



Commission for Energy Regulation

An Coimisiún um Rialáil Fuinnimh

Emergency Compensation Arrangements for Natural Gas Undertakings

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RESPONSES TO:	jmacevilly@cer.ie

*The Commission for Energy Regulation,
The Exchange,
Belgard Square North,
Tallaght,
Dublin 24.*

www.cer.ie

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Abstract:

The National Gas Emergency Manager (NGEM) may issue directions to Natural Gas Undertakings as to the production, use, supply, shipping, storage, transmission or distribution of natural gas in order to respond to a potential or actual Natural Gas Emergency, and such Undertakings are legally obliged to comply with those directions.

The purpose of this paper is to consider the arrangements for the compensation of Natural Gas Undertakings for costs which they may incur in complying with the instructions of the NGEM. This paper consults on the adequacy of the current process for reimbursing gas shippers in the Gaslink Code of Operations and on how compensation arrangements should be extended to all Natural Gas Undertakings, including gas producers and storage operators.

The intention is to have in place arrangements for all Natural Gas Undertaking in order to ensure that there are no disincentives to carrying out the instructions of the NGEM.

Target Audience:

Gas suppliers, shippers, storage operators, producers, Gaslink, the NGEM, and DCENR.

Related Documents:

- [CER Consultation Paper on Common Arrangements for Gas Security of Supply](#)
- [CER Conclusions Paper on Common Arrangements for Gas Security of Supply](#)
- [Natural Gas Emergency Plan](#)
- [Gaslink, Code of Operations](#)

Responses are requested from interested parties on the matters raised in this Consultation Paper. Comments should be submitted by 5.00pm on the 7th of May 2010. These should be submitted to:

Jerry Mac Evilly,
Commission for Energy Regulation,
The Exchange, Belgard Square North, Tallaght, Dublin 24
Tel: + 353 1 4000 800
Fax: + 353 1 4000 850
Email: jmacevilly@cer.ie

The Commission intends to publish all submissions received. Respondents who wish to have their responses remain confidential should clearly mark the document/s to that effect and include reasons for confidentiality. It would be helpful if responses could be submitted in electronic format.

Executive Summary

In coordinating the implementation of the Natural Gas Emergency Plan (NGEP), the National Gas Emergency Manager (NGEM) may issue directions to Natural Gas Undertakings as to the production, use, supply, shipping, storage, transmission or distribution of natural gas, and such Undertakings are legally obliged to comply with those directions.

Prompt action by all Natural Gas Undertakings in response to the instructions from the NGEM is integral to the proper functioning of the emergency procedures detailed in the NGEP and to the ultimate resolution of any emergency situation. Notwithstanding the fact that all Natural Gas Undertakings are legally obliged to comply with the instructions of the NGEM, it is reasonable that Natural Gas Undertakings should also expect transparent compensation arrangements to be in place.

It is clear that shippers have a role to play in responding to an emergency situation and the Gaslink Code of Operations includes a provision for reimbursing shippers whose gas has been offtaken to the benefit of other shippers during a Natural Gas Emergency. Other Natural Gas Undertakings including storage operators and producers may also be called upon by the NGEM to respond to an emergency situation. These Undertakings do not sign up to the Code of Operations and there are currently no arrangements in place for compensating them for costs incurred in responding to directions from the NGEM.

Under Regulation 5 of S.I. 697 of 2007, the Commission may issue directions which relate to the making of financial arrangements to energy undertakings and holders of a petroleum lease in order to protect the security of supply of natural gas.

This Consultation Paper consults on the existing procedure for reimbursing gas shippers included in the Code which is based on the GB System Average Price (SAP). It is considered that the market value of gas supplied would be an appropriate benchmark for the compensation of shippers. Therefore, the Paper also considers whether it is appropriate to extend these compensation arrangements utilising the SAP to cover the responses of storage operators and gas producers.

The methodology by which the final value for the commodity using GB SAP is calculated would have a significant effect on the final compensation price and this calculation is examined in this Consultation Paper. The issue of whether there is a need for a post-emergency claims process is also considered. This Paper does not consult on the details of the implementation of any new arrangements. The Commission requests high level comments on how new arrangements chosen by the Commission may be best formalised.

It should be noted that compensation arrangements for fuel switching by generating stations in the event of a Natural Gas Emergency are **not** the subject of this Consultation Paper (see Section 2.4).

The Commission invites comments regarding the options set out in this Consultation Paper or variations on them where parties feel that there are better options available.

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1.0 Introduction

1.1 The Commission for Energy Regulation

The Commission for Energy Regulation ('the Commission') is the independent body responsible for overseeing the regulation of Ireland's electricity and gas sectors. The Commission was initially established and granted regulatory powers over the electricity market under the *Electricity Regulation Act, 1999*. The enactment of the *Gas (Interim) (Regulation) Act, 2002* expanded the Commission's jurisdiction to include regulation of the natural gas market, while the *Energy (Miscellaneous Provisions) Act 2006* granted the Commission additional powers in relation to gas and electricity safety. The Commission is working to ensure that consumers benefit from regulation and the introduction of competition in the energy sector.

1.2 Purpose of this Paper

The Commission recognises that Natural Gas Undertakings¹ may incur costs as a result of complying with directions from the National Gas Emergency Manager (NGEM) in responding to a potential or actual Natural Gas Emergency². The purpose of this paper is to ensure that all Natural Gas Undertakings will be adequately compensated in the event that they incur such costs. This paper consults on the suitability of current arrangements to recompense shippers³ and on the potential introduction of similar arrangements for storage operators and gas producers.

The Commission commits to considering all views and affording respondents the opportunity to clarify any issue raised in this Consultation Paper as may be necessary.

1.3 Structure of this Paper

- Section 2 details the relevant legislation pertaining to the issues discussed in this Consultation Paper, as well as other background information.
- Section 3 contains an overview of potential directions which may be issued by the NGEM in order to prevent or respond to a Natural Gas Emergency by way of background.
- Section 4 discusses and raises questions on the current and potential compensation arrangements for Natural Gas Undertakings in carrying out the instructions of the NGEM.
 - Section 4.1 proposes the high level principles which will form the basis for the introduction and implementation of any new arrangements.
 - Sections 4.2 to 4.3 examine mechanisms for reimbursing gas shippers, storage operators and gas producers respectively.

¹ See section 2(1) of the Electricity Regulation Act, 1999 as amended by section 22 of the Gas (Interim) (Regulation) Act 2002). For the purpose of this Paper, this definition includes holders of a petroleum lease and excludes the transmission and distribution system operator ('the Transporter').

² See 19B (10) of the Gas (Interim) (Regulation) Act 2002 as inserted by Regulation 5 of S.I. No. 697 of 2007.

³ See Code of Operations Part H, 1.11.2.

- Section 4.4 considers the calculation of the System Average Price in relation to any new compensation arrangements.
- Section 4.5 discusses the introduction of a post-emergency claims process.

Section 5 examines and invites high level comments on the implementation of any future compensation mechanisms.

Appendix 1 contains a summary list of all of the questions which the Commission has included in this Consultation Paper.

2.0 Background Information

2.1 Legislative Background

Section 19A (2) of the Gas (Interim) (Regulation) Act 2002, as inserted by Regulation 5 of S.I. No. 697 of 2007⁴, sets out, *inter alia*, that the Commission may issue directions which relate to the making of financial arrangements to energy undertakings and holders of a petroleum lease in order to protect the security of supply of natural gas. In carrying out this duty, the Commission is obliged to ensure that such measures do not place an unreasonable burden on those energy undertakings and that they are compatible with the requirements of a competitive internal gas market.

In implementing the NGEP⁵ the NGEM may issue directions to energy undertakings, certain classes of final customers and holders of a petroleum lease in accordance with S.I. 697. These parties are obliged to comply with the instructions of the NGEM in the event of an Emergency. Failure to comply with an NGEM direction is a breach of Gas (Interim) (Regulation) Act 2002 and can be enforced through a High Court Order.⁶

Shippers and suppliers are obliged by their licences to comply with directions from the NGEM and to prepare and submit a Safety Case to the Commission which must include information in relation to 'Emergency Procedures'. Gas storage operators and producers in Ireland are obliged under conditions set out in their respective Connected System Agreements to comply with the procedures and instructions set out by the Transporter (including in its role as NGEM) in the event of a potential or actual Emergency.

The 'Emergency Procedures' section of Gaslink's Safety Case provides details of the emergency response arrangements that the Transporter has in place in order to provide an effective and coordinated response to large-scale network incidents and emergency situations. Compliance with the NGEP is monitored by the Commission through the Safety Case regime.

In July 2009 the European Commission published a Proposal for a Regulation to improve security of gas supplies.⁷ The Commission is working on the assumption that the Regulation will be finalised in Q2 of 2010 and will continue to monitor its development. Any future decision by the Commission in light of responses received to this Consultation Paper will have regard to the finalised provisions of the Regulation on security of gas supply.

⁴ S.I. 697 of 2007 gives legal effect to Directive 2004/67/EC of the European Parliament and of the Council of 26 April 2004 concerning measures to safeguard security of natural gas supply.

⁵ Further information on the responsibilities of the NGEM, as well as a copy of the Natural Gas Emergency Plan, are available on the [Gaslink website](#).

⁶ See section 19B(3) to (7) of the Gas (Interim) (Regulations) Act 2002 as inserted by Regulation 5 of S.I. No. 697 of 2007.

⁷ COM(2009) 363/4, *Proposal for a Regulation of the European Parliament and the Council concerning measures to safeguard security of gas supply and repealing Directive 2004/67/EC*. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52009PC0363:EN:NOT>

2.2 The Transporter and Emergency Arrangements

The Commission appointed Gaslink (i.e. the Transporter) as the NGEM in December 2008 and the NGEP was approved by the Commission in March 2009 in accordance with section 19B of the Gas (Interim) (Regulations) Act 2002 as inserted by Regulation 5 of S.I. No. 697 of 2007.

The powers of the Transporter (including in its role as NGEM) to take steps in order to avert or contain a Natural Gas Emergency are set out in the Code of Operations, which also includes obligations on shippers to comply with directions issued by the Transporter to contain, end or to prevent such an Emergency.

It should be noted that no steps taken by the Transporter in response to a Natural Gas Emergency, or by any shipper in compliance with instructions from the Transporter, shall be deemed a breach of the Code or any Ancillary Agreement. In the event of a Natural Gas Emergency, the Transporter may also suspend provisions of the Code and/or any Ancillary Agreement (with the exception of relevant financial requirements).⁸ The provisions of the Code that may be suspended include those in relation to the balancing regime (and associated Balancing Charges and Scheduling Charges) and Capacity Overrun Charges. The Transporter will not be liable for any costs incurred by a shipper which have arisen as a result of taking steps directed by the Transporter.⁹

2.3 Secondary Fuel Obligations

In the event of or in order to prevent a Natural Gas Emergency, the NGEM may require natural gas-fired generating stations to come off load. Under procedures agreed between the NGEM and EirGrid, gas-fired generating units may be directed by EirGrid to run on a secondary fuel. As part of ongoing security of supply monitoring activities, the Commission produced a Decision Paper in January 2009 which set out obligations on generators in relation to the storage and provision of secondary fuel capability. The Decision Paper also suggested the periodic testing and monitoring of secondary fuel would be the responsibility of EirGrid. The provisions for testing, fuel stock inspection and monitoring have been inserted into the Grid Code following approval by the Commission in October 2009. The Decision Paper also set out that generators could be compensated for the incremental cost incurred when tested on a secondary fuel.¹⁰ EirGrid was directed to publish a consultation paper proposing the detail of a cost recovery mechanism, in line with the directions of the CER Decision Paper. EirGrid's paper sets out the proposed arrangements for compensating generators for secondary fuel testing.¹¹

Compensation arrangements for power generators in relation to fuel switching in the event of a Natural Gas Emergency are **not** the subject of this Consultation Paper.

⁸ See Part H of the Code of Operations.

⁹ Code of Operations Part H, 1.11.1(a). The Transporter will also be kept 'Cash Neutral' for costs which it incurs in an emergency by charging such costs to the Disbursements Account described in the Code. Code of Operations, Part H, 1.11.1(b).

¹⁰ Decision Paper CER/09/001, *Secondary Fuel Obligations on Licensed Generation Capacity in the Republic of Ireland*.

¹¹ EirGrid, Consultation Paper, *Secondary Fuel Cost Recovery Mechanisms for Licensed Generation Capacity in the Republic of Ireland*, August 2009. See also EirGrid, *Secondary Fuel Clarification Document*, October 2009.

3.0 Emergency Instructions to Natural Gas Undertakings

In order to prevent or respond to a Natural Gas Emergency, the NGEM may issue a range of directions to Natural Gas Undertakings and the five steps of a gas emergency response are:

1. Declaration of Potential Emergency
2. Declaration of Actual Emergency
3. Firm Load Shedding¹²
4. Allocation & Isolation
5. Restoration

In the event of a potential emergency (Stage 1), the NGEM may firstly seek voluntary load reduction in power generation and may call on the voluntary maximisation of indigenous gas supplies, as well as the interruption of injection into gas storage.

Once a Natural Gas Emergency has been declared, gas shippers, storage operators and producers may be called upon by the NGEM to make gas supplies available, in particular to ensure that sufficient quantities of gas are available to meet the demand of the domestic market (Steps 2 to 4). These Natural Gas Undertakings may incur costs as a result of complying with directions of the NGEM.

In order to provide a basis for the potential compensation arrangements discussed in this Consultation Paper, the Commission discusses in turn the types of instructions which gas shippers, storage operators and producers may expect to receive from the NGEM. It should be noted that the NGEM's possible instructions and related responses of Natural Gas Undertakings will depend upon the nature and extent of the Natural Gas Emergency, the relevant Natural Gas Undertaking, as well as on the prevailing supply and demand situation in the transmission system at that time. Therefore, the information on such actions provided in Sections 3.1 to 3.3 is not intended to be a comprehensive list of instructions but should be interpreted as an indication of potential scenarios in relation to directions from the NGEM. The NGEM may in accordance with the NGEP implement different risk management strategies and issue instructions not noted in this Consultation Paper in order to resolve a potential or actual Natural Gas Emergency.

3.1 Instructions to Gas Shippers in an Emergency

As set out in the Code of Operations, during an Emergency shippers are obliged to '*comply with directions issued by the Transporter [including in its role as the NGEM] to bring an Emergency to an end or to prevent an Emergency (as the case may be)*'.¹³ Shippers may therefore be called upon to:

¹² In the event of a curtailment of gas supply in GB, the GB emergency procedures provide for proportionate load-shedding between GB, Ireland, Northern Ireland, and the Isle of Man with supplies to Moffat being cut-off only when gas supplies to domestic customers in GB cannot be maintained.

¹³ Code of Operations, Part H, 1.7.2.

- Increase/decrease the delivery and/or rate of flow of natural gas to or from an Entry Point and/or Connected System Exit Point and to submit the appropriate entry nomination/renomination.¹⁴
- Cease entry nominations at a particular Entry Point.
- Reduce or discontinue offtake of natural gas at any Offtake Point(s) on the transportation system and submit the appropriate exit nomination or renomination.
- Offtake the gas which had originally been the subject of nomination(s) from another shipper/shippers.¹⁵
- Withdraw all or a specified quantity of gas held in storage and submit the appropriate entry nomination or renomination.
- Cease injections of gas into storage.
- Interrupt injection to/withdrawal from Interconnector Inventory Storage.

Shippers may also be directed to cease exit nominations and/or to submit appropriate exit nominations/renominations for the relevant offtake point that has been identified for loadshedding by the NGEM¹⁶. In this case, the NGEM will determine the quantity of firm load shedding of the Large Daily Metered, Daily Metered and Non Daily Metered sectors in order to rebalance the network in accordance with the NGEP.

It is set out in the Code of Operations that the NGEM will, where practical, firstly seek voluntary reductions of offtake by shippers. Where the necessary reductions cannot be achieved in sufficient time, shippers may be directed to reduce demand for gas on the system. In this case, the Code details the order of Offtake Points (Large Daily Metered, Daily Metered and Non Daily Metered) in which reductions will be called upon by the NGEM.¹⁷

3.2 Instructions to Other Natural Gas Undertakings in an Emergency

As noted above, shippers may be called upon to interrupt flows of gas to and from storage or to make available storage gas during an Emergency. In relation to gas in storage, it is expected that instructions from the NGEM would usually be issued to shippers to withdraw such supplies and/or cease injection of gas into storage. In the event that there is no shipper at the Entry Point or that it is not appropriate to direct a shipper to release gas or that a shipper cannot or will not comply with the direction, it may be necessary for the NGEM to instruct the storage operator directly. In compliance with relevant licence conditions, storage operators may be instructed by the NGEM to:

- Release all or a given quantity of gas held in storage
- Increase or decrease or cease injection of gas into storage.
- Reduce or cease the delivery of gas from the storage facility to the transmission system.

¹⁴ Code of Operations, Part H, 1.8.

¹⁵ Code of Operations, Part H, 1.11.2

¹⁶ Code of Operations, Part H, 1.9

¹⁷ Code of Operations, Part H, 1.9.1 It should be noted that compliance by suppliers and end-users with instructions in the event of a Natural Gas Emergency is the responsibility of the relevant shipper(s). Code of Operations, Part H, 1.9.3.

Similarly regarding gas production, it is expected that shippers could be instructed by the NGEM to increase their nominations in order to bring additional flows onto the transmission system in order to prevent or resolve an Emergency. However, in the event that it is not possible to so direct a shipper, such a direction may be issued directly to the gas producer from the NGEM.

The NGEM may instruct gas producers to:

- Maximise supplies into the Irish transmission system (including or excluding storage) and/or to a particular amount (in kWh).
- Decrease or cease production of natural gas from the relevant facility.
- Cease injecting production gas into storage.

Currently, no Liquefied Natural Gas facility exists in Ireland but it is considered that these types of directions would equally apply to the operator of such a facility.

As it is not possible to predict in advance the emergency scenario which might emerge, these instructions and the circumstances in which they might arise are indicative only.

4.0 Emergency Compensation Arrangements

The Commission recognises the importance of a transparent process for reimbursing relevant parties where costs are incurred as a result of complying with instructions from the NGEM. It is considered that the market value of the gas supplied and/or interrupted would be an appropriate benchmark for such compensation. The Commission regards such an approach as compatible with market requirements and the interests of energy undertakings as required under Regulation 5 of S.I. 697 of 2007.

4.1 High Level Principles

Under normal market conditions Natural Gas Undertakings will procure and supply gas for customers and end-users in accordance with the Code of Operations and relevant licences. However, where an event occurs which adversely affects or which poses a risk to the integrity of the network and/or public safety, a Natural Gas Emergency will be declared and normal market arrangements may be suspended and Natural Gas Undertakings will be called upon to operate under instructions from the NGEM. The NGEM may call on Natural Gas Undertakings to divert and/or cease gas into the transmission system, as well as withdraw gas from storage.

While it is not possible to predict all actions which may be required by the NGEM, it is recognised that both shippers and other Natural Gas Undertakings would require assurances that they will be fairly reimbursed for costs incurred in responding to an NGEM direction. A combination of arrangements may need to be introduced in order to ensure that the chosen methodology appropriately aligns with the specific conditions of the Irish market.

The Commission considers that the following high level principles should apply to any compensation arrangements for costs incurred in these circumstances.

- Relevant parties are recompensed for taking actions to prevent or respond to a potential or actual Natural Gas Emergency, where such parties were not at fault for causing the potential or actual Emergency.
- No party should make a net loss as a result of fulfilling its licence obligations and/or those set out in the Code of Operations in relation to a Natural Gas Emergency.
- No party should make excessive profits as a result of a Natural Gas Emergency nor respond in such a way to instructions of the NGEM so as to deliberately ensure a profit is made on natural gas that has been diverted on the Irish transmission system and/or supplied to different categories of customers.
- Compensation arrangements must not inhibit in any fashion the emergency measures set out in the NGEP, the ability of the NGEM to plan, instigate and coordinate such measures and the response of Natural Gas Undertakings to directions from the NGEM.
- Compensation arrangements must neither place an unreasonable burden on Natural Gas Undertakings nor impact disproportionately on the interests of customers.

1. Are the stated high level principles appropriate to compensation arrangements for Natural Gas Undertakings in Ireland?

4.2 Current Arrangements for the Compensation of Gas Shippers

The Code of Operations includes a provision for the compensation of shippers in the event of an Emergency whereby, if gas offtaken by a shipper is reduced at an Exit or Supply Point and consequently offtaken by another shipper, the latter shipper is required to pay the First Tier Imbalance Price (see Section 4.4) to the Transporter for the relevant offtaken gas. This sum will be passed to the original shipper.¹⁸

This current compensation provision in the Code of Operations only deals with a specific situation regarding the offtake of gas belonging to another shipper. This arrangement may not address all potential scenarios involving shippers. For example:

- a quantity of gas, which is the subject of a nomination by a shipper at a particular Entry Point, cannot be delivered due to an emergency scenario and as a result, the relevant quantity must be met by another shipper submitting nominations at a different Entry Point.
- a quantity of gas belonging to shipper(s) is withdrawn from storage or is prevented from being injected into storage due to directions from the NGEM.
- other emergency responses undertaken by shippers such as increasing delivery or ceasing offtake of natural gas.

2. Does the current process set out in the Code of Operations cover all potential scenarios or does it need to be broadened to ensure that compensation will be available to shippers for any actions taken by them in response to instructions by the NGEM?

4.3 Arrangements for the Compensation of other Natural Gas Undertakings

As noted above, the Code of Operations includes a process for the compensation of shippers. However, it is recognised that other Natural Gas Undertakings besides shippers may also be called upon by the NGEM in accordance with the NGEP in order to offset or respond to an emergency situation. Currently, no compensation arrangements exist for the removal/curtailment of storage gas, as well as for increases/decreases in gas production in an emergency situation. The merits of extending the use of the GB SAP to such scenarios are therefore discussed below.

4.3.1 Storage Operators

Gas released from storage in response to instructions from the NGEM may not in all cases belong to gas shippers. Such gas may be owned by the storage operator who may be called upon by the NGEM to respond in the event of a Natural Gas Emergency.

¹⁸ Code of Operations Part H, 1.11.2. This compensation arrangement should be considered as separate from those provisions of the Code relating to Balancing and Scheduling Charges as part of normal operating procedures which may be suspended by the Transporter in the event of a Natural Gas Emergency. Code of Operations Part H, 1.10.1.

Given that the SAP is utilised as part of the existing compensation arrangement for shippers, it would seem fair and reasonable that this arrangement would also be used to compensate storage operators.

However, in the context of gas released from storage, transporting and re-injecting stored gas, as well as releasing such supplies at an earlier than anticipated date, may result in increased costs for shippers and storage operators. Therefore, it may be appropriate to supplement the SAP in order to cover relevant transport charges and entry/exit tariffs.

Under arrangements in the Uniform Network Code (UNC), an emergency will be triggered if storage gas falls below certain specified levels (GS(M)R Safety Monitors). Gas in storage could be curtailed in order to prevent such an emergency. GB shippers are compensated if their flows from storage on a particular Gas Day are curtailed. Such shippers receive a 'Storage Curtailment Compensation Price' (the System Marginal Buy Price for the Day minus the value of the mean of the System Average Prices for the thirty days preceding storage curtailment).¹⁹ As there are no requirements in the NGEM regarding storage levels, it is considered that curtailment arrangements similar to those in the UNC are unnecessary.

3. Is the System Average Price the appropriate price for gas removed from storage?
4. Are there any additional costs which should be covered for storage gas e.g. costs associated with re-injecting storage gas at a later date?
5. Should a specific compensation process be introduced to reimburse storage operators or shippers in the event that gas flows from storage are curtailed by the NGEM?

4.3.2 Gas Producers

Where the NGEM has directed an increase in production in order to respond to a potential or actual Natural Gas Emergency, contracted shippers would be required to nominate at the relevant Entry Point and ultimately make appropriate payments for the increased amounts in accordance with provisions of the Code of Operations. However, circumstances may arise in which the NGEM is required to instruct the Entry Point Operator directly to increase flows into the transmission system.

Where the NGEM instructs that gas production be minimised and/or ceased, compensation may also be appropriate for gas producers (where the producer is not at fault for the emergency scenario). Gas producers may incur costs associated with non-routine operations to physically decrease production and there may be lost revenue as a result of the reduction in production. It is considered that a post-emergency claims process would be most appropriate to address such costs (see section 4.5),

¹⁹ See Uniform Network Code, Section Q - Emergencies, 7.1.

6. If, for any reason, it is necessary for the NGEM to instruct the Entry Point Operator directly to increase gas production, is it appropriate to use the System Average Price in compensation for increased gas production?
7. Do you agree that costs associated with decreasing gas production should be addressed by a post-emergency claims process?

4.4 Calculation of the Commodity using the GB System Average Price

In GB, there has been much industry debate in recent years on appropriate arrangements relating to cashout prices²⁰ for shippers in the event of an emergency as set out in the UNC.²¹ These cashout prices are based on shipper balancing arrangements and are designed to provide shippers with incentives to balance their inputs and offtakes from the transmission system and in particular, to ensure that sufficient gas is brought in from the Continental or global LNG markets. The cashout price was originally calculated in the UNC utilising the mean SAP²² of the last 30 days immediately preceding the suspension of the On the Day Commodity Market.²³ It is noted that the use of an average price over a period leading up to the declaration of the Emergency is likely to be lower than the market valuation of gas for a specific day immediately prior to or on the day of a Natural Gas Emergency.

The GB arrangement utilising the mean SAP of the last 30 days was changed in 2005 for a number of reasons. It was considered that this approach might not have provided sufficient incentives to encourage shippers to take appropriate action to balance their position and that it may not have incentivised price sensitive sources such as the interconnector or LNG imports to flow into the GB market during a Gas Deficit Emergency.²⁴ The Irish market is very small compared to that in GB and therefore price signals may not be appropriate.

Under the existing process for compensating shippers in the Gaslink Code, the First Tier Imbalance Price has to be paid for the relevant offtaken gas. The First Tier Imbalance Price is defined in the Code as a *'price for each Day comprising the Euro equivalent of the System Average Price (SAP) of the UK On the Day Commodity Market (OCM) published by Transco [now National Grid] in respect of that Day'*.²⁵ Therefore, the relevant shipper would receive the SAP for the day that their gas was offtaken by the other shipper(s). Such offtakes may occur on the day of the declaration of the Emergency and/or on a subsequent day during the Emergency where it lasts for a longer

²⁰ The cash out price is that utilised to reflect the costs incurred in buying and selling gas to balance the system each day.

²¹ These UNC Modifications are available at <http://www.gasgovernance.com/Code/Modifications/>

²² The System Average Price (p/kWh) is the weighted average price of all trades for the relevant gas day on the OCM platform.

²³ See Ofgem Modification Proposals: 0149/0149A: Gas Emergency Cash-out Arrangements: Keeping the On-the-day Commodity Market open during a Gas Deficit Emergency (19 October 2007).

²⁴ See Ofgem, Open Letter re Uniform Network Code modification proposal 042 "Revision of the Emergency Cash-out price" and Uniform Network Code modification proposal 044 "Revised Emergency Cash-out & Curtailment Arrangements", 16th September 2005.

²⁵ Code of Operations, Part H, 1.6.1(c)

period. As SAP may increase considerably during an emergency situation, the use of the 'on the Day' price could result in overcompensation for shippers. Therefore, it may be preferable to use the SAP price on the day that the Emergency is declared. In the case of imported gas, costs relating to the transport of gas from the UK National Balancing Point to the Irish Balancing Point would also have to be taken into account.

The possibility of market manipulation arises where compensation arrangements have the potential to result in an overly high compensation price. For example, an excessively high price could motivate Natural Gas Undertakings to hold gas in storage where it appears likely that a Natural Gas Emergency will be declared. It is equally recognised that if the compensation arrangements resulted in a value being assigned to gas that was significantly less than it cost, it may result in shippers becoming reluctant to deliver supplies or to purchase additional storage stocks. It should also be noted that in the event of a disruption to gas supplies to Ireland only (i.e. not affecting GB), the application of the GB SAP on a day during an Ireland only Emergency may not constitute a suitable value for such offtaken gas in Ireland.

Given the integrated nature of the Irish and GB markets, it would seem appropriate to broadly align the calculation of compensation for Natural Gas Undertakings with current arrangements in GB. In the UNC different imbalance prices apply depending on whether the shipper is short or long in relation to its gas demand. It is set out that at Stage 2 ('Actual Emergency') of a Gas Deficit Emergency²⁶, cashout arrangements are based on the SAP (where users deliver more gas than they offtook) and on the System Marginal Buy Price²⁷ (where users offtook more gas than they delivered).²⁸ These prices relate to those prevailing at the time that Stage 2 of an emergency is declared. This arrangement involving the System Marginal Buy Price was regarded as being more likely to reflect the market price of gas immediately prior to an emergency being called.

8. Should an averaged SAP covering 30 days prior to the declaration of an Emergency be utilised for the compensation of Natural Gas Undertakings who follow a direction by the NGEM?
9. Should a different 'average' price be applied e.g. SAP over the last five weekdays?
10. Should a different price each day be applied as per the current arrangement in the Code or should the SAP prevailing at the time the Emergency is declared be utilised?
11. The compensation arrangements may also result in overcompensation. This could arise for example where the SAP on the day is applied. If this occurs should there be a method for clawing back the overcompensation amount and how would this be affected?
12. Is it appropriate to also utilise the GB System Marginal Buy Price in relation to shippers who offtake more gas than they delivered during an Emergency?

²⁶ See Uniform Network Code Section Q 1.2.3 (b).

²⁷ The System Marginal Buy Price (p/kWh) is the highest price that gas was traded by National Grid in its Network Code balancing role for delivery that gas day. The SMP Buy price is the greater of SAP + 0.0287 p/kWh or the Price in p/kWh which is equal to the highest market offer price in relation to a market balancing action taken for that day.

²⁸ See Uniform Network Code, Section Q, 4.2.2 and Joint Office of Gas Transporters, Code Modification Proposal No 0260 <Revision of the Post-emergency Claims Arrangements>, pg. 8.

4.5 Submission of Post-Emergency Claims

Just as all emergency responses cannot be anticipated, comprehensive procedures to reimburse Natural Gas Undertakings for *all* related costs in all circumstances cannot be formalised in advance. The question therefore arises as to whether a post-emergency claims process should be introduced and compensation provided where such claims are deemed acceptable and appropriate.

It is noted that extensive arrangements are in place in the UNC regarding post-emergency claims.²⁹ The UNC sets out that, where the user believes that it will still suffer financial losses when paid utilising the SAP and/or that it will suffer losses as a result of an instruction to a storage operator, the user can submit a claim for such losses.³⁰ These UNC post-emergency claims arrangements have been revised following the implementation of a recent code modification.³¹

In Northern Ireland, the Premier Transmission Code of Operations also includes procedures for claims to be submitted by shippers where they consider the compensation provided has not been sufficient. If a shipper claims that the amount paid to it in accordance with a 'Positive Balance' is less than the price which it had paid in respect of the relevant gas, an independent chartered accountant will be appointed by Premier Transmission to verify the claim and determine whether additional compensation should be provided by Premier Transmission.³²

In Australia, the submission of claims is utilised by the Victorian Energy Networks Corporation (VENCorp - now part of the Australian Energy Market Operator). VENCorp, as operators of the gas transmission system and market in Victoria, have detailed that relevant parties may make claims in the event that a gas undertaking is required to inject gas into the transmission system or in the event that ancillary payments for injected gas are reduced.³³

Given the unpredictable nature of any Natural Gas Emergency and the necessity of ensuring that Natural Gas Undertakings carry out NGEM instructions, it would seem prudent that consideration be given to a post-emergency claims process. A Natural Gas Undertaking would submit a claim to the Commission where it could demonstrate with accuracy that it had incurred additional costs and/or that it had not been adequately compensated by existing compensation arrangements. This could be the case in particular for Natural Gas Undertakings who incur costs other than the costs of commodity. The submission of claims to the Commission following a Natural Gas Emergency may be implemented as a standalone compensation arrangement or as supplementary process utilised in addition to set procedures noted above.

It is considered that, while a claims process provides flexibility in compensating Natural Gas Undertakings, such an approach would necessitate the development of clear,

²⁹ See <http://www.nationalgrid.com/uk/Gas/OperationalInfo/PostEmergencyClaims/>

³⁰ See Uniform Network Code, Section Q – Emergencies, 4.2.6. and 4.3.1

³¹ See Joint Office of Gas Transporters, Code Modification Proposal No 0260 <Revision of the Post-emergency Claims Arrangements> and the National Grid website - <http://www.nationalgrid.com/uk/Gas/OperationalInfo/PostEmergencyClaims/>

³² See Premier Transmission Limited Transportation Code, 6.11.4 to 6.11.7.

³³ See Victorian Gas Industry Market & System Operations Rules. Version 31, 3.6.5-6 and 6.6.5-7

concise procedures relating to the types of costs for which a claim could be produced. However, the highly detailed arrangements set out in the UNC may also not be appropriate in the context of the Irish market.

13. Is the use of post-emergency claims as an additional procedure an appropriate compensation arrangement for Natural Gas Undertakings? If so, which type of costs should be addressed as part of such a claims process?

5.0 Implementation

The Commission has set out in this Consultation Paper that the payment of a prevailing or average SAP, as well as the introduction of a post-emergency claims process, may be appropriate as part of additional compensation arrangements for both shippers and other Natural Gas Undertakings. The current process for compensating shippers is included in the Code of Operations and details that the Transporter will transfer such payments.

Taking into account responses received to this Consultation Paper, the compensation process set out in the Code may be modified and additional compensation arrangements may have to be formalised outside of the Code in order to address compensation for storage operators and gas producers. These new arrangements would also require the introduction of procedures for managing the collection and distribution of payments,

5.1 Establishment of Payments Mechanism

The Commission recognises that a transparent administrative procedure and a mechanism for transferring appropriate payments to relevant parties must be developed in conjunction with any new compensation arrangements. It is envisaged that the following issues would be addressed as part of a future payments mechanism:

- the administrator of the payments procedure
- the method of collecting payments
- the period for making payments
- the method for collecting and transferring payments in the event that compensation cannot be immediately provided by an individual natural gas undertaking to another.
- the evaluation of post-emergency claims.
- an appeals process

Therefore, the Commission intends to produce an additional consultation paper on the development of a payments mechanism taking into account the responses received to this consultation.

5.2 Giving Legal Effect to New Compensation Arrangements

It is considered that changes required as a result of any future decision by the Commission may be formalised through a modification to the relevant section of the Code of Operations. In relation to gas shippers, obligations relating to emergency arrangements and compliance with the Gas Point Registration Operator are set out in shipper licences and modifications to such licences may also be required in order to implement additional arrangements.

It is noted that additional measures may be necessary in order to give effect to any new procedures for Natural Gas Undertakings other than shippers who are not party to the Code. This may require changes to Connected System Agreements and/or storage licences.

14. The Commission requests high level comments on how new arrangements chosen by the Commission may be best formalised.
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Appendix 1

Summary of Consultation Questions

1. Are the stated high level principles appropriate to compensation arrangements for Natural Gas Undertakings in Ireland?
2. Does the current process set out in the Code of Operations cover all potential scenarios or does it need to be broadened to ensure that compensation will be available to shippers for any actions taken by them in response to instructions by the NGEM?
3. Is the System Average Price the appropriate price for gas removed from storage?
4. Are there any additional costs which should be covered for storage gas e.g. costs associated with re-injecting storage gas at a later date?
5. Should a specific compensation process be introduced to reimburse storage operators or shippers in the event that gas flows from storage are curtailed by the NGEM?
6. If, for any reason, it is necessary for the NGEM to instruct the Entry Point Operator directly to increase gas production, is it appropriate to use the System Average Price in compensation for increased gas production?
7. Do you agree that costs associated with decreasing gas production should be addressed by a post-emergency claims process?
8. Should an averaged SAP covering 30 days prior to the declaration of an Emergency be utilised for the compensation of Natural Gas Undertakings who follow a direction by the NGEM?
9. Should a different 'average' price be applied e.g. SAP over the last five weekdays?
10. Should a different price each day be applied as per the current arrangement in the Code or should the SAP prevailing at the time the Emergency is declared be utilised?
11. The compensation arrangements may also result in overcompensation. This could arise for example where the SAP on the day is applied. If this occurs should there be a method for clawing back the overcompensation amount and how would this be affected?
12. Is it appropriate to also utilise the GB System Marginal Buy Price in relation to shippers who offtake more gas than they delivered during an Emergency?
13. Is the use of post-emergency claims as an additional procedure an appropriate compensation arrangement for Natural Gas Undertakings? If so, which type of costs should be addressed as part of such a claims process?
14. The Commission requests high level comments on how new arrangements chosen by the Commission may be best formalised.