



Commission for Energy Regulation

An Coimisiún um Rialáil Fuinnimh

**Decision on the Natural Gas Licensing Regime to be
applied to Upstream Producers under Section 16 of the
Gas (Interim) (Regulation) Act, 2003**

31 July 2003

CER/03/185

Background

The Commission for Energy Regulation (“the Commission”), in its recent consultation paper accompanying publication of the draft natural gas licences (Reference CER/03/093, published 16th April 2003), stated that it was considering the appropriateness of applying a licensing regime to natural gas producers as required under Section 16(1)(a) of the Gas (Interim) (Regulation) Act, 2002 (“the Act”).

In the consultation paper, the Commission invited comment on conditions it would be appropriate to impose on such activities through any such licence. The Commission has now considered all of the responses it has received on this issue.

Legislative Position

- Section 16(1) of the Act provides that the Commission may grant a licence for the activities of the supply of natural gas to eligible customers, the operation of a distribution or transmission pipeline or the storage of natural gas.
- Section 16(2) of the Act provides that any person who undertakes any of the activities mentioned in Section 16(1) without a natural gas licence in respect of the activity is guilty of an offence and shall be liable on summary conviction to a fine or imprisonment or both.
- Under Section 16(1)(a) of the Act, a licence is required for an upstream producer to supply gas at the beach to petroleum leaseholders or licensed gas suppliers/shippers (unless the Commission decides to exercise its powers under Section 16(4) of the Act) as that activity falls within the scope of the class of activities comprising the supply of natural gas to eligible customers.
- Section 13 of the Act requires the preparation and publication of a code of operations by the holder of a licence under Section 16(1).
- Section 16(4) provides that the Commission may specify by regulations the classes of activities mentioned in Section 16(1) to which Section 16(2) and/or Section 16(10) shall not apply and the classes of licence holder to which the requirements of Section 13 shall not apply.

Comments Received from Industry

The Commission received several responses to the issues raised in its consultation paper.

Several respondents do not believe that it was the intention of the legislature to require such producers to hold a licence and therefore are against proposals to licence producers. Other parties believe that a licensing regime should be applied to producers and that natural gas producers should pay a levy to the Commission.

The key points raised in responses received include the following:

- The **licensing requirement was not the intended outcome** of the Act and that the application of a licensing regime to producers under the Act is only necessary based on a literal interpretation of Act;
- It could be considered that **an upstream producer selling to other producers or licensees is analogous to an electricity generator selling to licensed suppliers/the ESB** – an activity exempted by the Electricity Regulation Act 1999. Therefore, such gas sales may not merit licensing and oversight by the Commission.
- The Act could be interpreted **as requiring a similar licensing regime to apply to all foreign-based producers and NTS shippers** wishing to supply gas for sale in Ireland (raising jurisdiction issues);
- The Act is an “interim” Act and the **current situation may be regularised by further legislation**;
- Producers are already regulated by the terms of their Petroleum Lease. Any additional licence requirement could **constrain or restrict the existing rights of producers to sell gas** - this could constitute an unacceptable variation of the regulatory regime in the context of which development decisions were made;
- Any licence which did not at least last for as long as the term of the Petroleum Lease could lead to a producer becoming unable to exercise its rights freely to dispose of gas from the leasehold area – which may be seen as being an **unacceptable risk for producers**;
- As **producers do not have any contractual status within the downstream pipeline system**, they therefore should not be included in the persons regulated in respect of its use. The producer’s customer, the supplier, will fulfil this role;
- Due to the ownership structure of off-shore production facilities, **it would be necessary for all partners involved in a project to hold a licence** from the Commission.
- It is appropriate to licence producers and that they should be liable for payment of a levy to the Commission as required by licences issued under Section 16(1) of the Act.

Commission’s Decision

The Commission has decided to exempt natural gas producers from the requirement to hold a licence under Section 16(1)(a).

In making this decision, the Commission has been mindful of the fact that producers are subject to legislation and licensing by the Department of Communications, the Marine and Natural Resources under the relevant legislation. Furthermore, given that the Commission’s role is generally with respect to the regulation of downstream transmission, distribution, supply

and storage activities, it is considered that the original intention of Section 16(1) of the Act was not to licence producers.

As further consolidating legislation is presently being drafted by the Department of Communications, the Marine and Natural Resources, the Commission awaits the decision of the legislators with regard to specifying any licensing regime which may apply to such activities.

The Commission is to issue a regulation under Section 16(4) of the Act specifying that Section 16(2) and Section 16(10) shall not apply to the activity of supplying gas at the beach to petroleum leaseholders or licensed gas suppliers/shippers. Natural gas producers shall therefore be exempt from the requirement to hold a licence under Section 16(1)(a) of the Act. Furthermore, the requirements of Section 13 will not apply to the aforementioned activity.

The Commission shall shortly issue the regulation (a statutory instrument) in order for this decision to take effect.

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Commission for Energy Regulation
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NOTE:

Should you have any comments or queries, please contact Garrett Fitzgerald at gfitzgerald@cer.ie or on (+353)(0)1-4000800.