South-North Gas Pipeline and Compliance with EU Law:
Tariffing Arrangements for flows to and from the Gaslink System

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Executive Summary

This Consultation Paper addresses tariffing arrangements to be put in place to facilitate south to north flows on the South-North Pipeline (SNP) as part of the process of achieving compliance with relevant provisions of Regulation (EC) 1775/2005. Issues related to the implementation of necessary Code arrangements are already well underway and have been addressed in separate CER papers.

On the 23rd of March, the CER published an Information Paper (CER/12/035) which outlined the CER’s proposed approach to specific tariff issues. This paper highlighted 5 areas where tariffing arrangements would need to be progressed regarding flows on the SNP. These included:

1. Interconnector (IC) Entry Tariff;
2. Tariff for Exit from the Gaslink System¹ (into the SNP);
3. Remuneration for use of the SNP in Ireland;
4. Charges for end-users in Ireland who are fully supplied or part supplied through the SNP;

Regarding Item 1, as the SNP is supplied from IC2 only (in the context of south to north flows) Interconnector (IC) entry capacity will be required to be held by shippers in order to move gas into the SNP. As noted in CER/12/035, the CER intends to apply the standard approved IC entry tariff where the Gaslink System is used to move gas into the SNP.

Regarding Item 2, the determination of an appropriate tariff methodology for exit from the Gaslink System (into the SNP) is a complex issue. Deciding upon cost allocation for the maintenance of standby capacity is not straightforward even when considered within a single jurisdiction. This difficulty is increased when considered in an inter-jurisdictional context. This matter has also been the subject of much discussion in an EU context.

The issue of cost allocation in relation to the SNP’s connection to the second BGE subsea interconnector (IC2) has been the subject of lengthy discussions between CER and the Utility Regulator (UR) for some time in the context of Common Arrangements for Gas (CAG) project. In 2011 both regulators voluntarily entered into arbitration with the European Commission (EC) to seek an appropriate solution to this issue. The CER’s preference was to introduce an ongoing inter-TSO payment for the associated security of supply benefits; UR noted that payment would be made for use of the Gaslink System only when the SNP is actually used.

In their advice, the EC noted that it was not possible to place an ongoing charge on a system user as a pre-condition for access to the system. The EC also stated that the potential for Northern Ireland (NI) entities to realise a security of supply benefit as a result of the NI transmission system being connected to neighbouring systems is indisputable. They also advised that a fair proportion of the costs associated with ensuring security of supply benefits can be reflected in the tariffs associated with transporting gas to NI from Ireland provided it can be justified and does not lead to arbitrarily higher tariffs.

¹ In this context, we mean the “Gaslink System” to describe the Irish gas network operated by Gaslink. Thus, if the SNP is operated by another party under a separate code of operations to the Gaslink Code, then gas would exit the Gaslink System in order to enter the SNP.
The CER proposes to set a methodology for calculating the tariff for exit from the Gaslink System (into the SNP) in a manner which is considered consistent with the views put forward by the European Commission. It is therefore proposed to put in place a methodology which would recover a fair proportion of the ongoing costs associated with ensuring the availability of capacity and providing security of supply benefits. The proposed methodology involves an estimation of the annual required revenue associated with IC2 and seeks to allocate this ongoing cost (circa €21.25m p.a.) pro rata to the maximum supply which may be made available to shippers in Ireland (€16.420m) and to shippers on the SNP (€4.829m).

The CER also puts forward a methodology for calculating annual and short-term exit capacity products in a manner consistent with the methodology underlying the exit tariff calculation in Ireland. This methodology is to apply in the same manner to shippers flowing gas from the Gaslink System to the SNP. The CER also intends to put in place a mechanism for under and over recovery similar to the existing Gaslink transmission tariff methodology.

Items 3 & 4 relate to connections to the SNP in Ireland. The CER intends to progress these arrangements as per the process detailed in CER/12/035. Regarding Item 3, where any party connects to the SNP in Ireland, it is considered that the owner of the SNP will be properly remunerated via capacity and commodity tariffs. Regarding Item 4, where the TSO in Ireland uses a connection to SNP for a new Irish connection or to provide additional capacity to the Irish network, it is anticipated that an inter-TSO arrangement will be in place to make appropriate payments to the SNP TSO.

Regarding Item 5, it is anticipated that there will be a virtual reverse flow product available at the Relevant Point on the SNP. As this virtual reverse flow product will, in effect, only facilitate virtual reverse flow into IC2 from Northern Ireland, it is anticipated that the virtual reverse flow tariff at the Relevant Point will be calculated in a manner similar to the tariff for virtual reverse flow at the Moffat Entry Point (see Decision Paper CER/11/190). This includes a registration fee to cover the cost of developing and administering the new virtual reverse-flow arrangement, as well as capacity and commodity charges set to zero.
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1.0 Introduction

This Consultation Paper addresses tariffing arrangements to be put in place to facilitate south to north flows on the South-North Pipeline (SNP), a gas transmission pipeline that spans both the Irish and Northern Irish jurisdictions. Issues related to the implementation of necessary Code arrangements are already well underway and have been addressed in separate CER papers.²

On the 23rd of March, the CER published an Information Paper (CER/12/035³) which outlined the CER’s proposed approach to specific tariff issues. This paper highlighted 5 areas where tariffing arrangements are to be addressed in order to ensure compliance with relevant provisions of Regulation (EC) 1775/2005. These included:

1. Interconnector (IC) Entry Tariff;
2. Tariff for Exit from the Gaslink System (into the SNP);
3. Remuneration for use of the SNP in Ireland;
4. Charges for end-users in Ireland who are fully supplied or part supplied through the SNP;

The CER seeks the views of interested parties on the implementation of the above tariffing arrangements, in particular the development of a tariff methodology for exit from the Gaslink System to facilitate flows from IC2 to the SNP, as well as a virtual reverse flow tariff in relation to flows from NI to IC2.

These tariffing arrangements relate to the location of the Relevant Point on the SNP. In the Decision Paper CER/12/042, the CER noted that it 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.

The CER is mindful that the various tariffing arrangements to be put in place should not hinder the recovery of transmission revenues associated with the Gaslink System.

Responses are requested from interested parties on the matters raised in this Consultation Paper. Comments should be submitted by 5.00pm on the 6th of July 2012.

These should be submitted to:
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Email: jmacevilly@cer.ie

The CER 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.

² See Decision Paper, South-North Gas Pipeline and Compliance with EU Law, CER/12/042, 5 April 2012.
³ Information Paper, Tariffing Arrangements on the South-North Gas Pipeline and Compliance with EU Law, CER/12/035, 23 March 2012.
2.0 Entry-Exit Tariffs from Gaslink System into the SNP

2.1 Entry Tariff for flows from Gaslink System

In order for shippers to enter and offtake gas from IC2 for flows to the SNP, Interconnector entry capacity will be required to be held by such shippers. As noted in the Information Paper CER/12/035, the CER intends to apply the standard approved Gaslink IC entry tariff (Item 1) where the Gaslink System is used to move gas into the SNP.

2.2 Interaction with the CER Proposed Decision on Regulatory Treatment of the BGÉ Gas Interconnectors

The CER stated in CER/12/035 that a specific exit tariff will apply for gas exiting the Gaslink system for flows into the SNP (Item 2). This approach is in accordance with the requirement to implement tariffs separately for every entry point into or exit point out of the transmission system.4

Before addressing the methodology for implementing this exit, it is worth taking into account the CER’s recent consultations concerning the regulatory treatment of the BGÉ gas Interconnectors. There follows a brief précis of the issues considered in that consultation process.

IC2 (and IC1) are paid for directly by shippers booking Interconnector capacity and c. 94% of gas consumed in Ireland comes across the Interconnectors. The introduction of commercial arrangements on the SNP will entail that users of the SNP will benefit from the ongoing availability of capacity on IC2. While shippers might only utilise capacity on the SNP, and by extension IC2 and the onshore Scotland system, for short periods, those shippers will still benefit from the availability of such assets throughout the year. This benefit would essentially accrue to shippers and customers.

In the recent Proposed Decision Paper, *The Regulatory Treatment of the BGÉ Interconnectors* (CER/12/013), the CER noted that it does not propose to ‘strand’ any part of the Interconnector assets as part of its preferred methodology. Therefore, it is envisaged that end-users of the Gaslink transmission system will continue to support the ongoing availability and operation of the BGÉ Interconnectors, as well as associated security of supply benefits, whether or not they use them.

The importance of IC2 was also in part addressed in the context of the CER’s consultation process on the regulatory treatment of the Interconnectors. It was noted that the Interconnectors provide a back-up source of gas for users of other Entry Points in the event of an outage. Clearly, there are significant capital and operational costs associated with the development, maintenance and operation of IC2 and other relevant assets in onshore Scotland. These costs arise from the ongoing availability of IC2 throughout the year and do not constitute one-off costs for a particular service at a given time.

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The new tariff regime proposed in CER/12/013 is proposed to be implemented by October 2014. The tariffing arrangements detailed in this Consultation Paper will be reviewed as part of this implementation. This, of course, will be done in consultation with industry.

2.3 Exit Tariff for flows from Gaslink System: Cost Allocation

The determination of an appropriate tariff methodology for exit from the Gaslink System (into the SNP) is a complex issue. Deciding upon cost allocation for the maintenance of standby capacity is not straightforward even when considered within a single jurisdiction. This difficulty is increased when considered in an inter-jurisdictional context. This matter, in particular the risk of cross-subsidisation, has also been the subject of much discussion in an EU context.\(^5\)

The issue of cost allocation in relation to the SNP’s connection to IC2 has been the subject of lengthy discussions between CER and the Utility Regulator (UR) for some time in the context of the Common Arrangements for Gas (CAG) project. In 2011 both regulators voluntarily entered into arbitration with the European Commission (EC) to seek an appropriate solution to this issue. The CER’s preference was to introduce an ongoing inter-TSO payment for the associated security of supply benefits; UR’s view was that payment would be made for use of the Gaslink System only when the SNP was actually used.

In their advice (see Appendix 1) the EC put forward the view that it would not be possible to introduce a regulatory framework which would require NI entities to pay an ongoing charge in order to have access to the Gaslink system and to deny NI entities access to the system in the event the charge was not paid. It was stated that it was not possible to place an ongoing charge on a system user as a pre-condition for access to the system. The EC also noted that the potential for NI entities to realise a security of supply benefit as a result of the NI transmission system being connected to neighbouring systems is indisputable. The advice was that a fair proportion of the costs associated with ensuring security of supply benefits can be reflected in the tariffs associated with transporting gas to NI from Ireland provided it can be justified and does not lead to arbitrarily higher tariffs.

The CER proposes to set a methodology for calculating the tariff for exit from the Gaslink System (into the SNP) in a manner consistent with the views put forward by the European Commission. The CER therefore intends to put in place a methodology which would recover a fair proportion of the costs associated with ensuring the ongoing availability of IC2 for SNP shippers, and which reflect ongoing security of supply benefits. The CER does not propose to apply such costs as an ongoing charge, i.e. an ongoing charge will not be placed on relevant shippers who have not booked capacity on the IC2. Given that the EC’s views are based on relevant requirements of the Third Energy Package, the CER considers this approach to be in accordance with relevant EU legislation.

\(^5\) See in particular:
- EUI “THINK”, Final Report, EU Involvement in Electricity and Natural Gas Transmission Grid Tarification, January 2012, Section 5.4.
3.0 Calculation of Required Revenue

The CER wishes to ensure that SNP shippers contribute proportionately to the costs of and benefits of IC2 and the onshore Scotland system. The extent of their reliance and the potential size of bookings from SNP shippers, compared to those of current shippers on the Gaslink System, must be taken into account. The costs associated with the introduction and operation of the Interconnector system, including IC2, were previously detailed in the CER Consultation Paper *The Regulatory Treatment of the BGE Interconnectors in relation to Security of Gas Supply* (CER/11/002). The table below outlines the calculation of the standby cost and the proposed allocation of this cost between the beneficiaries.

### Calculation of Standby Cost

IC1 has a capacity of 17mcm/d (B in table) while IC2 has a capacity of c. 23mcm/d (A in table). At present 23mcm/d is the maximum combined capacity of the two pipelines. The required revenues for IC1 and IC2 ('the Interconnectors') are calculated in accordance with the CER's five year revenue review decision and are combined to form a single regulated Interconnector tariff. The annual revenue allowed for the two Interconnectors has in recent years amounted to c. €50m (D in table) with 90% recovered through capacity charges and 10% recovered through commodity charges.

IC2 serves to replicate the maximum 17mcm/d made available from IC1 and also serves to provide an additional 6mcm/d of capacity. 17mcm/d is taken to be the amount of standby capacity available on the IC system. The cost of maintaining this capacity is taken as €21.25m per annum (E in table).

### Allocation of this cost

Taking into account that c.5mscm may be called upon by users of the SNP (C in table) while 17mcm/day is available to Ireland as noted above, the CER proposes that the exit tariffs will be calculated on the basis of recovering c. €4.829m (F in table) from SNP shippers in relation to flows from IC2 to the SNP.

<table>
<thead>
<tr>
<th>Pipelines</th>
<th>Max Flow</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>IC2</td>
</tr>
<tr>
<td>B</td>
<td>IC1</td>
</tr>
<tr>
<td>C</td>
<td>SNP</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Pipelines</th>
<th>Annual Required Revenue</th>
</tr>
</thead>
<tbody>
<tr>
<td>D</td>
<td>Moffat Entry Point/Interconnectors</td>
</tr>
<tr>
<td>E</td>
<td>Stand-by Cost</td>
</tr>
<tr>
<td>F</td>
<td>SNP Stand-by Cost</td>
</tr>
</tbody>
</table>

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6 These maximum capacities of the Interconnectors are broadly accurate and are based on the latest available data from Gaslink/BGN. The actual total deliverability of the pipelines is a function of the inlet and outlet pressures. Therefore, the overall physical capacity of the combined pipelines may vary and the 23mcm/d used for the purpose of this paper should not be interpreted as a fixed total.

7 See Bord Gáis Networks Revenue Review 2007/08 – 2011/12 Transmission Decision Paper (CER/07/110)

8 These figures are indicative. Required revenues on the Gaslink System are in the process of being updated as part of the CER’s third gas networks price control (PC3).
The Gaslink Interconnector (IC) tariff will continue to be set on the basis of the allowed revenue set in the CER’s transmission price control as per the existing process. It is proposed that revenue recovered via the Gaslink System exit tariff for the SNP will be addressed in annual K-factor adjustments as part of the calculation of annual Gaslink transmission tariffs.
4.0 Calculation of Annual and Short-Term Capacity Tariffs

4.1 Proposed Methodology for Calculation of Annual and Short-Term Capacity Tariffs

The CER proposes to calculate the long-term and short-term exit capacity tariffs in a non-discriminatory fashion taking into account the required revenue set out in section 3 and a forecast of demand. It is envisaged that this methodology will be in place until September 2014 at which time a new regulatory arrangement at the Moffat Entry Point is expected to be introduced\(^9\). As per existing Gaslink transmission tariffs, it is proposed that a 90:10 capacity-commodity split will be utilised as part of the introduction of the long-term and short-term exit tariffs.

- **Step 1:**
  Forecast of expected annual capacity bookings and commodity flows on the SNP.
  Go to Step 3 where 0MWh/annum is forecast for either capacity or commodity.

- **Step 2:**
  Annual Capacity Tariff = Required Revenue\(^{10}\)*90%/Forecast Annual Capacity.
  Annual Commodity Tariff = Required Revenue*10%/Forecast Annual Commodity.
  Go to Step 8.

- **Step 3:**
  Forecast of expected monthly capacity bookings and commodity flows on the SNP.
  Go to Step 5 where 0MWh/month is forecast for either capacity or commodity.

- **Step 4:**
  Monthly Capacity Tariff = Required Revenue*90%/Forecast Monthly Capacity.
  Monthly Commodity Tariff = Required Revenue*10%/Forecast Monthly Commodity.
  Go to step 9.

- **Step 5:**
  Forecast of expected daily capacity bookings and commodity flows on the SNP.
  Go to Step 7 where 0MWh/day is forecast for either capacity or commodity.

- **Step 6:**
  Daily Capacity Tariff = Required Revenue*90%/Forecast Daily Capacity.
  Daily Commodity Tariff = Required Revenue*10%/Forecast Daily Commodity.
  Go to Step 10.

- **Step 7:** Default Daily Tariff
  Default Capacity Tariff = Required Revenue*90%/(Full Capacity [5mscm] per day *10).
  Default Commodity Tariff = Required Revenue*10%/(Full Commodity [5mscm] per day *10).
  Go to Step 10.

- **Step 8:**
  Apply appropriate exit short-term monthly and daily multipliers.
  Go to Step10.

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\(^{10}\) See Section 3 in relation to the calculation of the Required Revenue.
As noted in CER/12/035, the CER proposes that all gas exiting the Gaslink System to the SNP, whether flowing under normal operating conditions or during an emergency, will be allocated to relevant shippers and accordingly will be subject to the above tariffing methodology.

Regarding Step 7, where annual, monthly and daily demand for the subsequent year is not known, it is proposed a default daily tariff would apply in the same manner to NI and Irish shippers on the SNP for each day that capacity is utilised. Determining an appropriate default exit tariff is itself a complex issue. This is the case as, while the SNP is dependent on the Gaslink System for south to north flows throughout the year, very low levels of capacity (potentially zero) may be booked by shippers on the SNP in a given year. A number of different default assumptions may therefore be made in relation to capacity and commodity usage in this part of the methodology. Capacity bookings and commodity flows on the SNP may be assumed (for example) in the context of one day, across 10 days, or for one month. Evidently, a shorter period would entail a higher default tariff. The CER has proposed a 10 day period in the methodology and requests the views of respondents.

4.2 Over/Under Recoveries

An important mechanism to facilitate the functioning of the tariff methodology for shippers will be to ensure that all over/under recoveries are addressed. The CER envisages that any under-recoveries will be addressed by means of a K-Factor similar to the existing Gaslink transmission network tariff methodology. This K factor could be carried forward to the revenue requirement (item F in the table in section 3) for the following year, it could be smeared across all exits (item E in the table in section 3) or it could be remunerated in full by the postalised Gaslink exit required revenue. In any event, Gaslink will continue to be fully remunerated for relevant assets. The views of respondents are requested on these options.

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11 As per Steps 2 and 8 in relation to annual capacity, it is proposed that where monthly capacity is forecast, short term services, in this case daily capacity, would also be available. Therefore, short-term daily capacity tariffs would apply.

12 In light of this proposed approach, a figure of 10 is included in the denominator shown in Step 7.
5.0 Other Tariffing Arrangements

5.1 Remuneration for use of SNP in Ireland & Charges for end-users

Other tariffing issues will have to be addressed which relate to potential connections to the SNP in Ireland. The CER confirms that it is progressing these arrangements in accordance with the process detailed in CER/12/035. Regarding Item 3, where any party connects to the SNP in Ireland, it is considered that the owner of the SNP will be properly remunerated via capacity and commodity tariffs.\(^\text{13}\) Regarding Item 4, where the TSO in Ireland uses a connection to SNP for a new Irish connection or to provide additional capacity to the Irish network, it is anticipated that an inter-TSO arrangement will be in place to make appropriate payments to the SNP TSO.

The essence of these arrangements is that customers in Ireland connected to the Gaslink System, as well as their shippers, will be indifferent to the fact that some or all of their supplies will come via the SNP whilst also ensuring that the SNP owner will be fairly remunerated for use of the pipeline. The CER intends to commence work on this matter with the Utility Regulator.

5.2 Northern Ireland to Ireland Flows – Virtual Reverse Flow Tariff

In relation to flows from NI to Ireland on the SNP, it is proposed that there will be a virtual reverse flow product available at the Relevant Point on the SNP (Item 5). As this virtual reverse flow product will, in effect, only facilitate virtual reverse flow to Moffat (via IC2) from Northern Ireland, it is anticipated that the virtual reverse flow tariff at the Relevant Point will be calculated in a manner similar to the tariff for virtual reverse flow at the Moffat Entry Point (see Decision Paper CER/11/190).

This would involve the recovery of the costs associated with developing and administering the new virtual reverse-flow arrangements via a registration fee charged to those shippers who register to become a shipper at the Virtual Exit Point. There is still uncertainty surrounding the final cost of implementing the virtual reverse flow service at the Relevant Point. When the cost of implementing the virtual reverse flow service is known, it is proposed that the annual registration fee will be set by dividing the annual virtual reverse flow cost amount by the ex ante estimated number of shippers registering.

The CER proposes to introduce a zero charge for the virtual reverse flow capacity and commodity tariffs in order to align virtual reverse flow arrangements on the SNP with those at Moffat. It is also envisaged that under/over recovery mechanisms and code charges will be treated in a manner similar to the existing virtual reverse flow product at Moffat.

\(^{13}\) That is tariffs for capacity and commodity that will be applied where a party books capacity on the SNP in Ireland, and/or where a party transports gas on the SNP for use in Ireland.
6.0 Next Steps

The CER intends to produce a Decision Paper in July this year on the implementation of tariffing arrangements for flows from the Gaslink System to the SNP. Responses to this Consultation Paper will form an important input to that Decision Paper.

The CER intends to engage with BGE (UK) and the Utility Regulator as part of this process.

- Respondents’ comments are requested with regard to the five tariffing arrangements proposed above.
Appendix 1

EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR ENERGY

Director-General

Brussels, 19.10.2011
ENER B2/ToB/ad/s n°1168558

Sara White
Department of Communications, Energy and Natural Resources
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IRELAND

Fiona Hepper
Department of Enterprise, Trade and Investment
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Massey Avenue
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NORTHERN IRELAND

Dear Sara, Dear Fiona

Gas Interconnector Mitigation and Security of Supply

I am writing in response to your request for the advice of the DG Energy as to whether it is possible for the Irish national regulatory authority to approve a regulatory framework which would require Northern Ireland entities to pay an ongoing security of supply charge in order to have access to the Irish transmission system and to deny Northern Ireland entities who have not paid this charge access to the Irish transmission system.

In your letter you also set out that Ireland and Northern Ireland plan to introduce so called Common Arrangements for Gas, which would involve a single entry exit regime covering both jurisdictions. In this context the South North Pipeline, which connects the two systems, would be treated as part of an integrated network – there would be no need to establish access arrangements or separate tariffs/charges for use of the South North Pipeline.

Throughout the period since you wrote to DG Energy requesting our advice, Commission staff have been in contact with both regulatory authorities to discuss the issues raised. We wrote to the Commission for Energy Regulation and the Northern Ireland Authority for Utility Regulation on 12 July 2011, requesting further information as to the types of charges which were envisaged and which had led to your request to the Commission. You were copied into this request. The Northern Ireland Authority for Utility Regulation...
replied on 31 August, while the Commission for Energy Regulation replied on 19 September. The Northern Ireland Authority for Utility Regulation provided additional information on 4 October. You were also copied into these responses.

From the information contained in the initial request, and the information subsequently provided by the two regulatory authorities, DG Energy understands that the question addressed to us relates to EU rules applying where Northern Ireland and Ireland operate two separate transmission systems where there is a necessity to develop commercial arrangements for use of the South North Pipeline between Ireland and Northern Ireland. There is no difference between the obligations under EU law applying to interconnections between Northern Ireland and Ireland and those between Ireland and another part of the United Kingdom, or between any two Member States.

**The envisaged ongoing security of supply charge**

The Commission for Energy Regulation clarified that "what we envisage is an inter TSO payment for security of supply. This would be independent of any shipper's right to nominate capacity at the SNP to transport gas to Northern Ireland and indeed from North to South. Capacity would be made available, within day, as on the other exit points and shippers to NI would pay the appropriate tariff. The Commission for Energy Regulation also states that "[t]he central matter on which we seek the Commission's advice is whether EU law allows the CER ... to require an ongoing security of supply payment from the Northern Ireland TSO ...".

The aims of such an ongoing payment would be to ensure that entities in Northern Ireland who benefitted from the security of supply brought about by existing investments by the Irish transmission system operator would make a fair contribution towards defraying the costs of those investments. The Commission for Energy Regulation also makes clear that nothing in how this charge is applied should affect the rights of system users to access to the system down to a period of one day, as required by Regulation (EC) No 715/2009. Our understanding is that system users in Northern Ireland would not be directly affected by the envisaged charges applied to the transmission system operator in Northern Ireland, though they would be indirectly affected through the higher costs of the transmission system operator being reflected in tariffs.

The Commission for Energy Regulation considers that the requirement in Article 32(2) that transmission system operators have access to the networks of other transmission system operators, if necessary for the purpose of carrying out their functions including in relation to cross border transmission, means that those transmission system operators be charged for that access on the same basis as system users in general. This, according to the Commission for Energy Regulation, follows from the requirement to offer non-discriminatory third party access. In this case, the charge would be an ongoing security of supply charge.

**Status of transmission system operators**

Article 32(1) of Directive 2009/72/EC establishes a system of third party access for system users based on regulatory approved tariffs. Eligible customers and supply undertakings are specifically mentioned as being system users. It is a settled principle that producers and shippers of gas are covered by third party access in order for the rights of
eligible customers to be effective\(^1\). However, transmission system operators are treated separately in Article 32(2). This paragraph does not link access by transmission system operators to the payment of regulatory approved tariffs.

The separate treatment of transmission system operators follows from the different role of transmission system operators from other entities. The importance of separating transmission system operators from system users such as producers and suppliers is clear from the extensive unbundling provisions in Directive 2009/73/EC. Moreover, transmission system operators are required by Article 4 of Regulation 715/2009 to cooperate through the European network of transmission system operators for gas, clearly separating them from system users.

The specific role of transmission system operators is to operate, maintain and develop transmission systems and make them available to the market. In particular, each transmission system operator has a duty under Article 13(2) to build sufficient cross border capacity to integrate European transmission infrastructure accommodating all reasonable and technically feasible demands for capacity and taking into account security of gas supply. Building such capacity necessarily requires access to neighbouring systems. Recognising the particular roles and responsibilities of transmission system operators makes clear that non discrimination does not imply that they be treated equivalently with system users. This means that when a transmission system operator constructs such capacity, it is not required to pay tariffs to other transmission system operators on the same basis as system users covered by Article 32(1).

**Security of supply charges for system users**

Article 14(1)(c) of Regulation 715/2009 obliges transmission system operators to offer network users both long and short services. The first subparagraph of Article 13(1) of Regulation 715/2009 requires that tariffs take into account the need for system integrity and its improvement and reflect actual costs incurred. Therefore the need to ensure security of supply can be taken into account in tariffs. The third subparagraph of Article 13(1) of Regulation 715/2009 requires that tariffs facilitate efficient gas trade and competition, and Article 13(2) of Regulation 715/2009 requires that tariffs neither restrict market liquidity nor distort trade across borders of different transmission systems.

Article 14(2) of Regulation 715/2009 states that tariffs with a shorter duration than a standard annual transport contract shall not result in arbitrarily higher or lower tariffs that do not reflect the market value of the service. The potential for Northern Ireland entities to realise a security of supply benefit as a result of the Northern Ireland transmission system being connected to neighbouring systems is indisputable. This is one of the most important reasons to develop interconnected networks and represents a major benefit of the development of the internal market. A fair proportion of the costs associated with ensuring security of supply benefits can be reflected in the tariffs associated with transporting gas to Northern Ireland from Ireland approved by the Commission for Energy Regulation. Provided it can be justified and does not lead to arbitrarily higher tariffs, the Irish transmission system operator may also reflect these security of supply benefits in the difference between tariffs for long and short term capacity. However, it is

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\(^1\) See for example the judgement of the court in Case C-439/06 (Citiworks)
not possible to place an ongoing charge on a system user, who may wish to only use the system on a small number of occasions, as a precondition for access to the system.

**Cost allocation and cross border infrastructure**

As the Commission for Energy Regulation points out there has been significant discussion about schemes for cross border tarification or an inter transmission system operator compensation mechanism in gas\(^2\). However, the particular papers highlighted in the letter of the Commission for Energy Regulation are discussion papers by associations about possible future arrangements and do not have any formal status. Perhaps equally relevant, the aim of these papers is to address the need for cooperation to ensure an appropriate cost allocation for new infrastructure. The cost allocation, and the associated impact on tariffs for system users, would be subject to the approval of the relevant national regulatory authority or of a body in which it was represented. This ensures that system users are not faced with tariffs to cover costs which their national regulatory authority does not consider appropriate.

DG Energy is supportive of efforts by national regulators to cooperate and seek out innovative ways to support the realisation of new infrastructure. In our work preparing the Commission's forthcoming proposal on Energy infrastructure, we have looked at ways to ensure that projects of common interest for the Union can be realised. However, we do no consider that it is possible for one transmission system operator or National Regulatory Authority to unilaterally require transmission system operators outside their jurisdiction to participate in inter transmission compensation schemes or similar arrangements.

**Common arrangements for gas**

In the context of the implementation of a single all Island entry exit system there would no longer be any explicit charge for transporting gas from Ireland to Northern Ireland or vice versa. This will inevitably require the application of judgement as to where costs are incurred in a jointly operated system. In a situation such as the future joint operation of the Irish and Northern Ireland systems it will be necessary for two national regulatory authorities to jointly agree the tariff arrangements, having due regard to their duties under the European legislation.

**Conclusion**

In answer to the joint question set out in your letter, and based on the information since provided by the two regulatory authorities, DG Energy considers that it is not possible for the Irish national regulatory authority to approve a regulatory framework which would require Northern Ireland entities to pay an ongoing security of supply charge in order to have access to the Irish transmission system and to deny access to the Irish transmission system to Northern Ireland entities who have not paid this charge.

Please note that this letter is not legally binding. Giving binding interpretation of Union law is ultimately the role of the European Court of Justice. This letter does not create any

\(^2\) Whether a system would be created through an inter transmission system operator mechanism, capacity bookings by transmission system operators, or direct contributions towards new investment in neighbouring system is a technical matter.
new legislative rules. It merely sheds light on the current understanding of the services of DG Energy on how certain provisions of European internal energy market legislation are to be interpreted.

Yours sincerely

Philip LOWE