with that provided to the planning service and the detail an applicant would be expected to have at this point.</p>	<p>The information required for the grant of a licence is set out in Gas (Applications for Licences and Extensions) Regulations 447<sup>3</sup>. The areas where documentation is required are as follows:</p> <ul style="list-style-type: none"> <li>• Financial information</li> <li>• Constitutional documents</li> <li>• Expertise of applicant</li> <li>• Development Plan</li> <li>• Standard Conditions</li> </ul> <p>We would also require information on the applicant's preferred TPA regime with</p>

<sup>3</sup> [Gas \(Applications for Licences and Extensions\) Regulations Northern Ireland 1996](#)

			<p>supporting assessment against the criteria that the Utility Regulator has published.</p> <p>We do not see any information requirement that would differ significantly in terms of accuracy whether it is submitted before or after front-end engineering. We can provide a degree of flexibility in this regard whilst maintaining a robust application procedure.</p>
25	IMSL	<p>Confidential information: As part of the application process there will be a number of highly sensitive commercial documents collected, relating to the project design, the financing projections and the arrangements between the developers to name a few. It is essential that the confidentiality of these documents be recognised and preserved.</p>	<p>We recognise that as part of the application process, there could be a number of sensitive commercial documents collected.</p> <p>As a public body and non-ministerial government department, we are bound by the Freedom of Information Act (FOIA). Under the FOIA, certain information may also be classified as exempt information. We will give consideration to any appropriate exemptions.</p> <p>When submitting information to us we would encourage applicants to specify why they consider the information in question to be confidential.</p>
26	IMSL	<p>Timing of the licensee obligations: Again bearing in mind the long construction time required between the grant of the licence and first operation, all the obligations in the licence should come into force with reference to the date of first commercial operations rather than the date of licence grant.</p>	<p>The final draft licence was written so that the timing of the licence obligations would be triggered on grant of the licence. This may not be feasible if there is long period of time between granting of the licence and first operations of the storage facility. For example, the terms of the licence would require the licensee to provide information (financial accounts, compliance arrangements etc.) on a storage business which is not yet</p>

			<p>operational.</p> <p>We acknowledge IMSL’s request and are proposing that when we receive a gas storage licence application we will review what conditions will be effective from the granting of the licence and what conditions will be effective from the date of commercial operations.</p> <p>We are adopting this approach as it may not be appropriate to ‘switch off’ all licence conditions until first commercial operations and equally, as indicated by IMSL, it may not be appropriate to have all conditions ‘switched on’ from the date of licence grant.</p> <p>The final granted licence will confirm these arrangements but we envisage that discussions will take place with applicants during the review procedure.</p> <p>The licence draft accompanying this paper has retained the original drafting, however as above; the final granted licence will confirm the relevant arrangements.</p>
27	Endessa Ireland	Endessa Ireland welcomes clarification as to the requirements that may be on the storage operator and users under the Gas Safety (Management) Regulations (Northern Ireland) (GS(M)R(NI)). It is stated that in those regulations that a person conveying gas must co-operate with the network co-ordinator but Endessa Ireland would like clarification	Article 6 of GS(M)R(NI) requires that the person in control of a gas storage facility shall co-operate so far as is necessary with a person conveying gas in a network and with a network emergency coordinator to enable them to comply with the provisions of these regulations.

		as to the procedures and any emergency plans in place or measures likely to be taken as these are important from a commercial point of view for those using the storage facility.	As above, the duty to co-operate places an obligation on the storage system operator to co-operate 'so far as is necessary' with NINEC and TSOs to meet the requirements of GS(M)R. Commercial arrangements in the event of an emergency will need to be considered and discussed with DETI.
28	Shannon LNG	Figure of the consultation paper entitled "Decision Process relating to Article 36" does not include a market test in the conditions to be met. This does not comply with Section 6 of Article 36 of Directive 2009/73/EC. The process should be updated to comply with section 6 of Article 36 of Directive 2009/73/EC.	The diagram depicting the "Decision Process relating to Article 36' was intended to provide a high level overview. It was not our intention to include all of the requirements of Article 36 in the diagram. The particular reference to Section 6 of Article 36 of the directive refers to the regulatory authority deciding upon the rules and mechanisms for management and allocation of capacity before granting an exemption. The rules shall require that all potential users of the storage facility are invited to indicate their interest in contracting capacity before capacity allocation in the new infrastructure takes place. If we receive an exemption under Article 36, the full process will be set out and followed, including a consultation process on capacity allocation as above. The results of the consultation will be used to assess whether the criteria for exemption have been met.
<b>Issue No.</b>	<b>Respondent</b>	<b>Issue</b>	<b>Conclusion</b>
29	BGE/Storengy	The standard conditions of the draft licence contain	Considered under review of information

		multiple provisions regarding the provision and protection of information by the storage operator (including Conditions 1.4, 2.1.3, 2.2.3(1)(b), 2.3, 2.4 and 2.7). These provisions should be subject to careful review (see Part 3 of response) to avoid duplication, achieve greater clarity and avoid the application to operators of conditions inappropriate to the regulatory regime to which they are subject.	provisions. See conclusions under section 3.
30	BGE/Storengy	<p><b>Condition 1.4 (Restriction of Certain Information) and Condition 2.4 (Confidentiality and restriction on use of certain information):</b></p> <p>References to the conveyance of gas are not correct?</p> <p>Please clarify the intended differences between this condition 1.4.1 and Condition 2.4? Presumably Condition 2.4.3, should relate to commercially sensitive information only?</p> <p>Otherwise it would appear to impose an additional (and extremely far-reaching unbundling obligation) in all cases including where no unbundling obligation arises.</p>	<p>Licence updated to reflect comments.</p> <p>Considered under review of information provisions. See conclusions under section 3.</p>
31	BGE/Storengy	<p><b>Condition 2.7 (Provision of Information):</b> The information which an operator not subject to TPA is required to furnish under the provision (and indeed under Condition 2.3.1 (b)) presumably would not exceed that required under Article 19(4) of Regulation (EC) no 715/2009?</p>	<p>This condition is not intended to give effect to Art. 19(4) alone. As above we have reviewed the information provisions in the licence and believe these are appropriate including in the context of the Directive requirements.</p>