



Commission for Energy Regulation

An Coimisiún um Rialáil Fuinnimh

South-North Gas Pipeline and Compliance with EU Law

DOCUMENT TYPE:	Consultation Paper
REFERENCE:	CER/12/023
DATE PUBLISHED:	8 th March 2012
CLOSING DATE:	22 nd March 2012
RESPONSES TO:	cjohnston@cer.ie

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

www.cer.ie

CER – Information Page

Abstract:

In June 2009 the EU Commission issued formal notices of infringement to Ireland and the UK for non-compliance with EU Regulation 1775/2005 in respect of the South-North Pipeline, a gas transmission pipeline that spans both the Irish and Northern Irish jurisdictions.

This Paper highlights the key issues facing Ireland in relation to meeting compliance on this pipeline as a matter of priority.

Target Audience:

Gas suppliers, Shippers, Storage Operators, Producers, BGE(UK), BGE networks, Gaslink, NIAUR, DCENR, European Commission.

Related Documents:

- REGULATION (EC) No 1775/2005 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 28 September 2005 on conditions for access to the natural gas transmission networks
- REGULATION (EC) No 715/2009 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 13 July 2009 on conditions for access to the natural gas transmission networks and repealing Regulation (EC) No 1775/2005
- Transparency Requirements and Access to Gas Transmission networks – Decision Paper – CER/07/228
- Commission Decision of 10 November 2010 amending Chapter 3 of Annex I to Regulation (EC) No 715/2009 of the European Parliament and of the Council on conditions for access to the natural gas transmission networks

Responses are requested from interested parties on the matters raised in this Consultation Paper. Comments should be submitted by 5.00pm on the 22nd March 2012.

These should be submitted to:

Caroline Johnston,
Commission for Energy Regulation,
The Exchange, Belgard Square North, Tallaght, Dublin 24
Tel: + 353 1 4000 800
Fax: + 353 1 4000 850
Email: cjohnston@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

EU Regulation 1775/2005¹, on conditions for access to the natural gas transmission networks, aims at setting non-discriminatory rules for access conditions to natural gas transmission systems. It includes provisions regarding third party access services, principles of capacity allocation mechanisms, congestion management procedures and transparency requirements with which Member States must comply.

The Members States of Ireland and the UK have each received a formal notice of infringement from the European Commission for not complying with certain provisions of the Regulation in respect of the South-North Pipeline ('SNP'), a gas transmission pipeline that spans both the Irish and Northern Irish jurisdictions.

This Paper highlights the key compliance issues and how they might be addressed. It looks at two options for the location of the Relevant Point on the South-North Pipeline, namely Gormanston (where the SNP physically connects to IC2²) or the point where the SNP crosses the jurisdictional border between Ireland and Northern Ireland

While a literal interpretation of EU Regulation 715/2009 might suggest that Gormanston should be the Relevant Point, the CER understands that the infringement may legally be equally resolved by placing the Relevant Point at the border. At this stage, the CER has an open mind on which location is optimal to designate as the Relevant Point. Stakeholders' views on the optimal location are sought in the light of the considerations set out in the Consultation Paper.

Given the urgency of resolving the infringement, responses are required no later than **Thursday 22 March**.

¹ EU Regulation 715/2009 repeals Regulation (EC) No 1775/2005 on conditions to access the natural gas transmission networks

² The 2nd Subsea Interconnector (between Great Britain and Ireland)

Table of Contents

Executive Summary	4
1.0 Introduction	6
2.0 Background Information	7
3.0 Achieving Compliance	9
3.1 EU Regulation Requirements.....	9
3.2 Requirements for SNP Compliance	9
3.3 Location of the Relevant Point	11
3.3.1 Location of the Relevant Point at the Border	11
3.3.2 Location of the Relevant Point at Gormanston	12
3.4 Tariffs	14
4.0 Next Steps	15
Appendix 1 Consultation Questions	16

1.0 Introduction

This consultation paper considers some practical aspects of addressing, at the earliest possible date, the current infringement proceedings being taken by the European Commission against the Irish and UK authorities in relation to the South-North Pipeline.

The South-North Pipeline (SNP) is a gas transmission pipeline that spans both the Irish and Northern Irish jurisdictions. The pipeline was completed in 2006 but has not been made commercially operational. In June 2009 the EU Commission issued formal notices of infringement to Ireland and the UK for not designating a Relevant Point on the SNP and making maximum capacity available at that point. In their respective responses the UK and Irish authorities declared their intention to achieve compliance via the all island gas market 'CAG' Project.

The Regulators (the CER and NIAUR) have been working with industry to progress the CAG project. However, as both Regulators have recently acknowledged³, there are still substantive outstanding issues awaiting resolution. Both RAs are working toward resolving these issues but this will take time. In the light of this, and given the legal obligations on both jurisdictions to deliver compliance with EU requirements, both the CER and NIAUR are focussing on meeting compliance in their respective jurisdictions as a matter of urgency.

³ <http://www.allislandproject.org/GetAttachment.aspx?id=4d3a5d5b-85b9-4c58-b6b0-2987b46ebfb1>

2.0 Background Information

Natural gas enters the Irish transportation system at two points, the Inch Entry Point in County Cork and the Moffat Entry Point in Scotland. The Moffat Entry Point constitutes a connection between two regulated natural gas pipeline systems, the National Transmission System ('NTS') in Great Britain and Gaslink system in Ireland. Gas physically flows in one direction from Moffat in Scotland downstream to three jurisdictions (Ireland, Northern Ireland and Isle of Man) via three sub-sea interconnector pipelines. Currently 96% of Ireland's natural gas demand, and 100% of Northern Ireland's and Isle of Man's demand, is met through this Interconnection point.

Currently, the transmission systems in Ireland and Northern Ireland operate independently of each other with only some cooperation on cross border issues, such as emergencies. Both systems share the use of assets at Moffat, which is used to import gas from the GB NTS system. The pipeline splits at Twynholm in Scotland, from which all gas going to Northern Ireland flows through the Scotland to Northern Ireland Pipeline (SNIP) and all gas going to Ireland flows through the Interconnectors (IC1 and IC2) via Brighthouse Bay⁴. Gas is transported through these pipelines (SNIP and ICs) and the onshore systems under separate Codes administered by different system operators.

The South-North Pipeline ('SNP') comprises 156 kilometres of transmission pipeline of which 100 km is located in Northern Ireland and subject to regulation by the NIAUR and 56 km is located in Ireland and regulated by the CER. It forms part of NI Transmission System and was constructed by BGE(UK) pursuant to a licence obligation imposed by NIAUR to provide capacity to transport gas to Northern Ireland in anticipation that the capacity in the SNIP would be insufficient to meet market demand in Northern Ireland. The security of supply benefits to Northern Ireland of the SNP, by the provision of a second entry point to NI, are well recognised. When the pipeline was commissioned, the then NI Energy Minister Nigel Dodds noted that the pipeline would inter alia, *"give additional security of energy provision here and offer a diversity of supply for energy consumers in the areas it serves"*⁵.

The pipeline was commissioned in 2006 and five towns⁶ have been connected to it on the Northern side of the border from Antrim to Newry. Currently the gas flows on the pipeline from Twynholm down the SNIP pipeline through the BGE(UK) and PTL connection point at Carrickfergus and onto the SNP to supply the connected towns. Arrangements are in place to flow gas from Gormanston to NI in cases of emergency. To-date gas has flowed Northwards on seven occasions for safety/security reasons in accordance with agreed procedures.

The CER has licensed BGE(UK) to operate the section of the South-North Pipeline within Ireland and the Northern Irish Regulator (NIAUR) has licensed BGE(UK) to operate the section of the South-North Pipeline within Northern Ireland. BGE(UK), as Pipeline Operator, is obliged to offer third party access in accordance with Condition 2 (Third Party Access) of its CER Licence. NIAUR recognise this and have agreed to such connections subject to regulatory approval of the commercial terms.

⁴ The Isle of Man is connected to IC2

⁵ <http://www.detini.gov.uk/energy-newspage-25>

⁶ These are Antrim, Banbridge, Craigavon (including Lurgan), Newry and Portadown. It is planned to connect Armagh in the future

The South-North Pipeline has yet to be made commercially operational for off-takes south of the border. Once the pipeline is made commercially operational it will facilitate physical gas flows from the NTS system at the Moffat Interconnection Point, along the 2nd Subsea Interconnector ('IC2') into the South-North Pipeline for delivery to Northern Ireland and to off-takes on the SNP in Ireland.

EU Regulation 1775/2005, on conditions for access to the natural gas transmission networks, aims at setting non-discriminatory rules for access conditions to natural gas transmission systems⁷. It includes provisions regarding third party access services, principles of capacity allocation mechanisms, congestion management procedures and transparency requirements with which Member States must comply.

In June 2009 the EU Commission issued formal notices of infringement to Ireland and the UK regarding the interconnection points at Moffat and the SNP. The Commission argued that these points had not been declared Relevant Points and the maximum capacity was not made available at the points. Therefore, market participants could not gain access (in both directions) to these pipelines to transport gas.

In response, the two Member States set about developing arrangements for Virtual Reverse Flow at Moffat. This was put in place in December 2011 and provides access to the UK market to Irish Shippers through the use of virtual capacity made available through the Gaslink Code. In regard to the SNP, Ireland⁸ responded that the infringements would be resolved as part of the CAG project but that regardless of the progress on the CAG, however, the Irish authorities are committed to ensuring that flows can be effected along the South North Pipeline and that the necessary tariff, Code and business arrangements are in place to ensure capacity is available to Shippers.

The CER and NIAUR have been working with industry, most particularly over the past year, to progress the CAG project. However, as both Regulatory Authorities (RAs) have recently acknowledged⁹, there are still substantive outstanding issues awaiting resolution in the CAG project. Both RAs are working toward resolving these issues but this will take time. In the light of this, and given the legal obligations on both jurisdictions to deliver compliance with EU requirements, both RAs are focussing on meeting compliance as early as possible in their respective jurisdictions as a key priority.

Given this pipeline crosses a border between two separate jurisdictions with separate regulatory and transportation regimes the obligation to make the maximum capacity available on the South-North Pipeline requires a number of arrangements to be developed. These are discussed in Section 3 of this paper.

⁷ EU Regulation 1775/2005 has been repealed by EU Regulation 715/2009

⁸ Response to reasoned opinion August 2010

⁹ <http://www.allislandproject.org/GetAttachment.aspx?id=4d3a5d5b-85b9-4c58-b6b0-2987b46ebfb1>

3.0 Achieving Compliance

3.1 EU Regulation Requirements

The following sets out the EU requirements as they relate to the South-North Pipeline:

- (1) Article 6(4) of Regulation 1775/2005 requires that all 'relevant points' of a gas transmission system shall be approved by the competent authority (the CER) after consultation with network users.
- (2) The relevant point is defined as including all entry and exit points to and from a transmission network operated by a transmission system operator¹⁰.

There are accompanying obligations associated with Relevant Points under the Regulation, such as access arrangements, making maximum capacity available and transparency requirements.

Specifically, at each 'Relevant Point' the Regulation requires that:

- (1) maximum capacity shall be made available to market participants (Article 5(1))
- (2) each TSO shall make public information on the technical, contracted and available capacities (Article 6(3))

These requirements are designed to ensure that European Shippers can access all European pipelines to transport gas and that customers' reasonable expectations to be supplied with natural gas can be satisfied. In respect of Ireland achieving compliance in relation to the South-North Pipeline this means that arrangements must be put in place for third party access to the pipeline for delivery of gas from Ireland to Northern Ireland and also that customers in Ireland can have access to the SNP. The specific requirements are discussed below.

3.2 Requirements for SNP Compliance

3.2.1 Maximum Capacity and Transparency

The Maximum Capacity that is to be made available at the Relevant Point will have to be published in accordance with the transparency requirements set out in the EU Commission Decision of 10th November 2010 amending Chapter 3 of Annex I of Regulation (EC) No 715/2009. Gaslink publishes the required information for all other Relevant Points on the Irish system. The SNP will need to be included as a Relevant

¹⁰ See Annex 3.2(1) of Commission Decision of 10 November 2010 amending Chapter 3 of Annex I to Regulation (EC) No 715/2009 of the European Parliament and of the Council on conditions for access to the natural gas transmission networks

Point and the technical and booked capacity in both directions, published daily and historically to comply with this provision.

Currently the gas flows on the SNP are from north to south (albeit that there are currently no off-takes south of the border). The flow can be (and has been on seven occasions) reversed, from south to north, for network security reasons. Indeed the primary purpose of the pipeline is to provide an additional entry point to NI to provide additional capacity. Thus, physical reverse flow is enabled on the SNP and the capacity, in both directions, now needs to be made available to Shippers on both sides of the interconnection point. It should be pointed out that as the SNP does not connect to the Irish on-shore system and Irish customers cannot be served by gas flows from Northern Ireland at present. A connection to the Irish side of the SNP which loops onto the Irish on-shore system (e.g., the proposal to reinforce Dundalk from the SNP) would provide limited gas flows from Northern Ireland to the Irish on-shore system. If storage is developed in Northern Ireland this would require additional compression facilities and additional capacity could then be made available for delivery of gas from Northern Ireland to Irish customers connected off the SNP.

Since both of the scenarios above are realistic (i.e. salt cavern storage in Larne and Irish customer connections to the SNP), it would be prudent to ensure that the commercial arrangements now being put in place on the SNP facilitated gas flows from North to South.

3.2.2 Relevant Points and Making Capacity Available

In practice making maximum capacity available at a Relevant Point ('RP') involves putting arrangements in place so that market participants can have third party access to the pipeline. These arrangements include:

- making capacity available at the Relevant Point,
- having a Code of Operations which allows Shippers to book capacity and nominate for gas to flow against this capacity,
- metering to measure the flows,
- approved tariffs for the booking of capacity and the transportation of the gas through the pipeline.

Additionally, there will need to be an inter-operator agreement and agreed emergency procedures. These arrangements must be supported by appropriate governance arrangements to ensure compliance with regulatory and safety requirements in both jurisdictions.

The first question to resolve is the location of the Relevant Point. This will influence the arrangements that must be put in place to make capacity available on the pipeline. There are two options concerning the location of the Relevant Point on the South-North Pipeline. It could be located at Gormanston, where the SNP physically connects to IC2, or at the point where the SNP crosses the border.

The CER recognised in its licence to BGE(UK) that the primary purpose of the SNP is to supply Northern Irish customers. Nevertheless, in accordance with the EU regulations access must also be provided to Irish customers wishing to connect to the pipeline. If there are customer connections on the Irish side of the SNP then the location of the

Relevant Point assumes much greater importance¹¹. The key question is how this capacity is to be reserved and how the gas is to be transported to the Irish customers, i.e. what Code of Operations will be used. This Paper considers two options¹²:

- (1) if the Relevant Point is located at Gormanston, the BGE(UK) Code would be extended down to that point and
- (2) if the Relevant Point is located at the border, the Gaslink Code would be extended up to the border.

3.3 Location of the Relevant Point

The CER understands that both options would be legally compatible with the relevant EU law. As to which location is optimal the CER has an open mind at this stage but, as required by the EU Regulation, wishes to consult on the matter. Important guiding criteria include

- The location should not delay resolution of the infringement
- The location should be user friendly and minimise the risk of regulatory duplication as far as possible e.g. Code compliance.
- The location should be practical and minimise compliance costs.
- The location should be conducive to cross border cooperation and to the development at CAG functions down the line.

Irrespective of the location of the Relevant Point and the applicable Code of Operation(s) detailed Inter-Operator Arrangements will be necessary, although the content and complexity of these arrangements will vary depending on the location of the Relevant Point.

Metering arrangements are currently in place at Gormanston. These are adequate to allow for gas flows to Northern Ireland. When new connections are proposed on the Irish side of the border a review will be necessary to determine the need for any further metering on the pipeline.

3.3.1 Location of the Relevant Point at the Border

If the Relevant Point was located at the jurisdictional border the Gaslink Code could be extended up to that point and gas would be delivered seamlessly to Irish customers off the pipeline by Irish Shippers using the Gaslink Code.

¹¹ There has been some interest in the past in customers seeking connection to the SNP and there is a credible possibility that Dundalk may be reinforced by connection to the SNP in the near future

¹² A third potential option of having a separate code up to the border is discounted as this would offer no benefits and would mean that there would be two Relevant Points on the system, one at Gormanston and the other at the border

Northern Irish Shippers who wish to use the SNP to deliver gas to Northern Irish customers only could trade at the border and would not need to obtain an Irish Shipping Licence.

From an Irish customer perspective, the Gaslink Code would facilitate the provision of the same market facing arrangements to all Shippers. It would also avoid multiple transportation contracts and potential pan-caking of tariffs and ensure that all Irish Shippers can access all Irish customers equally and seamlessly.

Location of the Relevant Point at the border provides for gas flows from Northern Ireland to Ireland when customers are connected on the Irish side of the border. This would ensure compliance with the requirement for the capacity to be bi-directional¹³ as required by Regulation 1775/2005 and future-proof the arrangements.

It might be argued that the current absence of metering equipment at the border would not support its location as the relevant point. On the other hand, this need not necessarily be a critical consideration, at least for as long as there are no pipeline offtakes in the Republic.

3.3.2 Location of the Relevant Point at Gormanston

General Issues

If the Relevant Point is located at Gormanston Northern Irish Shippers would book capacity at that point and nominate gas for transportation using the BGE(UK) Code (which would be extended down to Gormanston and thus apply to the section of the SNP within the Irish jurisdiction).

Even though the BGE(UK) Code would apply to the SNP, all Shippers (including those Shippers delivering gas to Northern Ireland) would be required to be licensed by the CER in order to ship gas along the southern section of the SNP (as with all other pipelines within the Irish jurisdiction). Further, both the CER and UR would have governance responsibilities over the BGE(UK) Code that applies to the section within the Irish jurisdiction.

If the Relevant Point is located at Gormanston there are two options for Codes applying within the Irish jurisdiction:

1. The BGE(UK) Code would apply to all Shippers on the SNP whether they are exiting in Ireland or in Northern Ireland; or
2. The BGE(UK) Code would apply to Shippers exiting in Northern Ireland and the Gaslink Code would apply to Shippers delivering gas to Irish customers with Gaslink reserving capacity for these Shippers.

These Code options are assessed below.

¹³ Note: current network capabilities do not support flows from the SNP to the on-shore Ireland network

Code Option 1 – BGE(UK) Code applies to all Shippers on SNP

Under this scenario, two separate Codes of Operations (with separate products/transportation rules) will apply to the pipelines within the Irish jurisdiction. Shippers delivering gas to Irish customers connected to the SNP will have an additional transportation contract for these customers and could be subject to the pan-caking of tariffs. Irish customers¹⁴ being supplied from the SNP could therefore be subjected to potentially discriminatory treatment and an uncompetitive market relative to all other Irish customers.

Any code applied to the SNP in Ireland will of course have to comply with the safety requirements regulated by CER in its capacity as safety regulator for downstream gas networks.

Code Option 2 – BGE(UK) Code applies to NI Shippers; Gaslink Code applies to Shippers delivering gas to Irish Customers

Alternatively arrangements could be put in place for Gaslink to reserve capacity on the SNP to serve Irish customers. This would allow Gaslink to determine when it needed to flow gas through the pipeline to Dundalk or any other Irish customer(s) served by the SNP. Thus the arrangements would be seamless as far as the Irish Shippers are concerned and they would incur the same costs as would apply if they were exiting any other point on the Irish transportation system.

However, transposing these arrangements to provide one seamless service to Irish Shippers could be complex, costly and likely take time to develop. This approach therefore is unlikely to secure resolution of the EU infringement at the earliest possible date.

3.3.3 The Moffat Precedent

It could be argued that arrangements at the Moffat interconnector point should set the precedent for the arrangements on the SNP. This would suggest that Gormanston, as the physical point of connection of the SNP to IC2, would be the location of the Relevant Point. CER note that there is one significant difference in that a prospective connection to Dundalk would loop the SNP into the onshore gas network in Ireland.

CER Summary Comment

On the face of it, a literal interpretation of Annex 3.2(1) of Commission Decision of 10 November 2010 in respect of Relevant Points¹⁵ would, it is true, suggest that

¹⁴ As it would be a very small market competition would naturally be very limited and indeed it is possible that no shipper would be interested in serving the market at all.

¹⁵ The relevant point is defined as including “all entry and exit points to and from a transmission network operated by a transmission system operator...”

Gormanston should be the “Relevant Point”. It is the point where the two transmission systems *physically* meet one another. The system assets each side of Gormanston are underwritten separately by users in the two jurisdictions.

However, the CER considers that it need not necessarily follow that Gormanston be the Relevant Point for the purpose of resolving the infringement, particularly if it can be shown that an alternative point on the pipeline (e.g. the Border) could equally serve the same purpose and better promote seamless cross border trade in gas without in any way undermining the purpose of Regulation 715/2009 or adversely affecting the interests of Shippers or customers in either jurisdiction. CER is interested in securing a timely compliance with EU law, and thus resolution of the infringement proceedings. Where an alternative more attractive option is available, but on a longer timeframe, then CER will consider this as a “day two” solution.

3.4 Tariffs

There are a number of issues to be considered in order to address all potential uses of the SNP. These will be consulted on in the near future in a separate paper.

4.0 Next Steps

The next steps to achieving compliance with EU Regulation 1775/2005 in respect of the South-North Pipeline are as follows:

- CER Decision Paper on the designation of the South-North Pipeline as a Relevant Point of the Irish gas transportation system as well as the necessary steps required to implement the accompanying obligations associated with Relevant Points under the Regulation 1775/2005 on the Pipeline
- CER Consultation Paper on tariffing arrangements on the South-North Pipeline

Appendix 1 Consultation Questions

1. Where should the Relevant Point on the South-North Pipeline be located, at Gormanston or the border?
2. What Code Arrangements should apply to the section of the SNP located in the Irish jurisdiction, the BGE(UK) Code or the Gaslink Code?
3. Are there any other Code options which should be considered?