



Endesa Ireland response to NIAUR's consultation on The Gas Storage Regulatory Framework in Northern Ireland

Endesa Ireland welcomes the opportunity to respond to the consultation on Gas Storage Regulatory Framework. The island of Ireland would greatly benefit from investment in gas storage facilities. These facilities will provide flexibility for market participants and will enhance security of supply. The publication of a regulatory framework will help to provide certainty for investors considering investments in storage facilities.

The new gas Regulation included in the Third Package legislation (Regulation (EC) 715/2009), published in July 2009, sets out general requirements for Storage System Operators (SSOs) and LNG System Operators. The Regulation states that these System Operators must offer services on a non-discriminatory basis to all network users that accommodate market demand. Member States may grant exemptions for all or part of the capacity of the new infrastructure according to the criteria set out in the newly implemented gas Directive (Directive (EC) 2009/73). Consideration for granting exemptions must be given on a case-by-case basis. Exemptions are meant to be exceptions to the rule and not a matter of course, which seems to be the prevailing situation in Europe.

Endesa Ireland strongly encourages NIAUR to grant exemptions to the third-party access (TPA) requirements on an exceptional basis only. Where exemptions are deemed necessary, partial exemptions should be granted rather than full exemptions to TPA.

Flexibility is a necessary tool for all market participants and Gas Storage facilities will provide greater access to flexibility and will enhance competition. Endesa Ireland recognises investors' need for certainty and understands that project financing may be difficult to obtain without some level of exemption from TPA. However, it has been shown that financing can be obtained with partial exemptions. Endesa Ireland is of the opinion that where NIAUR determines that exemptions are necessary, exemptions should be limited to a portion of the capacity and these exemptions should be for a limited duration.

Following are Endesa Ireland's comments on the specific proposals contained within the consultation paper:

1. *Comments on the gas storage licence presented as part of the gas storage licence for Northern Ireland*

Endesa Ireland considers that the gas storage licence for Northern Ireland broadly meets the requirements as set out in the legislation. However, the legislation sets out minimum requirements. Considering that Ireland and Northern Ireland are progressing the CAG and our gas markets are linked to those in GB, Endesa Ireland considers Article 2.2.2, which states that “*The Licensee shall operate the Licensed Business through a legally distinct and separate entity from any other business or venture which is engaged in the production or supply of natural gas in Northern Ireland.*”, should be amended to include a requirement that the licensee should operated a business that is a legally distinct and separate entity from any business engaged in the production or supply of natural gas and/or electricity production in the UK and Ireland.

In addition, Endesa Ireland does not see the need to give a Storage Operator compulsory purchase powers. The Storage Operator will not be the owner of the storage facility. It is difficult to envisage a situation where compulsory purchase would be necessary for a Storage Operator. Endesa Ireland would suggest removing this provision

2. *Aspects of the Third Package that should be considered for the future regulatory framework of gas storage in Northern Ireland?*

The Third Package legislation places an emphasis on the development of regional energy markets. The future regulatory framework of gas storage in Northern Ireland should look to the development of requirements that are compatible with the envisaged regional framework. Endesa Ireland would suggest that NIAUR also consult with the stakeholders and Regulatory Authorities in the NorthWest Gas Regional Initiative in the development of the Gas Storage Operator licence.

3. *The relevant geographic and product markets applicable to a gas storage facility in Northern Ireland?*

Endesa Ireland considers that the relevant market includes those countries to which Northern Ireland is directly connected, Ireland and the UK. The gas markets of Ireland and Northern Ireland are both linked to the GB market and that the conditions of competition are sufficiently homogenous and are distinguishable from neighbouring areas. Within this geographic market, the prevailing gas price is the price at the NBP. This is not the case throughout the GRI NW region.

Until the development of the regional market, Endesa Ireland would not consider the GRI NW region to be the relevant geographic market.

In relation to the product market, Endesa Ireland considers that the relevant product market should be limited to short and medium range storage facilities, as these provide comparable services allowing gas to be withdrawn at similar rates.

The EC Interpretive Note¹ on the granting of TPA exemptions suggests that NIAUR should consult with CER when considering exemption applications, as storage and LNG facilities in Northern Ireland will have an impact on competition and security of supply in Ireland. This linkage will be further strengthened with the implementation of the Common Arrangements for Gas. Therefore, Endesa Ireland considers that CER should be consulted prior to any decision on TPA exemptions.

4. Market power in Northern Ireland and its influence on selecting the most appropriate TPA regime.

Endesa Ireland agrees that the gas storage market in Northern Ireland is effectively an extension of the GB market as the price in Ireland and Northern Ireland is effectively the NPB price plus the interconnector charges. It is unlikely that an SSO will be in a position to influence this price as congestion is not an issue on the interconnector with GB.

However, the gas markets in Ireland and Northern Ireland are at an early stage of development in comparison to the GB market and may not be considered sufficiently competitive to implement an nTPA regime. In addition, the companies currently involved in looking at the development of storage facilities in Northern Ireland have a high level of market power in the energy markets in each jurisdiction.

Endesa Ireland would hope that by the time a storage facility is commissioned, competition would be sufficiently advanced to allow for an nTPA regime. Endesa Ireland supports light-touch regulation and considers that an nTPA regime would be preferable.

5. Application of the technically and/or economically necessary assessment regarding access to a gas storage facility in Northern Ireland

¹ http://ec.europa.eu/energy/gas_electricity/interpretative_notes/doc/sec_2009-642.pdf

TPA requirements are not applicable to those facilities which the Regulatory Authorities have deemed are not technically or economically necessary for the operation of an efficient gas market. Endesa Ireland considers that access to storage on the island of Ireland is necessary for gas suppliers to operate in an efficient manner and provide economically efficient prices for the customers on the island. Access to gas storage facilities in GB is limited; furthermore, gas storage in Northern Ireland should provide a more economic solution for customers on the island, limiting gas transportation costs. Therefore, Endesa Ireland considers that storage facilities in Northern Ireland should be considered economically necessary.

6. *Appropriateness of negotiated / regulated TPA as a framework for access to gas storage facilities in Northern Ireland*

The gas markets in Ireland and Northern Ireland are at an early stage of development in comparison to the GB market and may not be considered sufficiently competitive to implement an nTPA regime. In addition, the companies currently involved in looking at the development of storage facilities in Northern Ireland have a high level of market power in the energy markets in each jurisdiction and may have incentives to withhold capacity.

Endesa Ireland would hope that by the time a storage facility is commissioned, competition would be sufficiently advanced to allow for an nTPA regime. Endesa Ireland supports light-touch regulation and considers that an nTPA regime would be preferable, provided the SSO is unable to exert market power.

7. *Suitability of applying exemptions to the TPA requirements for a gas storage facility in Northern Ireland?*

The two groups currently considering investment in storage facilities in Northern Ireland include incumbents as significant partners in the project - Moyle Energy Investments Limited (a subsidiary of NIE Energy Holdings) and Bord Gáis Eireann. The Regulatory Authorities have determined that these companies continue to exert a high level of market power, requiring that the activities of these companies are regulated. In addition, both have affiliate companies with interests in power generation. As such, investment in gas storage facilities by these companies is unlikely to result in higher levels of competition in the region, suggesting that an exemption to TPA may not be appropriate.

Endesa Ireland recognises that applications for exemptions to TPA requirements must be considered on a case-by-case basis and should not be categorically denied to incumbents. However, we would suggest that a very strong case would need to

be made in order for these companies to demonstrate eligibility in relation to the exemption criteria as set out in Directive 2009/73/EC.

Furthermore, in ERGEG's Draft Guidelines on Article 22², guidance for the interpretation of the exemption requirements it states "enhancement of competition is not sufficient per se in order to obtain an exemption. The enhancement of competition has to be substantial enough to justify the exemption and the four other tests of the Directive need to be met." The Draft Guidelines also state that National Regulatory Authorities must strike a balance between the objectives of promoting infrastructure investment and ensuring competition through fair, non-discriminatory access to infrastructure. In their final Guidelines³, ERGEG has stated that partial exemptions are preferable to full exemptions.

Endesa Ireland recognises that in some instances, exemptions to TPA are required. Where these exemptions are required, it is our experience that partial exemptions for a limited duration of time are sufficient to obtain project financing.

² http://www2.e-control.at/portal/page/portal/EER_HOME/EER_CONSULT/CLOSED%20PUBLIC%20CONSULTATIONS/GAS/Article%2022/CD/E07-GFG-31-07%20Article%2022%20Guidelines%20DP2.pdf

³ http://www.energy-regulators.eu/portal/page/portal/EER_HOME/EER_PUBLICATIONS/CEER_ERGEG_PAPERS/Guidelines%20of%20Good%20Practice/Gas/E07-GFG-31-07b_Art22_PC-Conclusions_2009-04-09.pdf