



**Third Party Access Regime
for the proposed
Islandmagee Storage Ltd facility**

**Consultation Paper
18th May 2012**

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1. Introduction

Islandmagee Storage Limited (IMSL¹) has applied for a licence to store gas in a proposed gas storage facility in the Larne Lough area. The Utility Regulator is currently applying its licence application procedures², but before we can consult on the gas storage licence we must consider the Third Party Access (TPA) regime for the facility as required under Article 33 of Directive 2009/73/EC (the “Directive”). The requirements of Article 33 are summarised in section 2 of this paper.

In their application, IMSL also requested a licence that does not contain a use-it-or-lose-it (UIOLI) condition. This consultation paper also addresses this request.

1.1 Purpose of paper

Previously we have stated that we would carry out an automatic review of gas storage licence applications against Article 33 of the Directive. Therefore the purpose of this paper is to determine whether TPA to the proposed IMSL storage facility is technically and/or economically necessary and, if access is required, whether the access regime should be negotiated or regulated.

The paper is also consulting upon whether a UIOLI condition should be included within the prospective gas storage licence.

Previous papers also discussed exemptions relating to major new infrastructure under Article 36 of the Directive. However IMSL has not requested an exemption under Article 36 in their application. As such this paper is only applying Article 33 of the Directive.

1.2 Structure of paper

The structure of this paper is as follows:

Section 2 outlines the criteria against which we will make our decision on the most appropriate TPA regime for the IMSL facility.

Section 3 provides the evidence that IMSL have provided in their application for their preferred TPA regime and their position on a UIOLI condition within the licence.

¹ Further information on IMSL and the Larne Lough storage project is available on their company website <http://islandmageestorage.com/>

² The Utility Regulator may grant a licence to store gas in a specified gas storage facility under Article 8 (b) of the Gas (Northern Ireland) Order 1996.

Section 4 presents our assessment against the criteria and 'minded to' decision on the most appropriate TPA regime for the IMSL facility and our initial position on whether a UIOLI is required within the licence.

Section 5 presents the next steps following this consultation paper.

1.3 Request for comment

We are seeking comments on the proposed TPA regime for the IMSL gas storage and on the issue of whether a UIOLI condition is required within the licence. Respondents should not feel confined to the specific questions proposed and may comment on any other issue they feel is relevant to the issues in this paper.

The Utility Regulator intends to publish all comments received. Any confidential information that respondents wish not to be published must be clearly marked as such.

As a public body and non-ministerial Government department, the Utility Regulator is bound by the Freedom of Information Act (FOIA) which came into full force and effect on 1st January 2005. According to the remit of the Freedom of Information Act, it is possible that certain recorded information contained in consultation responses can be put into the public domain. Hence, it is now possible that all responses made to consultations will be discoverable under FOIA – even if respondents ask the Utility Regulator to treat responses as confidential. It is therefore important that respondents note these developments and in particular, when marking responses as confidential or asking the Utility Regulator to treat responses as confidential, should specify why they consider the information in question to be confidential.

The Utility Regulator invites comment on this consultation paper by close of business on Monday 18th June 2012.

Responses, preferably in electronic format, should be returned to:

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2. Criteria to determine the most appropriate TPA regime

Article 33 of Directive 2009/73/EC sets out the TPA requirements for gas storage facilities. We have discussed these requirements in detail in previous papers, namely the [Gas Storage Regulatory Framework Conclusions Paper](#) and preceding [Consultation Paper](#). As a reminder, a short summary is provided below.

2.1 Background

Article 33 requires that Member States choose between regulated or negotiated access to storage facilities when it is technically³ and or/economically necessary⁴ for providing efficient access to the system for the supply of customers.

If access is deemed necessary, then Member States must choose between regulated or negotiated access to storage facilities.

As a reminder regulated TPA is on the basis of published tariffs and/or other conditions as determined by the Utility Regulator. Whereas negotiated TPA refers to access on the basis of voluntary commercial agreements negotiated in good faith between the storage owner and users of the facility.

When access is deemed *not* technically and/or economically necessary to provide efficient access to the system for the supply of customers then it is *not* necessary to provide TPA. In this case TPA requirements do not apply to the storage facility.

With the above references in mind, essentially there are three questions to be asked in the following order when applying Article 33:

1. *Is it technically necessary to provide access to the gas storage facility to enable the efficient supply of gas to customers?*
2. *Is it economically necessary to provide access to the gas storage facility to enable the efficient supply of gas to customers?*

If the answer to both of these questions is 'no' then TPA does not apply under Article 33. In this case the gas storage licensee is not required to provide TPA to the gas storage facility. If the answer to either of these questions is 'yes' then TPA to the gas storage facility is required. In this case a third question must be asked:

³ Access to storage is technically necessary if there are no other types of flexibility tools that can satisfy any operator or new entrant's demand for a certain kind of flexibility services.

⁴ Access to storage is economically necessary if flexibility tools, other than storage, are available but represent an economic barrier to entry in comparison with the cost of using storage itself.

3. *Is regulated or negotiated access the most appropriate TPA regime?*

The Council of European Energy Regulators (CEER) has published guidance⁵ on the application of the terms technically and/or economically necessary. The report provides the following definitions:

Technical Requirement: If there are no flexibility tools apart from storage that can satisfy any operator or new entrant's demand for a certain kind of flexibility services, this means that access to the gas market is technically possible only through storage. In this case, access to storage must be granted, either under an nTPA regime or rTPA regime.

Economic Requirement: If shippers need for a certain kind of flexibility can be fulfilled by any tool other than storage, this tool should be available at a cost that does not represent an economic barrier to entry in comparison with the cost of using storage itself. This result can be achieved either through effective competition, under nTPA, or through cost reflective tariffs, under rTPA.

If the storage developer is not satisfied with the TPA regime following assessment against the requirements of Article 33, then a request for an exemption may be submitted under Article 36 of the Directive.

We have previously published criteria to assist in answering the questions above. The criteria are replicated below.

2.2 Criteria to determine whether access is technically and/or economically necessary

With respect to the requirement to determine whether a gas storage facility is technically and/or economically necessary, (i.e. questions 1 and 2) we have previously stated that we will use the following main criteria:

- The availability of flexibility tools
- The perceived impact to the market when TPA does not apply

Flexibility is defined as the availability of gas and/or capacity (transmission, storage, LNG) needed to:

- adapt supply to foreseeable volume variations in demand and to adjust the erratic fluctuations of demand;
- exploit market opportunities with the market opening to competition, i.e. using different combinations of flexibility tools in order to achieve cost advantages or enjoy new market business;

⁵ CEER, Recommendations on implementation of Third Party Access to Storage and Line-pack, 5th December 2003

- comply with public service obligations and strategic objectives

Flexibility tools provide flexibility on the supply side in order to meet fluctuations in demand. Examples of flexibility tools are storage, production flexibility, flow management, such as import flexibility, back-haul, interruptible and line-pack or other more sophisticated flexibility tools such as virtual storage and spot markets. If access to flexibility tools is readily available then it would be unlikely that access to storage would be deemed technically necessary. If flexibility tools, other than storage, are available but they represent a prohibitive cost compared to the cost of storage then access to gas storage would be economically necessary.

In order to assess the availability of flexibility tools we concluded that the UK and the flexibility market are the most appropriate geographic and product markets respectively.

2.3 Criteria to determine whether access is regulated or negotiated

With respect to Article 33 and the requirement to determine the most appropriate TPA regime, be that either regulated or negotiated, (i.e. question 3 above) we previously stated that we would use the following criteria:

- Level of market power
- Impact to investment
- Level of transparency
- Unbundling requirement

We also concluded that we would use use the CEER checklist and ERGEG criteria as supporting guidance.

3. IMSL application

IMSL's licence application stated that TPA should not apply to the proposed facility.

IMSL argue that flexibility in the UK market is provided from a number of sources, these include Pipeline Imports; LNG imports Short Range Storage (SRS); Medium Range Storage (MRS); Long Range Storage (LRS); UK Continental Shelf (UKCS); and Demand-Side Response.

IMSL has provided the following evidence, using the criteria set out in section 2, to support their position:

3.1 The availability of flexibility tools

1. Pipeline Imports

(a) Norway

Capacity from Norway is 53.7 bcm/y⁶. Norwegian flows can provide flexibility to the UK system. Often this does require price incentive and can also be dependent on the flows from Norway to Europe.

(b) BBL

Historically significant contractual delivery obligations meant that capacity on BBL provided predominantly base load supplies. More recently there has been increased variability and indeed virtual reverse flow, which indicates that this is now available to provide flexibility in the market. BBL has capacity of 19.5 bcm/y and the introduction of hourly balancing in the Netherlands and Interruptible Reverse Flow (Virtual) has meant that in 2011 flows have become significantly more variable.

(c) IUK

The IUK provides UK market with 25.5 bcm/y capacity. In 2010 Ofgem estimated that 43% of IUK was in effect part of the flexibility market in the UK.

2. LNG imports

⁶ National Grid Ten Year Statement December 2011

UK now has LNG import terminals with a total capacity of 55.9 bcm/y. These facilities clearly provide flexibility within the market, albeit that they must compete on price with facilities in Asia.

3. Short Range Storage (SRS)

SRS should be included in the definition of the flexible market given its similar behaviour to imported gas, despite its limited duration. Whilst limited duration and comparatively high cost should mean it has a low weighting in the analysis, it should be included.

4. Demand-Side Response

Demand side response is in its infancy in the UK market but should nevertheless be considered as part of the flexibility market.

Overall the UK has an import capacity of 156 bcm/y.

The above analysis, they argue, demonstrates that there is a wide variety of flexibility tools for the UK market.

3.2 The perceived impact to the market when TPA does not apply

In their application IMSL include a review of storage facilities in the UK which have been built since 2000 (see Table 1 below). Given that the relevant market is the UK flexibility market, IMSL’s conclusion is that there are a number of incidences in GB where TPA does not apply and this has not had a negative impact on the market.

Table 1: IMSL Review of TPA arrangements for storage facilities in UK

Source: IMSL Gas Storage Licence Application

Facilities that are currently operational where TPA does not apply					
Facility	Space (mcm)	Deliverability (mcm/day)	Duration (days)	Start date	Owner
Avonmouth	82	13.6	~6	1978	NG
Hatfield Moor	120	2.4	~50	2000	Scottish Power
Humbly Grove	315	7.5	~42	2005	Star Energy
Hole House	55	11	~5	2004 - 2008	EDF Trading
Aldbrough Phase 1	170 (rising to 330 by summer 2012)	40	~8	2009	Statoil/SSEHL
Holford	160 by 2012	16	~10	2011	E.ON

(formerly Byley)					
Hill Top Farm	100 by 2016	15	~7	2011	EDF Energy
<i>Facilities that are currently under construction where TPA does not apply</i>					
Stublach	400	33	~12	2013/14, phase two 2015/16	Storengy (GDF Suez)

3.3 Use-it-or-lose-it licence condition

The [Gas Storage Licence](#) published alongside the [Gas Storage Licence Conclusions Paper](#) contained a use-it-or-lose-it (UIOLI) condition (condition 3.1.2) which would require the licensee to include arrangements in each contract with a user of the facility to offer any unused contracted capacity for use by third parties.

IMLS have requested in their licence application that the use-it-or-lost-it condition is not included in their prospective licence.

IMSL’s reasoning is that, whilst they are not privy to the contracts and licences of other parties, to their knowledge the majority of storage facilities do not have TPA or UIOLI provisions. They reference Ofgem’s Draft Decision letters: Statoil UK Ltd’s and SSE Hornsea Ltd application for an exemption from section 19B of the Gas Act 1986, 10 October 2007, which stated that:

“When granting an exemption to a facility on the basis that it is not necessary for the economically efficient operation of the market, we do not consider that it is appropriate to require, as a term of the exemption, that effective anti-hoarding arrangements are in place or that information about the usage levels at that particular storage facility is given to the market.”

Furthermore, IMSL noted that the Guideline for Good Practice for Storage System Operators (GGPSSO) applies to facilitate TPA where an exemption has not been granted.

IMSL have also argued that if a UIOLI condition were included it would be difficult to implement and would impact the viability of their business.

Their reasoning is that a fast acting gas storage facility, such as the proposed IMSL facility at Larne, creates its revenue by responding quickly to price signals in the market i.e. withdraw gas when prices are high and inject gas when prices are low. The generally perceived cycle is that injection occurs in the summer when prices are lower

and withdrawal occurs in the winter when prices are higher. However there are also shorter-term fluctuations in the price of gas from which a storage operator would want to gain advantage.

In order to retain this flexibility, parties using the facility need to hold capacity and respond quickly to pricing signals. If a UIOLI condition were in place it would hamper the ability of a contracted party using the IMSL facility to hold capacity and respond to the market.

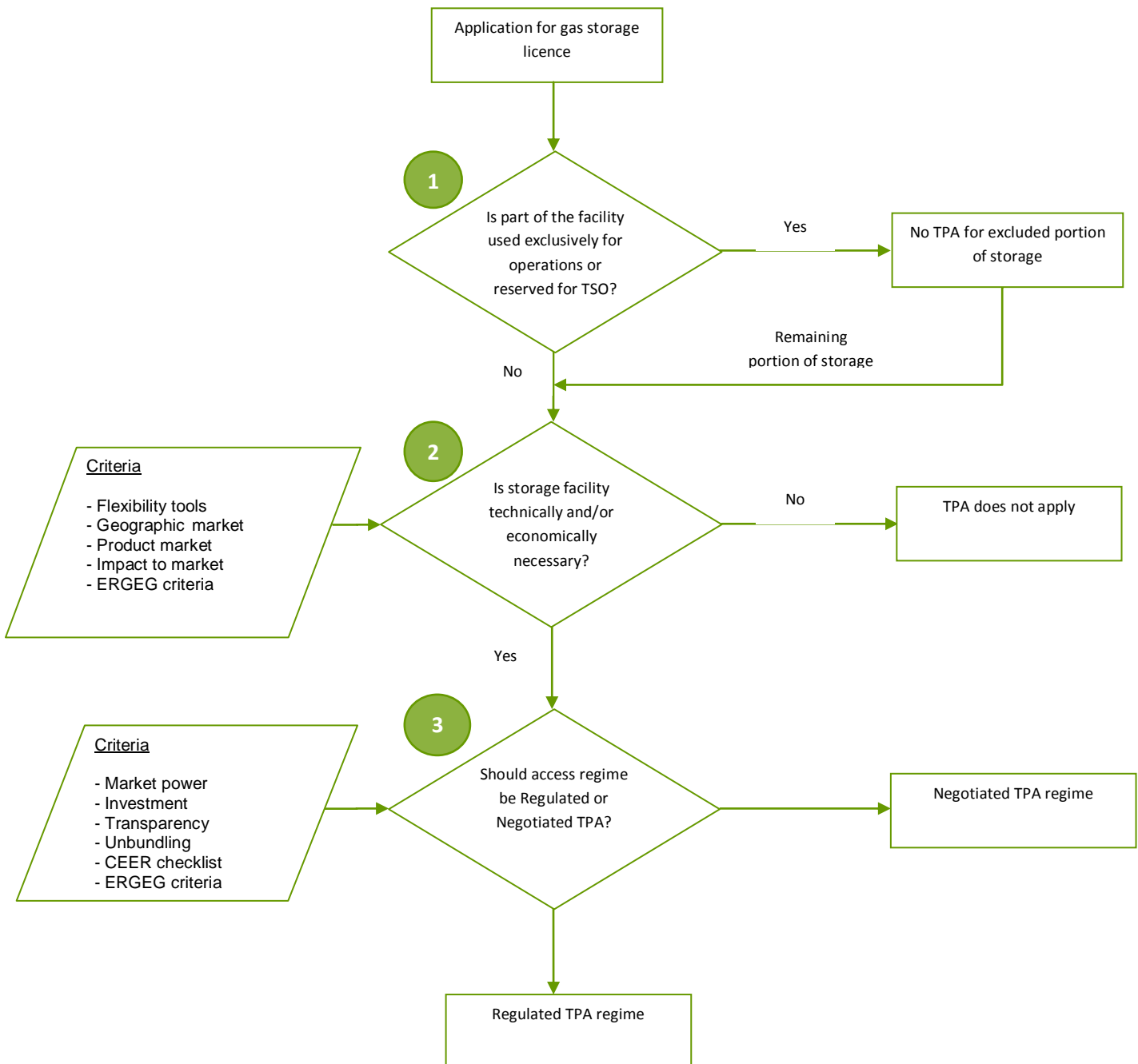
The inclusion of a UIOLI condition could therefore restrict the viability of the future business and potentially impact initial investment.

4. TPA assessment

4.1 Methodology

We have assessed the TPA arrangements for the proposed IMSL gas storage facility using the decision process set out in Figure 1 below.

Figure 1: Decision process relating to Article 33



The first decision point in the process (labelled 1 in Figure 1) refers to whether part of the facility shall be used exclusively for operations or reserved for use by a transmission system operator. This decision has been included to reflect the definition of storage facility used in the Directive.

The directive defines "storage facility" as a facility used for the stocking of natural gas and owned and/or operated by a natural gas undertaking, including the part of LNG facilities used for storage but excluding the portion used for production operations, and excluding facilities reserved exclusively for transmission system operators (TSOs) in carrying out their functions.

As IMSL has not stated that a portion of the gas storage facility is expected to be excluded for production operations or to be reserved exclusively for TSOs, our assessment at this stage, is that the answer to this decision point is 'no'. Our assessment is therefore on the full capacity of the proposed facility.

The next decision point (2) in the process asks:

1. *Is it technically necessary to provide access to the gas storage facility to enable the efficient supply of gas to customers?*
2. *Is it economically necessary to provide access to the gas storage facility to enable the efficient supply of gas to customers?*

We have previously published the criteria that we would use to assess whether it was technically and/or economically necessary to provide efficient access to the market.

These are set out below and referenced at decision point 2 in Figure 1 above:

- Geographic market
- Product market
- The availability of flexibility tools
- Perceived impact to the market when TPA does not apply
- ERGEG criteria

We previously concluded that the relevant geographic and product markets are the UK and flexibility markets respectively and we see no reason to change our view. Our assessment against the remaining criteria is set out below.

4.2 Availability of flexibility tools

As discussed above, a key conclusion from our previous papers was that the UK flexibility market is the relevant market. An overview of the UK flexibility market is provided below.

Northern Ireland gas suppliers have access to the GB market via the National Balancing Point (NBP) and can therefore access the flexibility tools that are on offer.

Import flexibility

The UK's import capacity is now 156 bcm/y, this is split into three near equal sources, the Continent (46.4 bcm/y), Norway (53.718 bcm/y) and LNG (55.919 bcm/y). Hence the UK is now well served through a diverse set of import routes from Norway, Holland, Belgium and from other international sources through LNG (see Table 2 below).

Notably National Grid's [2011 Gas 10 Year Statement](#) has forecast that IUK will remain a key source of responsive/flexible supply for the UK.

National Grid also note that although Norwegian imports to the UK are forecast to decline, the opportunity for Norwegian flows to provide flexible supplies to the UK increases. This may be subject to factors such as further EU market liberalisation, contractual conditions and access to continental transmission and storage.

Table 2: Existing UK Import Infrastructure

Source: National Grid

Import Project	Operator / Developer	Type	Location	Capacity (bcm/y)
Interconnector	IUK	Pipeline	Bacton	26.9
BBL Pipeline	BBL Company	Pipeline	Bacton	19.5 _b
Isle of Grain 1-3	Isle of Grain LNG	LNG	Isle of Grain	20.3
GasPort	Excelerate	LNG	Teesside	4.1
South Hook 1&2	Qatar Petroleum & ExxonMobil	LNG	Milford Haven	21.0
Dragon 1 BG	Group / Petronas	LNG	Milford Haven	10.5
Langeled	Gassco	Pipeline	Easington	25.3
Vesterled	Gassco	Pipeline	St Fergus	13.1
Tampen	Gassco	Pipeline	St Fergus	9.1

Gjøa	Gassco	Pipeline	St Fergus	6.2
			Total	156.0

LNG

National Grid have noted that there is considerable uncertainty in the LNG forecasts due to the absence of long term supply contracts and exposure to global conditions, namely LNG production and demand in alternative markets, notably Asia, and to a lesser extent Europe and the Americas.

Although there is uncertainty over these flows, LNG is assumed to be the major long term supply source to the UK and it is expected that LNG will continue to provide flexibility in the UK market. This is clearly evident in the existing LNG facilities presented in Table 2 above and the planned LNG import facilities presented in Table 3 below.

Table 3: Proposed UK import projects⁷

Source: National Grid

Storage Project	Operator / Developer	Type	Location	Date ⁸	Capacity (bcm/y)	Status
Dragon 2 BG Group /	Petronas	LNG	Milford Haven	2016	+ 3 - 6	Planning granted, no FID ⁹
Isle of Grain 4	Isle of Grain LNG	LNG	Isle of Grain	n/a	n/a	Open Season
Norsea LNG	Partners	LNG	Teesside	2016	+ ~20	Planning granted, no FID
Port Meridian	Hoegh LNG	LNG	Barrow	2013	+ ~6	Planning granted, no FID
Amlwch	Halite Energy	LNG	Anglesey	TBD	~20	Approved onshore
					Total	50+

⁷ This list is by no way exhaustive, other import projects have at times been detailed in the press

⁸ It is anticipated that major infrastructure projects will take a minimum of 5 years to be completed

⁹ FID - Final Investment Decision

Gas Storage

As presented in Section 3, Table 1: IMSL Review of TPA arrangements for storage facilities in UK, the UK has a number of existing gas storage facilities which can provide flexibility services for UK gas suppliers including those in Northern Ireland.

From the above review of flexibility services we consider that there are a wide range of flexibility services available in the UK which Northern Ireland suppliers may access.

4.3 Technically and/or economically necessary assessment

We have defined the relevant geographic and product markets as the UK and the flexibility markets respectively. Northern Ireland gas suppliers have access to the GB flexibility market which, as presented above, offers a wide range of flexibility tools that would meet the demand for a flexibility service from any operator or new entrant.

A new or existing supplier in the Northern Ireland gas market would not be restricted to sourcing its gas solely from the proposed IMSL gas storage facility given that there are a wide range of flexibility tools available in the UK.

Therefore since access to flexibility tools is readily available, we are of the opinion that it is not technically necessary to provide access to the proposed IMSL gas storage facility.

With regards to economic necessity, if flexibility tools, other than storage, are available but they represent a prohibitive cost compared to the cost of storage then access to the gas storage would be economically necessary. This is clearly not the case since the UK flexibility market is a liquid and competitive market.

Since Northern Ireland and GB shippers can avail of the flexibility products within the GB market, the proposed IMSL gas storage facility can be considered to be functioning within a competitive and flexible market.

Within this setting third party access to the proposed IMSL storage facility would not be economically necessary due to the presence of a high degree of flexibility tools.

Therefore, linking back to the CEER's economic requirement definition:

If shippers need for a certain kind of flexibility can be fulfilled by any tool other than storage, this tool should be available at a cost that does not represent an economic barrier to entry in comparison with the cost of using storage itself. This result can be achieved either through effective competition, under nTPA, or through cost reflective tariffs, under rTPA.

In the case of the UK flexibility market the desired result is achieved through effective competition.

Since the flexibility services operate in a sufficiently competitive market, we are of the opinion that access to the proposed IMSL gas storage facility is not economically necessary.

Following this review, we are therefore minded to determine that TPA requirements should not apply to the proposed IMSL gas storage facility. i.e. the response to questions 1 and 2 posed in section 4.1 are no and TPA does not apply under Article 33.

Consequently we have not progressed to decision point 3.

4.4 Perceived impact to the market if TPA does not apply

In our Gas Storage Regulatory Framework Conclusions Paper we also decided that if analysis on the availability of flexibility tools indicated that TPA is not necessary, then it may be appropriate to carry out a further check on the potential impact of this upon the market.

An appropriate method to assess this perceived impact is to review the relevant UK precedents. As presented in Table 1 in section 3, IMSL has provided a review of TPA arrangements for storage facilities in UK.

We have discussed the TPA arrangements in GB with Ofgem. Rough and Hornsea are the only gas storage facilities in GB that are required to operate under a negotiated TPA regime. The other gas storage facilities have been granted a Minor Facility Exemption (MFE)¹⁰ to TPA. The MFE outcome is similar to the 'TPA does not apply' outcome that we are proposing for the IMSL facility.

Since several gas storage facilities in GB have been granted a status where 'TPA does not apply' and there has been no adverse impact it is our expectation that a 'TPA does not apply' outcome for the IMSL gas storage facility in Northern Ireland would not create an adverse affect to the market.

Additionally given that that UK market is a competitive and liquid market we do not envisage that IMSL would be in a position of market power in Northern Ireland if TPA did not apply. Any gas placed into storage in Northern Ireland would be purchased at the NBP and transported to Northern Ireland. IMSL would have little influence over the NBP element as this is traded within a liquid GB market.

¹⁰ Previously referred to as a 'de-minimis' exemption

4.5 ERGEG criteria

As a further check we also advised that we would also use the ERGEG criteria relating to the application of Article 33. The EU Gas Regulatory Madrid Forum 2009 proposed the following criteria that may be assessed when determining the access regime to storage facilities:

- The effectiveness of competition in the market
- The availability of alternative flexible tools
- The availability of capacity for storage users
- The availability of requested products by other storage operators
- The independence of the storage system operator

These criteria overlap with our assessment criterion of the availability of flexibility tools in the market and our consideration of the liquidity of the UK market. As such we are content that they have been addressed in our general assessment of the UK market rather than as standalone criterion.

The independence of the storage system operator criterion refers to when the licensee is part of a vertically integrated undertaking that is engaged in the production or supply of natural gas in Northern Ireland. This does not apply to IMSL.

1. The Utility Regulator seeks industry views on its minded to position that TPA requirements should not apply to the proposed IMSL gas storage facility.

4.6 Use-it-or-lose-it condition

IMSL has requested that the proposed UIOLI condition is not included in their prospective licence. In their licence application, IMSL has noted that if TPA does not apply then the proposed UIOLI condition should not be included within the licence.

Our proposal to include a UIOLI condition was based on the recommendations included in the Amendment of the Guidelines of Good Practice of Storage System Operators (GGPSSO), February 2011, specifically Guideline M: Optimal use of storage and corresponding products. Through Guideline M, storage system operators are required to offer any unused capacity so as to make sure that the storage capacity is optimally used and that the selling of any capacity is maximised.

However IMSL has argued that the GGPSSO only applies to facilitate TPA where an exemption has not been granted.

To address this issue we have reviewed the scope of the original GGPSSO. The scope and objective of the original GGPSSO relates to TPA for storage facilities in accordance with Article 19 of the European Directive 2003/55/EC.

Directive 2003/55/EC has since been repealed by Directive 2009/73/EC and Article 19 has been replaced by Article 33, however the content of both articles remains largely the same. Article 33 refers to the organisation of access to storage facilities and linepack when technically and/or economically necessary for providing efficient access to the system for the supply of customers i.e. when TPA applies.

IMSL has made a valid point, however the GGPSSO also states that their intention is to give a *minimum set of rules* required for the organisation of the market for storage capacity.

As such we could include a UIOLI condition within the gas storage licence to promote efficient use of the storage capacity regardless of the TPA regime, including where TPA does not apply.

We have discussed the provision of UIOLI arrangements in GB with Ofgem. The majority of gas storage facilities in GB that have been given a Minor Facility Exemption (MFE) are not subject to UIOLI obligations.

Consistency with regulatory arrangements in GB is a key consideration in putting in place a gas storage regulatory framework in Northern Ireland that will facilitate the development of gas storage facilities.

Therefore in order to achieve a level-playing field with gas storage facilities in GB, our initial position is that the UIOLI condition should not be included in IMSL's prospective licence.

2. The Utility Regulator seeks industry views on its initial position that the UIOLI condition should not be included in IMSL's prospective gas storage licence.

3. The Utility Regulator seeks any further comments on the issues raised in this consultation paper.

5. Next Steps

We are seeking industry comments on the issues presented in this consultation paper, namely our minded to decision that TPA does not apply to the proposed IMSL gas storage facility and our initial position that a use-it-or-lose-it condition should not be included in the final IMSL gas storage licence.

Following responses to this consultation paper, the Utility Regulator will make a final decision on the most appropriate TPA regime for the IMSL gas storage facility and whether a UIOLI condition is appropriate.

In the interim we will continue our assessment of the IMSL gas storage licence application. We anticipate that we will have completed our review of the IMSL gas storage licence application in the summer of 2012.