# South-North Gas Pipeline and Compliance with EU Law

<table>
<thead>
<tr>
<th>DOCUMENT TYPE:</th>
<th>Decision Paper</th>
</tr>
</thead>
<tbody>
<tr>
<td>REFERENCE:</td>
<td>CER/12/042</td>
</tr>
<tr>
<td>DATE PUBLISHED:</td>
<td>5&lt;sup&gt;th&lt;/sup&gt; April 2012</td>
</tr>
<tr>
<td>FURTHER INFORMATION:</td>
<td><a href="mailto:cjohnston@cer.ie">cjohnston@cer.ie</a></td>
</tr>
</tbody>
</table>

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

www.cer.ie
1.0 Introduction

In response to the formal notice of infringement received from the European Commission, on the 8th March the CER published a Consultation Paper (CER/12/023) highlighting the key compliance issues in respect of the SNP and how they might be addressed. It looked at two options for the location of the Relevant Point on the SNP, namely Gormanston (where the SNP physically connects to IC2) or the point where the SNP crosses the jurisdictional border between Ireland and Northern Ireland.

The CER received responses to the Consultation Paper from 6 parties. These are listed below and are published in conjunction with this paper on the CER website.

1. Mutual Energy Limited
2. Shannon LNG
3. Endesa Ireland
4. Gaslink, BGE(UK), Bord Gais Networks (joint response)
5. PSE Kinsale Energy Limited
6. Irish Offshore Operators’ Association

UR is conducting an equivalent consultation paper for Northern Ireland which also issued on 8 March. Both regulators have exchanged all responses they have received.
2.0 Background Information

The background to the SNP and to the infringement proceedings by the European Commission – in so far as they related to the SNP – was set out in some detail in the Consultation Paper CER/12/023. We will therefore confine ourselves to a brief summary recap below.

- 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 UR and 56 km is located in Ireland and regulated by the CER.

- It forms part of NI Transmission System and was constructed 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.

- 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 in Northern Ireland. To-date gas has also flowed northwards on seven occasions for safety/security reasons in accordance with agreed procedures.

- 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.

- 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, arguing that these points had not been declared Relevant Points and the maximum capacity was not made available at the points.

- In response, the two Member States set about developing arrangements for Virtual Reverse Flow at Moffat and this was put in place in December 2011. In regard to the SNP, Ireland\(^1\) 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.

- However, in the light of the recently acknowledged substantive issues awaiting resolution in the CAG Project, and given the legal obligations on both jurisdictions to deliver compliance with EU requirements, both RAs are now focussing on meeting compliance as early as possible in their respective jurisdictions as a key priority.

---

\(^1\) Response to reasoned opinion August 2010
To this end, on the 8th March, the CER published a Consultation Paper (CER/12/023) highlighting the key compliance issues in respect of the SNP and how they might be addressed. It looked at two options for the location of the Relevant Point on the South-North Pipeline, namely Gormanston (where the SNP physically connects to IC2) or the point where the SNP crosses the jurisdictional border between Ireland and Northern Ireland.
3.0 Responses to Consultation

As these were relatively short and self explanatory and are published in tandem with this decision, we do not propose to summarise them in any detail here.

On the specific question of the optimal location of the “Relevant Point” on the SNP for the purpose of resolving the EU infringement – the key focus of the Consultation Paper – it is fair to say that there were mixed views. While a number favoured Gormanston, one favoured the Border. One respondent group confined its response to listing the advantages and disadvantages of both locations, while two other respondents reserved their position on the location question until they had sight of the anticipated separate consultation on tariffing for access to the SNP.

A more general point made by a number of respondents was their unease at the relatively short consultation period allowed and the perceived narrow focus of the consultation exercise with little detail offered on the wider context market and regulatory context in which the SNP would be operating.

The CER acknowledges the tight timeframe given for the consultation period and appreciates that all the operational and commercial arrangements under consultation by the CER in respect of the SNP should ideally be consulted on together. However, given the urgency of achieving compliance this was not possible in this instance. There is also the point that some decisions, particularly that of deciding the location of the relevant point – need to be made as a precondition to resolving other issues such as the necessary Code modifications etc. That said, the CER will consider issuing a further paper in due course bringing together all the commercial and regulatory arrangements that will apply to the section of the SNP that is located in the Irish jurisdiction.
4.0. CER Decision on Location of the Relevant Point

4.1 CER Decision

Legitimate arguments can be made for locating the relevant point at either of the two locations advocated in the Consultation Paper: Gormanston and the Border.

As a first step, the CER is satisfied that both locations are physically feasible. We also understand and are satisfied that both locations would be legally permissible under the EU Regulation.

On balance, the CER’s preferred location for the relevant point would be the Border for the following reasons:

(1) It would be in line with objective of having one Code of Operations applying to all pipelines in Ireland. The choice of the Border could reduce barriers to 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.

(2) It would minimise dual regulation on the SNP in the Irish jurisdiction, and avoid complications in relation to the CER’s statutory regulatory responsibilities, particularly in respect of emergency and safety obligations.

(3) All gas customers and gas shippers in the Irish jurisdiction would be subject to the same commercial and regulatory arrangements in terms of access to the market.


(5) The necessary Inter-Operator Arrangements should be less complex than if the relevant point were at Gormanston.

In respect of the argument that Moffat, and specifically the arrangements applied to Stranraer in Scotland, provide a precedent for how the arrangements should be applied to the SNP in the Irish jurisdiction, the CER point out that these arrangements were established prior to the European Directives and do not necessarily provide an optimal solution. Further, and more importantly, a significant difference between Stranraer and the SNP is that a prospective connection to the SNP, that is Dundalk, would loop the SNP into the onshore gas network in Ireland. In this case, the Stranraer example would not be applicable.

The CER appreciates, however, that not all stakeholders share this preference for the Border over Gormanston. Neither does UR, as we know from discussions. In the light of this, and in view of the urgency of making tangible progress on resolving the infringement issues, the CER is agreeable to locating the Relevant Point at Gormanston, while reserving the right to review this position if and when there are connections to the SNP from within the Irish jurisdiction.
4.2 Practical Implications

Given the decision to locate the Relevant Point at Gormanston, and extend the BGE(UK) Code down to this Point, the following sets out the practical implications and regulatory obligations for the CER in order to achieve compliance on the SNP:

(1) Approval of the BGE(UK) Code of Operations within Irish jurisdiction

The CER is responsible for regulating the access arrangements to all pipelines within the Irish jurisdiction. The CER must approve the BGE(UK) Code of Operations that applies to the SNP that lies in the Irish jurisdiction (as required under Section 13 of Gas (Interim) (Regulation) Act 2002 and this has been reflected in Condition 14 of the BGE(UK) Licence).

The CER must consider whether the CER will directly approve the BGE (UK) Code or an ‘Approval by Approval’ method of regulation will suffice. Other considerations include:

(a) The dual governance responsibilities between both Regulators for certain aspects of the Code, and the need to amend the BGE(UK) Code to reflect CER governance powers as set out under Condition 14.2 of the BGE(UK) Licence.

(b) The Code Modification Proposals assessment and determination.

(c) How disputes be resolved on the southern section of the pipeline, and respective roles of the Regulatory Authorities.

(d) Impact of the governing law of the BGE (UK) Code for the Irish jurisdiction.

(2) Gaslink Code of Operations Amendments

A new Exit-Entry Point on the SNP will need to be established in the Gaslink Code. An “RoI Exit to NI” Capacity Product and an “RoI Entry Point from NI” Capacity Product (and associated Code rules (e.g., nominations, allocations, balancing rules)) will need to be developed, consulted and implemented in the Gaslink Code

(3) RoI Shipping Licensing

Shipping activity on the southern section of the SNP must be licensed by the CER, as set out under Section 16 of GAS (INTERIM) (REGULATION) ACT, 2002, as amended by SI 760/2005. Thus, NI Shippers will need to obtain an RoI Shipping licence to ship gas along the southern section of the SNP pipeline. Further, the BGE(UK) Code may have to recognise both Irish Shipping Licensees and Northern Irish Shipping Licensees.
(4) Inter-Operator Arrangements between Gaslink and BGE(UK)

Inter-Operator Arrangements between Gaslink and BGE(UK) will need to be established for operation and use of the SNP within Ireland. For example, in order to provide the same market facing transportation arrangement for all Irish Shippers Gaslink will need to enter into agreement with BGE(UK) to transpose BGE(UK) Code products and transport arrangements into the Gaslink products and transport arrangements. These Inter-Operator Arrangements would also contain agreed procedures and arrangements in respect of the technical operations at the interface between the Gaslink system and the SNP.

(5) Connected Systems Agreement between BGE(UK) and Gaslink

A Connected Systems Agreement (‘CSA’), containing provisions governing the technical aspects of transporting gas from one system into another, will have to be established.

(6) RoI Emergency Procedures Review

The RoI Emergency Procedures will need to be reviewed and the BGE(UK) Code may need to be amended to reflect the role and powers of the NGEM in RoI. The NGEM issues emergency instructions (via GTMS) during an emergency to Shippers who have acceded to the Gaslink Code. These Emergency procedures will need to be reviewed in respect of a separate BGE(UK) Code applying to the southern section of the SNP. Further, Operator to Operator Emergency and Non-Emergency Agreements will need to be established.
5.0 Next Steps

- The CER is directing Gaslink to review and update its latest “RoI Infringement Compliance Report” in the light of the this CER decision on the location of the Relevant Point, to continue to engage directly with BGE (UK) in its capacity as SNP operator and all other affected stakeholders in order to achieve compliance with Regulation 715/2009 by July and to submit progress reports to CER at fortnightly intervals.

- CER will produce a Consultation Paper regarding the tariffing arrangements on the SNP detailed in the CER Information Paper (CER/12/035) issued on 23rd March. The CER intends to engage further with BGE (UK) and NIAUR as part of this process.

- CER intends to issue a further Paper bringing together all the commercial and regulatory arrangements that will apply to the section of the SNP that is located in the Irish jurisdiction.

- The CER will also continue to engage directly with UR on all practical aspects of ensuring resolution of the EU infringements by both jurisdictions.