
STATUTORY RULES OF NORTHERN IRELAND

2013 No. 92

**The Gas and Electricity (Internal Markets)
Regulations (Northern Ireland) 2013**

PART III

AMENDMENT TO GAS (NORTHERN IRELAND) ORDER 1996

Exemption from requirement for system access

19. After Article 10A insert—

“Exemption from requirement for system access

10B.—(1) Where any licence under Article 8(1)(a) or (d) is subject to a relevant condition, the holder of such a licence may apply to the Authority for an exemption under this Article with respect to the system or any part of the system to which the condition applies.

(2) An application under paragraph (1) may be sent to the Authority only after a person has applied for access to the system or part of the system in question in accordance with a relevant condition.

(3) Such an application may be made before or after the holder of the licence has refused access.

(4) An application made after such a refusal must, however, be made before the end of the 7 days beginning with the date of the refusal.

(5) An application under paragraph (1) may only be made if the holder of the licence considers that allowing the application for system access would cause serious financial difficulties because of take or pay commitments of the licence holder under one or more gas purchase contracts.

(6) An application under paragraph (1) must enclose all relevant information, including in particular information with respect to—

- (a) the nature and extent of the difficulties mentioned in paragraph (5) which the holder of the licence considers would arise (“the difficulties”);
- (b) any steps taken by the holder of the licence to prevent the difficulties from arising; and
- (c) the period over which the holder considers the difficulties would arise.

(7) The Authority may give an exemption under this Article if it considers that—

- (a) having regard to any steps taken by the holder of the licence to prevent the difficulties from arising, the only reasonably available means of prevention is an exemption under this Article; and
- (b) an exemption ought to be given having regard to—

- (i) the objective of achieving a competitive gas market;
 - (ii) the need for the holder to comply with any relevant public service obligations within the meaning of paragraph (2) of Article 3 of the Directive which has been imposed on the holder pursuant to that paragraph;
 - (iii) the need to ensure security of supply of gas;
 - (iv) the position of the holder of the licence in the gas market and the level of competition in the market;
 - (v) the level of seriousness of the difficulties;
 - (vi) the time when the gas purchase contract was entered into and the extent to which the holder could reasonably have foreseen at that time that the difficulties were likely to arise;
 - (vii) the terms of the gas purchase contract, including the extent to which the contract allows for market changes;
 - (viii) the significance of the system or part of the system to which the application under paragraph (1) applies; and
 - (ix) the overall effect of the exemption on the operation of an economically efficient gas market.
- (8) An exemption under this Article must be given for a limited period and in writing and must specify—
- (a) the period of the exemption; and
 - (b) any conditions the Authority considers necessary in order to ensure that the holder of the licence to whom the exemption is granted takes all reasonably practical steps to ensure that, by the time that the exemption expires, the difficulties would no longer arise.
- (9) If the Authority has given an exemption under this Article, it must send to the European Commission as soon as is reasonably practicable—
- (a) a copy of the decision to give the exemption, including the conditions subject to which the exemption was given; and
 - (b) any other information the Authority considers relevant to the exemption or to the terms in which the exemption was given.
- (10) An exemption under this Article may be modified or revoked by the Authority—
- (a) in accordance with its provisions;
 - (b) at any other time, if the Authority considers that an exemption under this Article is no longer required.
- (11) The Authority must modify or revoke an exemption given under this Article if required to do so by the European Commission in accordance with Article 48(2) of the Directive.
- (12) In this Article,
- (a) “relevant condition” means a condition included in a licence under Article 10A(3) or (10) and relating to compliance with the requirement for system access laid down by Article 32 of the Directive; and
 - (b) “system” includes in relation to the holder of a licence under Article 8(1)(d) an LNG facility;
 - (c) “take or pay commitment” and “gas purchase contract” has the same meaning as in Article 48(1) of the Directive.”.