DEPARTMENT OF ENERGY & CLIMATE CHANGE

Corporate Response Form 'Third Package' Consultation URN 10D/727 Open: 27/07/2010 Close: 19/10/2010	
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Consultation Questions

Chapter 1 – Consumer Protection

1	**Consultees are invited to comments on Government proposals to implement the consumer protection measures of the Third Package.**
CSL does not wish to comment on this area	
2	**In respect of the requirement to switch customers within three weeks, subject to contractual terms, we propose to put in place a new Licence Condition requiring the new supplier to give new customers a 14 calendar day period after the contract has been entered into, to consider whether they wish to proceed with this. Unless the customer notifies the supplier they do not wish to proceed, the Licence Condition will require the new**

	supplier to give customers the right to change their mind within 14 calendar days and then be switched within three weeks, subject to outstanding debt (and, in the case of non-domestic customers, contractual conditions). Do consultees agree with this proposal?
CSL does not wish to comment on this area.	
3	**Do consultees consider that the requirement on supply undertakings which are not registered in Great Britain, to provide a GB address for the service of the documents, poses any difficulty for these suppliers? Evidence of costs to these suppliers would be particularly welcome.**
CSL does not wish to comment on this area.	

Chapter 2 – Transmission and Distribution Networks	
4	**Do you have any comments relevant to our consideration of which unbundling models should be available in the GB market?**
CSL does not wish to comment on this area.	
5	**Do you have any views or concerns with how we intend to apply these new Third Package requirements on TSOs and DSOs?**
CSL does not wish to comment on this area.	

Chapter 3 – Gas Infrastructure

6	**Should the Gas Directive requirements for storage and LNG operators be introduced through a new licence regime or by amending existing legislation? Please provide evidence of costs and benefits wherever possible.**

Introduction

Centrica Storage Ltd (CSL) welcomes the opportunity to respond to this consultation question. Our response will be structured in two distinct parts; we shall firstly respond to the question above and then we shall discuss some observations from areas of the Third Package out with the scope of the question. In this response, references to Articles are to those in Directive 2009/73/ec. If you would like to discuss any of our comments in more detail, please do not hesitate to contact us.

Licences or Legislation?

CSL understands that the requirements of the Gas Directive will require implementation in the UK and that DECC is considering achieving implementation by means of either setting the requirements out in legislation or by creating a new licensing regime. Whilst we agree that there exists a fairly balanced number of pros and cons for each of these options, CSL encourages DECC to implement the requirements by means of legislation for the reasons set out below:

- Increased Ofgem Control: CSL notes that Ofgem is likely to be empowered to administer and to ensure enforcement of the requirements within the potential licence regime, and, under the Directive, these powers shall be exercised with regard to "the importance of the project for the internal market" (A4(2)) and "to considerations of efficiency and economic balance" (A12). Such an approach raises major concerns as it increases the level of regulatory uncertainty and risk faced by both market participants and potential storage investors. The provisions of A4(2) and A12 both contain an inherently wide scope for interpretation and may permit Ofgem to discriminate in the licence criteria applied amongst different SSOs and storage facilities. The exercise of these powers by Ofgem in such circumstances may result in variation of the licence conditions applied amongst SSO and storage facilities, with those which are perceived to theoretically reduce the efficiency and economic balance of the market receiving more onerous and burdensome requirements, compared to those deemed to have the opposite impact.

- Administrative Burden on Storage System Operators (SSOs): Currently, SSOs are already subject to the following licences: Production Licence; Storage Licence; Transporter Licence; Crown Estate Lease (offshore facilities) – all licences which are fairly disconnected from one another. An additional licence would further increase the

administrative burden on existing SSOs and increase uncertainty faced by storage developers due to role of Ofgem in administering such a regime and the potential for agreement on the licence conditions not to be reached.

At a time where these is a significant national need for new storage investment, and the economics of many projects are marginal, we may see the use of A4(2) and A12 resulting in a disconnect from, or a barrier to achievement of, the Government's infrastructure investment objectives. For example, an application of licence criteria by Ofgem where excessive importance is given to theoretical market objectives rather than recognising the national need for more storage in GB, resulting in an SSO or a storage facility being treated less favourably than others, may prevent much needed investment in storage infrastructure from going ahead.

Additionally, a licence is ultimately an agreement between Ofgem and the SSO, and therefore there exists the potential for dispute. The costs of the potential resolution of such disputes could be significant and are avoidable under the legislative route. The impacts of such disputes on the timing of delivery (and thus the economics) of new projects may also be significant – again this risk is avoidable under the legislative route.

Further, in line with the pros of the legislative route identified by DECC, CSL supports the argument that much of the material that would go into a licence already exists in legislation, and that the introduction of a licence would ultimately require a legislative change in any event. As legislation brings certainty and equality of approach amongst all SSOs and storage projects, against this backdrop, and taking account of the above points, it would seem sensible to introduce the Third Package requirements into legislation.

If DECC decides to implement a licence, CSL urges DECC to restrict the content of the licence to the requirements of the Third Package and to provide more developed rules in the legislation around the function of A4(2) and A12 in order to limit uncertainty and any potential discrimination which the current drafting in the Directive may permit.

CSL would also wish to discuss appropriate transitional arrangements for existing facilities.

Additional Observations

- nTPA Regime

We note that it is DECC's intention to impose an obligation on Ofgem to define and publish criteria according to which the access regime applicable to storage facilities may be determined. Under A33(1), provision is made for either the Member State or the National Regulatory Authority (NRA) to define and publish such criteria. CSL recommends that DECC builds into the legislation the ability for the Secretary of State to give Ofgem directions in relation to the criteria, and for Ofgem to be bound to have particular regard to these directions given in order to facilitate delivery of the

Government's infrastructure investment objectives. We would also recommend that the Secretary of State is given the power in the legislation to quickly remove this power from Ofgem and to veto Ofgem's decisions. Due to the increasing reliance on imported gas and potential volatility/uncertainty attached to imported supplies, there may be times where Ofgem's decisions may need to be overridden to avoid time consuming dispute and uncertainty, and to expedite the delivery of infrastructure.

- Unbundling and Confidentiality

  CSL understands that the main function of unbundling is to improve third party access, but merit must also be given to the benefit of unbundling to achieving compliance with the confidentiality obligations and the requirement to protect commercially sensitive information from related undertakings (A16(1)). We have observed that the requirement to unbundle does not apply to TPA exempt facilities (A15(1)), but the obligations around confidentiality apply to all SSOs. In practice, we have concerns that compliance with the confidentiality obligations may not be possible in the absence of some form of unbundling.

  A TPA exemption does not prohibit either a) the storage facility and the SSO component of the Vertically Integrated Undertaking (VIU) from existing within the production and supply component, nor b) the sale of the storage capacity in such a circumstance to third parties. Where a facility sits within the production arm of the VIU, a significant amount of commercially sensitive information about the storage activity which is commercially advantageous is accessible by the VIU. It is unlikely that this information will be public domain in the absence of any obligations to disclose this to the market. CSL would suggest that this could constitute a breach of the requirement for the SSO to "prevent information about its own activities which may be commercially advantageous from being disclosed in a discriminatory manner" (A16(1)). In this situation, we struggle to see how compliance with A16(1) can be achieved without some form of separation of the SSO from the rest of the VIU.

  Similarly, the ability of the SSO to share services with the VIU further amplifies this concern. We note that under A16(1), Transmission System Operators shall not share services (other than administrative functions) with the rest of the VIU in order to enable compliance with the requirement to protect commercially sensitive information, but a similar requirement does not apply to SSOs. CSL recommends that certain controls are enforced for all SSOs in order to preserve the confidentiality of storage information that may be commercially advantageous to other parts of the VIU.

- Activities Relating to Storage

  In the light of the A15(1) requirement for SSOs to be independent from activities not relating to storage, and the A15(2)(a) requirement for SSOs not to participate in the company structures responsible directly or indirectly for the production and supply of natural gas, it is important that DECC recognises that SSOs engage in gas shipping – an activity which arguably could constitute "supply". Similarly, many of those SSOs operating depleted hydrocarbon reservoir facilities are also required to hold a

	Production Licence in respect of the unavoidable extraction of native gas molecules – an activity which arguably could constitute "production". Both of these activities are ancillary to storage activities and are a necessary component of effective commercial and physical operation, and CSL does not believe the intent of the Article is to remove the SSO's ability to engage in these ancillary activities. In order to avoid any further uncertainty in this area, CSL recommends that DECC makes provision which sets out that these ancillary activities are permissible where the primary purpose of the entity is storage activities.
Chapter 4 – Role of the National Regulatory Authority	
7	**Implementing binding decisions** **For the reasons we have set out in the consultation document, the Government proposes to replace the current collective licence modification objection arrangements with a process that allows Ofgem to reach its decisions subject to appeal to an appropriate body. This would reinforce Ofgem's power to make decisions in accordance with their powers and duties under the Third Package, and would give all licensees the same right of appeal. Ofgem's decisions, as now, would need to be reached following consultation and subject to the principles of better regulation. This proposal would include all Ofgem licence modification decisions and not only those covered by the Third Package. We would be grateful for your views on these proposals.**

CSL does not wish to comment on this area.

Chapter 5 - Cross border co-operation

8	**Do you have any views or concerns with how we intend to introduce the regional co-operation elements of the Third Package?**

CSL does not wish to comment on this area.

Impact Assessment Questions

These are partial Impact Assessments containing our initial qualitative assessment of the costs and benefits. We therefore would welcome any quantitative evidence to support the further development of these impact assessments. Any information provided will be treated with sensitivity and anonymity.

Consumer Switching

9	**Are the assumptions made as part of this Impact Assessment correct and have we correctly identified the costs and benefits associated with this measure?**

CSL does not wish to comment on this area.

10	**The Government would welcome any information that could improve our analysis of the costs and benefits highlighted in this Impact Assessment, and specifically any evidence regarding: supplier systems changes, monitoring costs, administrative burdens, the number of extra erroneous switches which may occur as a result of our proposals, the cost of manually stopping the switch and any information regarding the number of customers that currently fall outside the 3 week switching period defined (excluding the cooling-off period).**

CSL does not wish to comment on this area.

Consumer Information

11	**Are the assumptions made as part of this Impact Assessment correct and have we correctly identified the costs and benefits associated with these measures?**

CSL does not wish to comment on this area.

12	**The Government would welcome any information that could improve our analysis of the costs and benefits highlighted in this Impact Assessment, and specifically any evidence regarding: whether the record keeping requirement imposes additional costs (system costs and administrative costs) on industry; an estimate of the scale of these costs; and any evidence regarding the costs associated with passing on consumption and metering data to another supplier.**
CSL does not wish to comment on this area.	
13	**What would be the additional costs to the industry for providing the additional information to consumers in terms of complaints handling/dispute settlement arrangements available by the supplier?**
CSL does not wish to comment on this area.	

National Regulatory Authority	
14	**Are the assumptions made as part of this Impact Assessment correct and have we correctly identified the costs and benefits associated with these measures?**
CSL does not wish to comment on this area.	
15	**We would welcome any information that could improve our analysis of the costs and benefits highlighted in this Impact Assessment, and specifically any evidence regarding; the monitoring, enforcement and administrative costs involved and any evidence regarding the indirect costs on industry of these measures.**
CSL does not wish to comment on this area.	

Transmission and Distribution	
16	**Are the Impact Assessment assumptions on the costs to TSOs of complying with the new TSO certification process realistic (both for those seeking derogations and those not doing so)?**
CSL does not wish to comment on this area.	
17	**The Impact Assessment assumes that ensuring the independence of the compliance officer for DSOs requires little additional action on the part of the affected DSOs. Your views including evidence of costs would be appreciated.**
CSL does not wish to comment on this area.	

Gas and LNG Operators	
18	**Are the assumptions made as part of this Impact Assessment correct and have we correctly identified the costs and benefits associated with these measures?**
	CSL has previously submitted a paper to DECC on its perceived costs of implementation of the Third Package and the Rough Undertakings. CSL's view remains unchanged.
19	**What specific changes to current practice will be required to comply with articles 15 (unbundling) and 16 (confidentiality) of the Directive? What are the likely costs of making these changes?**
	As set out in our response to question 6, CSL understands that the main function of unbundling is to improve third party access, but merit must also be given to the benefit of unbundling to achieving compliance with the confidentiality obligations and the requirement to protect commercially sensitive information from related undertakings (A16(1)). We have observed that the requirement to unbundle does not apply to TPA exempt facilities (A15(1)), but the obligations around confidentiality apply to all SSOs. In practice, we have concerns that compliance with the confidentiality obligations may not be possible in the absence of unbundling. A TPA exemption does not prohibit either a) the storage facility and the SSO component of the Vertically Integrated Undertaking (VIU) from existing within the production and supply component, nor b) the sale of the storage capacity in such a circumstance to third parties. Where a facility sits within the production arm of the VIU, a significant amount of commercially sensitive information about the storage activity which is commercially advantageous is accessible by the VIU. It is unlikely that this information will be public domain in the absence of any obligations to disclose this to the market. CSL would suggest that this could constitute a breach of the requirement for the SSO to "prevent information about its own activities which may be

	commercially advantageous from being disclosed in a discriminatory manner" (A16(1)). In this situation, we struggle to see how compliance with A16(1) can be achieved without some form of separation of the SSO from the rest of the VIU. Similarly, the ability of the SSO to share services with the VIU further amplifies this concern. We note that under A16(1), Transmission System Operators shall not share services (other than administrative functions) with the rest of the VIU in order to enable compliance with the requirement to protect commercially sensitive information, but a similar requirement does not apply to SSOs. CSL recommends that certain controls are enforced for all SSOs in order to preserve the confidentiality of storage information that may be commercially advantageous to other parts of the VIU. CSL's view of the costs of setting up and maintaining such a regime are set out on the paper which it is previously submitted to DECC.
20	**Articles 15, 17 and 19 of the Gas Regulation specify that certain operational information must be made publicly available by 'technically and economically necessary' LNG and storage sites. What are the likely costs involved in making this information publicly available?**
	CSL's view of the costs of setting up and maintaining such a regime are set out on the paper which it is previously submitted to DECC.
21	**Article 22 of the Regulation outlines the requirement for contracts and procedures to be harmonised at 'technically and economically necessary' LNG and storage sites. What changes to current practices will, in your view, be required to achieve this and what are the likely costs of making these changes?**

CSL believes this Article refers to the harmonisation of storage contracts within each of the SSO's products, rather than between products and between gas supply infrastructure. CSL believes that where the same product is offered to all customers on the same contractual terms and conditions, thus enabling customers to trade their capacity easily on the secondary market, then compliance with Article 22 is achieved.

22	**We would welcome evidence on the costs and benefits of introducing a licensing regime for LNG and storage as opposed to introducing the measures through changes to legislation.**

CSL's view of the costs of setting up and maintaining such a regime are set out on the paper which it is previously submitted to DECC.