



Safety Before LNG

Protecting the Shannon Estuary and its people

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European Commission Consultation on the list of candidate Projects of Common Interest in gas infrastructure

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Submission against the Addition
of
'PCI 5.3 Shannon LNG' Terminal and Connecting Pipeline'
and
its enabling and connected projects
'PCI 5.1.1 Moffat Physical Reverse Flow (IE/UK)'
&
'PCI 5.1.2. SNIP Physical Reverse Flow (NI/GB)'
to
the 4th Union List of Projects of Common Interest

29th May 2019

EXECUTIVE SUMMARY

Shannon LNG should be removed from the PCI Candidate List for the following reasons:

1. The new promoter of the Shannon LNG project is New Fortress Energy, with the declared intention of importing fracked US gas into Ireland. There has been no assessment of fracked gas in the energy mix in Ireland and Fracking is banned in Ireland, along with the treating and storing of fracked gas. In 2016 the EU Parliament vote on Biodiversity urged the Member States not to authorise any new hydraulic fracturing operations in the EU.
2. The project is currently held up in the courts (High Court and ECJ) for at least another 12-18 months and other challenges against breaches of the EU SEA, EIA, Competition and Public Participation Directives in the plan to import fracked US gas into the Irish Energy mix means the commissioning dates claimed by the promoter are unachievable.
3. This project is only motivated by the expansion of the US fracking industry which has moved the US from being a net importer to an exporter of gas. Switching from coal to shale gas is accelerating rather than slowing global warming. Giving PCI status to this project runs counter to the Precautionary Principle, EU climate targets and the Paris Agreement.
4. The N-1 condition through a joint risk approach where Ireland and the UK are treated as a single region was already achieved (The UK N-1 figure is 120% and Ireland's N-1 figure is 134%) and will be enhanced with the completion of the construction of the twinning of the second independent interconnector from Brighthouse to Cluden in Scotland (PCI 5.2). The PCI 5.2 Twinning of the Interconnector for the final 50km in Scotland already brings security of supply to Ireland with 2 completely independent interconnectors, representing 2 separate pieces of gas infrastructure.
5. Ireland already has access to 3 main source of access (Corrib, Interconnector s IC1 and IC2) and 2 Minor sources of access (Inch and Eco Gas). The PCI target of 3 Sources Minimum is already achieved.
6. The UK already, and consequently Ireland via the two - now independent - interconnectors, has access to appropriate connections, diversion of supply sources, supplying counterparts and routes, including LNG terminals.
7. The construction period of 4 years for 2 tanks means the commissioning date claimed is unachievable.
8. Shannon LNG did not inform the commission that it has abandoned the current onshore terminal plan on the current PCI candidate list since it has now applied for a new project - an FSRU. Why would the Commission agree to keep something on the list which is not going to be built?
9. Shannon LNG misled the Commission in its TEN-E meeting in Brussels on 7th May, 2019 when it stated that Shannon LNG *"has never said that it is buying fracked gas"*. This is contradicted by a written admission in documents filed with the US Securities and Exchange Commission by New Fortress Energy that *"certain of our suppliers employ hydraulic fracturing techniques"*. The EU TYNDP 2018 also states that *"The Shannon LNG project will be the closest European Import Terminal to the US LNG export terminals"*. This incoherent claim must be clarified.
10. There was no clarity in the presentation of the projects 5.1.1 (Moffat PRF) and 5.1.2 (SNIP PRF) at the TEN-E meeting in Brussels on 7th May 2019. It is unclear if these projects are in fact mutually exclusive or not.

11. Brexit, which was triggered by Article 50, now means that the UK will no longer be a member of the EU or of the EEA and consequently the main pre-condition of a cross-border impact with another EU or EEA country for qualification as a PCI is not achievable (i.e. automatic disqualification).
12. The planning for the 26-kilometre pipeline has expired and has not been reapplied for.
13. The reverse flow of the interconnector is deemed an "enabler" project for the Shannon LNG project but a project to export gas to the UK cannot be seen to be enhancing Ireland's Security of Supply and the term "enabler" does not exist in the PCI Regulation whereas the term "bottleneck" does exist.
14. Ireland and the UK is considered as the one gas area in the NSI-West Gas Region. Due to the Connected Systems Agreement (CSA) signed between the UK and Irish Gas TSOs in 1998 which cannot be broken without Irish agreement - even in the event of Brexit - this situation will continue unchanged. As such, the provision of an LNG terminal in Ireland when several already exist in the UK removes the necessity of the project, with or without Brexit (automatic disqualification).
15. New Sources of gas in offshore Ireland are going through the licensing process (Exxon, China and Europa) including at a large field adjacent to the Corrib field, bringing into question the assertion that "Corrib is depleting".
16. The project promoter, asserts that the quantity of gas imported would be "equivalent to Ireland's total foreign natural gas imports" meaning that the sheer amount of gas would render Ireland's renewable sector unable to compete.
17. The Climate Emergency just declared in Ireland obliges the Commission to respect the Subsidiarity Principle which rules out Union intervention when an issue can be dealt with effectively by the Member State. Putting the Irish projects on the PCI list which sets the framework for future development consent runs counter to the principle of subsidiarity.
18. The European Ombudsman has decided to open a formal inquiry into allegations that there was maladministration by the European Commission in the creation of a PCI list which was proposed to the EU Parliament and voted on without any proper SEA, which would have obliged it to consider "reasonable alternatives".
19. There has been no assessment of the cumulative impacts of similar projects - the 'InisFree LNG' by 'Next Decade' in Cork, the Island Magee Project in Larne Lough and Bio-gas projects where Gas Networks Ireland (GNI) aims to have at least 20% of renewable gas in the network by 2030.

INTRODUCTION

PCI accreditation from the European Commission is an extremely powerful initial development consent for gas projects such as the proposed Shannon LNG US fracked gas import terminal because it sets the framework for future development consent within the Member States. Article 7 of the PCI Regulation¹ states that *"projects of common interest shall be allocated the status of the highest national significance possible and be treated as such in permit granting processes"*. The Regulation goes on to state that *"With regard to the environmental impacts addressed in Article 6(4) of Directive 92/43/EEC and Article 4(7) of Directive 2000/60/EC, projects of common interest shall be considered as being of public interest from an energy policy perspective and may be considered as being of overriding public interest, provided that all the conditions set out in these Directives are fulfilled"*.

The boom in proposed LNG import terminals throughout Europe is motivated by the expansion of the US fracking industry which has moved the US from being a net importer to an exporter of gas. However, this comes with a high environmental, public health and climate change price. The most up-to-date scientific knowledge is categorical on the following points: The number one climate threat in Europe is fracked gas. Cornell University's Professor Robert Howarth, a leading scientist in this area, states that this is no bridge fuel, that switching from coal to shale gas is accelerating rather than slowing global warming, that methane's impact on climate over 10 years is 105 times more potent than carbon dioxide, that one half of Methane emissions in the US is coming from Shale Gas Leakage and that, to put it simply, fracked gas is the dirtiest of all fossil fuels with a bigger climate footprint than coal.² This was not the thinking over 10 years ago when the Shannon LNG project initially obtained planning permission.

Indeed, DG Trade, in its final Trade Sustainability Impact Assessment (SIA) on the Transatlantic Trade and Investment Partnership (TTIP) between the EU and the USA in March 2017³, citing the UN Framework Convention on Climate Change (UNFCCC), the Kyoto Protocol and the Paris Agreement found that while a shift to gas away from coal in the EU could lead to some environmental gains *"locally"*, *"environmental benefits from LNG over coal (which are debatable due to methane leakage during extraction and energy needed during production, conversion and transport) are perhaps even negative if a combination of LNG+coal crowded out 'greener' energy sources such as renewables in the global energy mix"*.

However, The European Commission is proceeding, nevertheless, with the implementation of the Energy Plan to import fracked US gas⁴ announced by President Juncker in July 2018⁵ following his visit to President Trump in the USA through multiple LNG terminals and countries and imposed via the PCI procedure. We assert that this represents unlawful State Aid and Misuse of aid at each Member State Level and is also a breach of the SEA Directive, which requires an assessment of reasonable alternatives before a plan. A project is not allowed to have the PCI status unless it is approved by the Member State because Article 3.3(a) of Regulation 347/2013 states *"each individual proposal for a project of common interest shall require the approval of the Member States, to whose territory the project relates"*. The current PCI list was approved by Ireland on 17th October 2017⁶.

Shannon LNG is applying once more for inclusion on the 4th PCI list on the grounds that it promotes diversification and gives security of supply to Ireland. However, this criteria is not fulfilled since the N-1 condition through a joint risk approach where Ireland and the UK are treated as a single region was already

¹ PCI Regulation (EU) No 347/2013 <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:115:0039:0075:en:PDF>

² Howarthlab.org

³ European Commission DG Trade: "SIA in support of the negotiations on a Transatlantic Trade and Investment Partnership (TTIP) - Final Report" - March 2017
http://trade.ec.europa.eu/doclib/docs/2017/april/tradoc_155464.pdf

⁴ http://europa.eu/rapid/press-release_IP-19-2313_en.htm

⁵ Joint U.S.-EU Statement following President Juncker's visit to the White House Washington, 25 July 2018 (http://europa.eu/rapid/press-release_STATEMENT-18-4687_en.htm)

⁶ 23 January 2019. Irish Member State Parliamentary Answer by the Minister admitting formal Member State support for the Shannon LNG PCI project (<https://www.oireachtas.ie/en/debates/question/2019-01-23/204/>)

achieved⁷ and will be enhanced with the completion of the construction of the twinning of the second independent interconnector from Brighthouse to Cluden in Scotland (PCI 5.2). The PCI 5.2 Twinning of the Interconnector for the final 50km in Scotland already brings security of supply to Ireland with 2 completely independent interconnectors, representing 2 separate pieces of gas infrastructure. In addition, the European Commission itself recognises that Ireland and the UK represent the one "area" in the gas region that is the North-South gas interconnections in Western Europe ('NSI West Gas') priority corridor⁸. The UK already has access to US fracked gas imports with the first fracked gas imports arriving to the UK in September 2018. This also means that the security of supply and competition criteria put forward by Shannon LNG will not be met technically because the UK already has access to appropriate connections, diversion of supply sources, supplying counterparts and routes.

If anything, an LNG terminal for fracked US gas in Ireland will create fossil fuel lock in and compromise the development of the indigenous biogas industry, which could help in the reduction of the GHG emissions from the agricultural sector. Developing domestic renewable energy sources could enhance the country's energy security in the middle to long term

Ireland banned both fracking and the importation of fracked gas. Why is there no consideration of fracked gas in the energy mix of what is being supplied under the generic heading of "LNG"? Only one Member State is affected - Ireland - unless the aim is to export gas from Shannon LNG to the UK (once the PCI project of the Reverse Flow of the Interconnector to Moffat is implemented), benefiting from lower corporation tax in Ireland and the implementation of the US-EU trade deal. The Trade Deal should have nothing to do with the PCI process.

Ultimately, the Shannon LNG project in particular, and the importation of fracked US gas to Europe in general, is a highly politically-motivated energy plan which is favouring trade over climate, which gives strong support for the removal of Shannon LNG from the proposed list of Projects of Common Interest.

⁷ "Energy Policies of IEA Countries. Ireland 2019 Review - International Energy Agency", page 66
https://www.connaissancedesenergies.org/sites/default/files/pdf-actualites/Energy_Policies_of_IEA_Countries_Ireland_2019_Review.pdf

⁸ <https://www.cru.ie/wp-content/uploads/2014/07/CER14795b-Part-D-of-Gaslink-GNIs-CEF-Grant-application.pdf> ("Connecting Europe Facility 2014-2020. Energy Call for proposals 2014" page 14

1. METHODOLOGY of MONITORING PRINCIPLES

The Trans-European Networks for Energy (TEN-E) meeting in Brussels on May 7th, 2019 outlined the methodology that would be used for evaluating whether or not a project qualified as a Project of Common Interest.

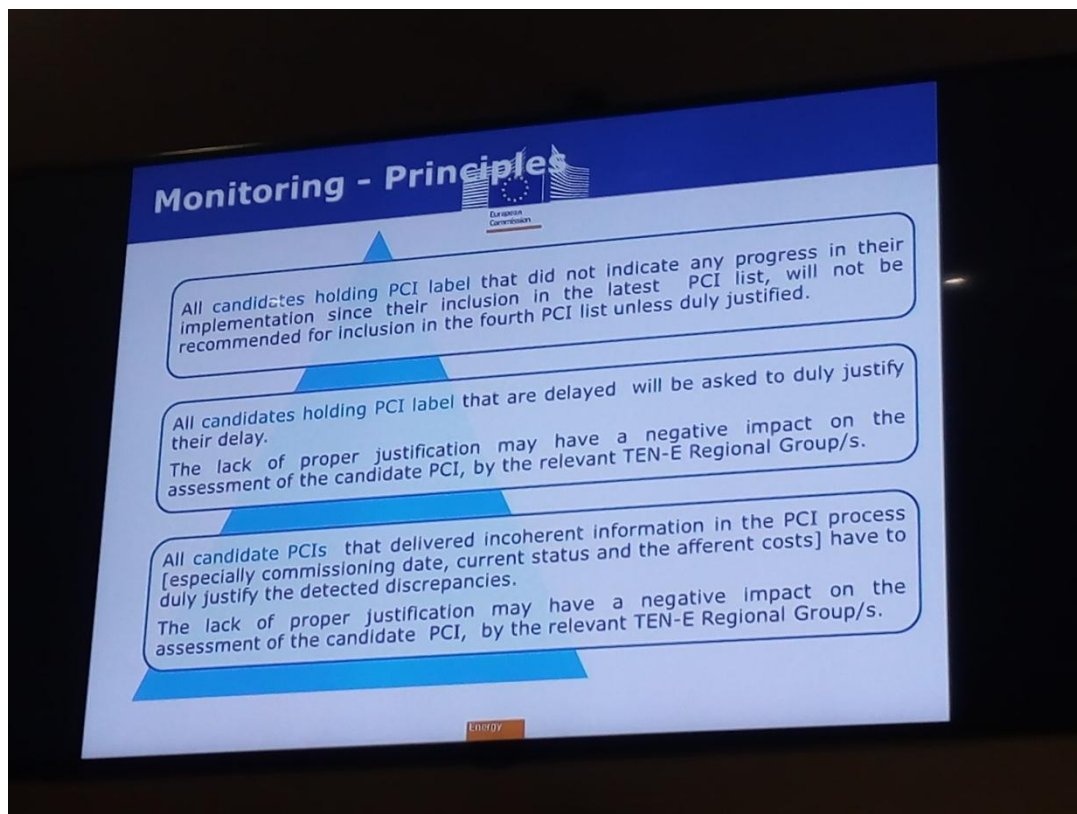


Figure 1: PCI Monitoring Principles.

1.1 Delays Caused by the Promoter

All Candidates holding PCI label that did not indicate any progress in their implementation since their inclusion in the latest PCI list, will not be recommended for inclusion in the fourth PCI list unless duly certified.

The Shannon LNG Terminal and Pipeline has not progressed since its inclusion in the latest PCI list.

- a. Shannon LNG development consent for the 26-kilometer pipeline expired on February 17th, 2014¹⁰. Shannon LNG did not make any progress in applying for a new planning permission for the 26-kilometer pipeline - a delay caused entirely by the project promoter.
- b. Shannon LNG found a new promoter for the project, a US fracked gas exporter 'New Fortress Energy', announced on August 25th 2018¹¹. The "Prohibition of Onshore Hydraulic Fracturing Act 2017"¹², already makes the "*taking*", or "*storing*" of fracked gas "*situated in Ireland*" illegal and this would therefore include fracked gas in LNG tankers arriving from the USA. The proposal to import US fracked gas into the Irish Energy System one year after Fracking was banned in Ireland led to a legal challenge to the extension of

¹⁰ <http://www.pleanala.ie/casenum/GA0003.htm>

¹¹ Irish Examiner August 25th, 2018 <https://www.irishexaminer.com/breakingnews/business/1bn-shannon-gas-project-acquired-864419.html>

¹² <http://www.irishstatutebook.ie/eli/2017/act/15/section/1/enacted/en/html>

planning permission as outlined by Eddie Mitchell at the TEN-E meeting of 7th May, 2019. The challenge was caused by the actions of Shannon LNG instigating a plan to import US fracked gas into Ireland.

1.2 Outside Delays

All Candidates holding PCI label that are delayed will be asked to duly justify their delay. The lack of proper justification may have a negative impact on the assessment of the candidate PCI, by the relevant TEN-E Regional Group/s.

- a. The permission for the extension of planning permission for the LNG terminal (not the expired pipeline) has been challenged in the High Court in Ireland and has now been referred to the European Court of Justice on certain aspects of the EU Habitats Directive. On an initial reading this would seem to have been outside the Promoter's Sphere of Influence. However, as highlighted by Eddie Mitchell of "*Love Letirm*", at the 7th May 2019 TEN-E meeting in Brussels, as highlighted in the Irish Parliament¹³, as highlighted by the Irish Member State National Radio Station RTÉ 1¹⁴ and as was highlighted in the Irish National Newspaper - The Sunday Times¹⁵ - it was revealed that Irish Environmental NGO "'Friends of the Irish Environment' were offered one million euros by the Shannon LNG project to withdraw its court case against the major energy project". The Irish Parliament (The Dáil) heard it referred to a "*bribe*". It seems that this approach is systemic because it already occurred in the legal environmental challenge to the Corrib pipeline where the Irish Government bought the decision by making an offer to settle in the legal challenge it was losing with no respect for the public in whose trust the case was taken¹⁶. This is unacceptable behaviour as it would represent an attempt to purchase an inalienable right to build a US fracked gas import terminal on the Shannon Estuary without the public knowing about it. It is not acceptable that such important environmental decisions on Ireland's Energy policy could be determined in the margins of the High Court; behind closed doors; in private; without any meaningful participation by the public, representing a denial of access to justice by the public. This has now brought the planning consent for this project, the extension of an old project, into disrepute. And this will almost certainly lead to more delays. The project promoter must take some responsibility and must justify itself in causing the delay in this matter.
- b. Shannon LNG also withheld from the public the fact that the new Project Promoter was US fracked gas exporter New Fortress Energy, until after the planning decision was made. Public Consultation on the Planning Application for the proposed Shannon LNG terminal ended on 14th May 2018. It was disclosed by the Irish Planning Authority (An Bord Pleanála) on January 10th and 15th 2019 that the PCI Section of An Bord Pleanála was aware since *April 4th, 2018* that New Fortress Energy (a US Fracked Gas Exporter) was a stakeholder in the Shannon LNG project. Planning permission was given on July 11th, 2018 and the public only became aware on August 25th, 2018, through the media¹⁷, that the real project promoter was US fracked gas exporter New Fortress Energy. US fracked gas exporter New Fortress Energy's involvement in the Shannon LNG project was therefore deliberately withheld, from the public at the public participation stage and decision-making stage of the planning application process. The Political Establishment in Ireland has conspired against the Irish people to get US fracked

¹³ <https://www.oireachtas.ie/en/debates/debate/dail/2019-05-21/7/> Planning and Development (Climate Measures) (Amendment) Bill 2019: First Stage Dáil Éireann debate - Tuesday, 21 May 2019

¹⁴ <https://www.rte.ie/radio/radioplayer/html5/#/radio1/21559169>

¹⁵ <https://www.thetimes.co.uk/edition/ireland/friends-of-the-irish-environment-got-1m-offer-to-end-lawsuit-over-kerry-gas-terminal-t3hvfkhs2>

¹⁶ <https://ien.ie/environmental-law-implementation-group/> and <http://www.antisce.org/articles/corrib-settlement-means-ensure-better-environmental-law-taisce>

¹⁷ <https://www.irishexaminer.com/breakingnews/business/1bn-shannon-gas-project-acquired-864419.html>

gas into the Energy Mix before it could be scrutinised by the Irish people and stopped, thereby prejudicing this entire planning process. The project promoter must take some responsibility and must justify itself in causing the delay in this matter.

1.3 Incoherent Information

All Candidate PCIs that delivered incoherent information in the PCI process (especially commissioning date, current status and the afferent costs) have to duly justify the detected discrepancies. The lack of proper justification may have a negative impact on the assessment of the candidate PCI, by the relevant TEN-E Regional Group/s.

Article 5 (8) of PCI Regulation 347/2013 states:

"A project of common interest may be removed from the Union list according to the procedure set out in Article 3(4) if its inclusion in that list was based on incorrect information which was a determining factor for that inclusion, or the project does not comply with Union law."



Figure 2: Shannon LNG presentation slide in TEN-E meeting, Brussels, 7th May 2019

- a. Shannon LNG's presentation at the TEN-E meeting of 7th May 2019 was for "Shannon LNG - Import Terminal (& HE CHP Plant)" as per Figure 2. However, in the current TYNDP 2018 LNG-N-30¹⁸, it is described as "Shannon LNG Terminal and Connecting Pipeline". So, Shannon LNG has omitted the pipeline and instead added a power station in what it presented on 7th May, 2019. This is incoherent and needs to be clarified

¹⁸ PCI gas candidates Description: https://ec.europa.eu/info/sites/info/files/pci_gas_candidates_description.zip

- b. The LNG Terminal part of the Project is not fully permitted because of the Legal Challenge to the Extension of planning for the terminal¹⁹. The Interim High Court Decision²⁰ ruled that this current project has raised serious environmental questions which have been referred to the ECJ. Given that the Judge has ordered that no construction is to begin until the ECJ has ruled on the matter²¹ (not expected for 1 more year at least), this also means that the Commissioning date of 2022 is impossible to achieve - another incoherence that needs to be clarified.
- c. The permission for the connecting 26 kilometre pipeline permission has expired²². This means that for this connecting pipeline a new application has to be submitted. This information was not disclosed to the Commission and it may affect the proposed commissioning date.
- d. The original planning permission PA0002 EIA²³ and Oral Hearing²⁴ and Final Inspector's Report into PA0002²⁵ agreed that the original construction phase would last 4 years and the remaining 2 tanks would take 2 years to complete. The construction period will therefore be at least 6 years. An application to extend planning permission for 5 years for a project that has not yet started means the development as per the original planning permission timescale would still not be completed within the 5 years. This means that the commissioning date as put forward by the project promoter, Shannon LNG/ New Fortress Energy is self-evidently incoherent and must be clarified.
- e. The project is now back at the Ideation stage as it seems, through a new and secret application (which is contrary to Article 9(7) of the PCI Regulation²⁶ for a new project) to the Irish planning authority for what is evidently a floating storage regasification unit instead of an onshore storage system. No other information has been revealed to the public other than that Shannon LNG has made a new application to the Irish Planning Authority (An Bord Pleanála) on March 20th, 2019 for a *"Proposed alteration to Shannon LNG regasification terminal to provide for a reduced footprint, less onshore facilities and equipment and the omission of four onshore storage tanks and associated pond for hydrotesting."*²⁷. The project promoter at the 7th May 2019 meeting in Brussels stated: *"We do not know how long that judicial review would take which is why we would have to consider other projects"*. However,
 - This is now clearly a Floating Storage Regasification Unit (FSRU) and needs to be clarified immediately.
 - An FSRU would represent a new project and cannot be considered an alteration to an existing planning permission which has now expired
 - The provisions of Chapter III of the PCI Regulation will now apply to any new project proposed by the promoter as per Article 19. This will be a new "application file".

¹⁹ <http://www.pleanala.ie/casenum/PM0014.htm>

²⁰ <http://courts.ie/Judgments.nsf/0/A6D3C5CE0FD82116802583A200392CCD> and <http://www.safetybeforelng.ie/pressreleases/pressrelease20190215HighCourtRulesOnExtensionOfShannonLNGPlanning.html>

²¹ <https://www.irishtimes.com/news/environment/developers-of-shannon-gas-processing-terminal-ordered-not-to-begin-construction-1.3795310> Irish Times February 15th, 2019

²² <http://www.pleanala.ie/casenum/GA0003.htm> where planning permission is 5 years by default in Ireland, unless otherwise stated in the planning decision

²³ Section 7.2 Shannon LNG Environmental Impact Assessment

²⁴ Day 4 of Oral Hearing into proposed Shannon LNG Terminal 24th January 2008

²⁵ Inspector's Report into proposed Shannon LNG Terminal, 14th March 2008

<http://www.pleanala.ie/casenum/PA0002.htm>

²⁶ "The project promoter, or, where national law so provides, the competent authority, shall establish and regularly update a website with relevant information about the project of common interest, which shall be linked to the Commission website and which shall meet the requirements specified in Annex VI.6." <https://eur-lex.europa.eu/legal-content/en/TXT/?qid=1413451972937&uri=CELEX:02013R0347-20140110>

²⁷ <http://www.pleanala.ie/casenum/304007.htm>

- As per the National Regulatory Authority (CRU) submission at the 7th May 2019 TEN-E meeting in Brussels, a review of costs for the new project would have to be undertaken and submitted by New Fortress Energy.
- f. The Shannon LNG representative, in his presentation at the TEN-E Meeting of May 7th 2019 stated:

"There has been discussion about fracked gas. Shannon LNG has never said where it is sourcing its gas. It has never said that it is buying fracked gas. so the assumption about fracked gas is not relevant for us. We don't know where it emanates from."

However, the assertion that 'New Fortress Energy' was indeed a fracked gas exporter was confirmed in a filing submitted to the United States Securities and Exchange Commission on November 9th 2018 by the Company itself where it stated:

"We are an integrated gas-to-power company that seeks to use "stranded" natural gas to satisfy the world's large and growing power needs"

and

"Hydraulic Fracturing. Certain of our suppliers employ hydraulic fracturing techniques to stimulate natural gas production from unconventional geological formations (including shale formations), which currently entails the injection of pressurized fracturing fluids (consisting of water, sand and certain chemicals) into a well bore" ²⁸

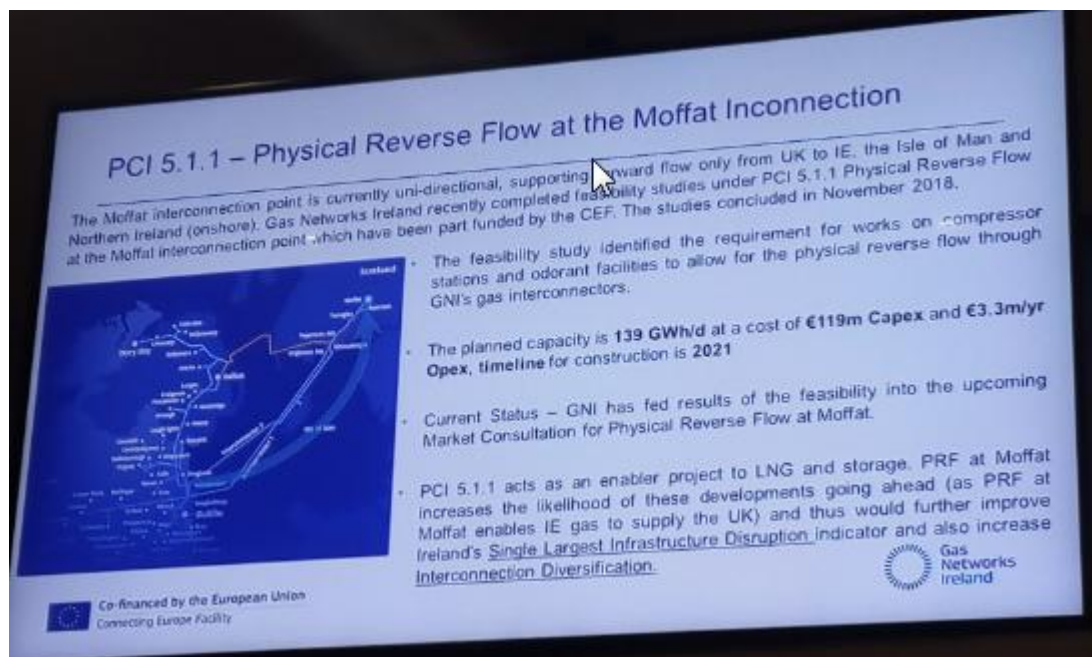


Figure 3: PCI 5.1.1. Physical Reverse Flow at the Moffat Interconnection Point

- g. The Reverse Flow of the Interconnector (PCI 5.1.1 - Figure 3) from Ireland to the UK has been described by the project promoter, Gas Networks Ireland (GNI), as an "enabler project to LNG and storage". However, this is the contrary to the principle of the reduction of bottlenecks as per Article 4(2)(b)(i), because New Fortress Energy has itself declared in its submission to the US Securities and Exchange Commission that its Shannon LNG project would have the capacity

²⁸ https://marcellusdrilling.com/wp-content/uploads/2018/11/s002392x7_s1.pdf

to import "the equivalent of Ireland's total foreign gas imports"²⁹. Given that the UK security of Supply is already at 120%, there is an incoherence here that needs to be clarified.

- h. There is a lack of clarity in the reverse flow of the interconnector projects 5.1.1 and 5.1.12 (SNIP - Figure 4) in that it is unclear if these 2 projects are entirely mutually exclusive or not. Reverse flow projects, under Annex IV(1)(c) must cross the borders of Member States but the SNIP interconnector is in the same country, the UK, so technically this part of the Reverse Flow does not qualify as a PCI because it lacks the required Article 4(1) cross-border impact.

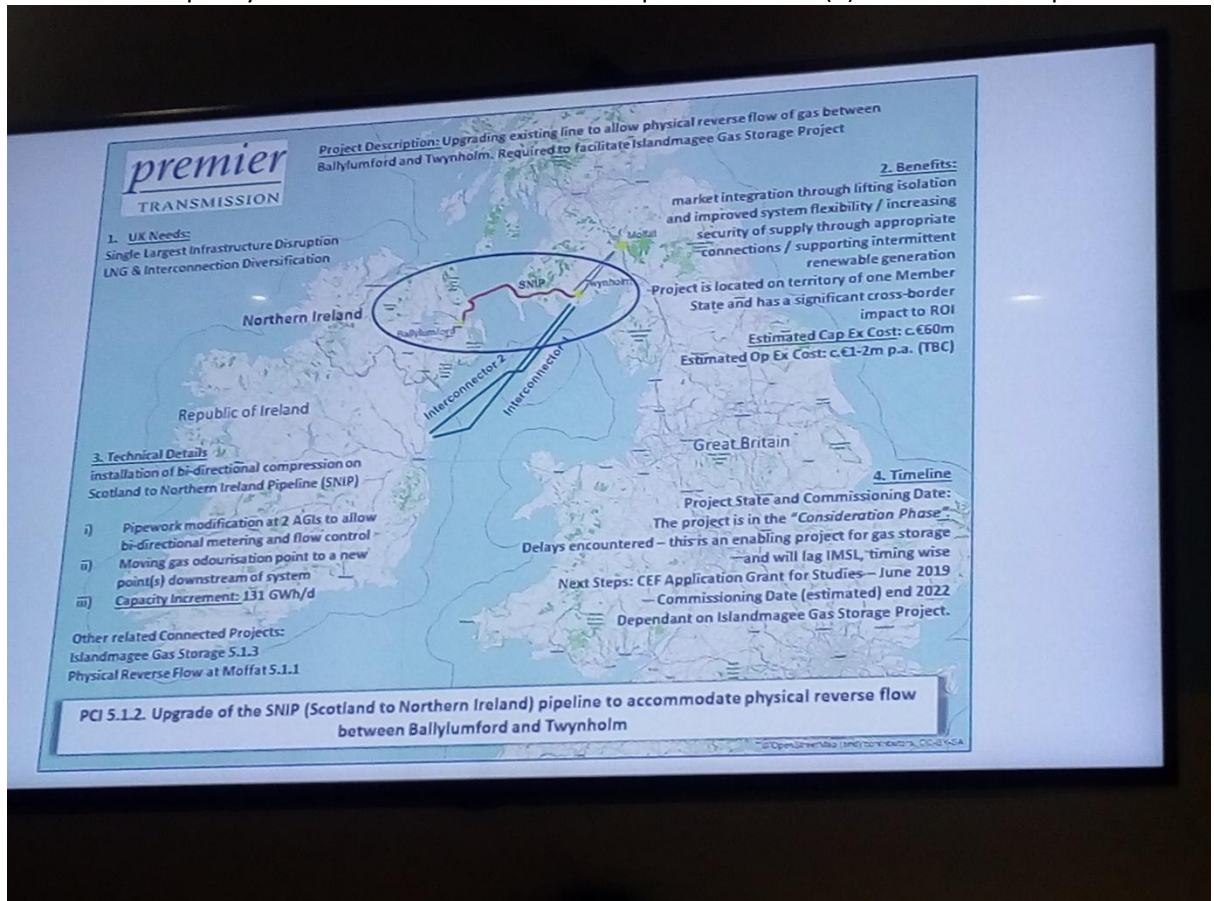


Figure 4: PCI 5.1.2 SNIP Physical Reverse Flow

- i. There is a lack of clarity in the claims of the promoter for 5.1.12 (SNIP) in that the project for physical reverse flow from Northern Ireland to Scotland (both in the UK) could have a significant cross border impact to Ireland. These claims are highly theoretical, at best, and seem only to be made in an attempt to fulfil the required cross border impact requirement of Article 4(1).

²⁹ https://marcellusdrilling.com/wp-content/uploads/2018/11/s002392x7_s1.pdf page 5

2. CRITERIA

We assert that the criteria for the proposed Shannon LNG project to be accepted as a Project of Common Interest as per Article 4 of the PCI Regulation 347/2013³⁰ are not being met.

The criteria are divided into general criteria, specific criteria and qualitative criteria

2.1 GENERAL CRITERIA

Article 4(1) of the PCI Regulation specifies the 3 general criteria as follows:

“Projects of common interest shall meet the following general criteria:

- a) the project is necessary for at least one of the energy infrastructure priority corridors and areas;*
- b) the potential overall benefits of the project, assessed according to the respective specific criteria in paragraph 2, outweigh its costs, including in the longer term; and*
- c) the project meets any of the following criteria:*
 - i. involves at least two Member States by directly crossing the border of two or more Member States;*
 - ii. is located on the territory of one Member State and has a significant cross-border impact as set out in Annex IV.1;*
 - iii. crosses the border of at least one Member State and a European Economic Area country.”*

We assert that none of these 3 general criteria are being met.

2.1.1. Necessity for the priority corridors and areas

Shannon LNG proposes to bring in fracked US gas to the North-South gas interconnections in Western Europe (‘NSI West Gas’) priority corridor, which is defined in Article 4(1)(a) as:

*“gas infrastructure for North-South gas flows in Western Europe to further diversify routes of supply and for increasing short-term gas deliverability. Member States concerned: Belgium, Denmark, France, Germany, Ireland, Italy, Luxembourg, Malta, the Netherlands, Portugal, Spain, the United Kingdom”.*³¹

1. However, the Member States of this priority corridor already have access to fracked gas from the US via LNG imports to the UK since September 2018³² and to France since October 2018³³. Ireland also has access to LNG-sourced gas via the UK LNG import terminals which arrive in Ireland via the 2 interconnectors IC1 and IC2. So, this first general criteria that “the project is necessary for at least one of the energy infrastructure priority corridors and areas” of Article 4(1)(a) is not fulfilled because the aim to “further diversify routes of supply and for increasing short-term gas deliverability” to Ireland is already accomplished by similar projects in the UK and Ireland has immediate access to the UK's increased Supply Diversity via interconnectors IC1 and IC2. The project, by this general criteria must, in addition, be “necessary”, a stronger term putting the burden of proof on the project promoter to explain why the project is so “necessary” and there is no immediately apparent explanation here why this project is so “necessary”. It is a ‘nice to have’ not a “necessity” as required by the legislation. If the excuse of Brexit uncertainty is used as a counter-argument to the assertion in this paragraph, it must be noted that the Interconnector IC1 supplies Stranraer in Scotland and all of Northern Ireland, meaning that any threat to supply of gas to the Interconnector will also threaten gas supply by the UK to regions in the UK, an implausible and unsovereign option for the UK. If Brexit uncertainty is relied on then, logically, the

³⁰ <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:115:0039:0075:en:PDF>

³¹ Annex 1 of PCI Regulation 347/2013 <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:115:0039:0075:en:PDF>

³² US Energy Information Administration: https://www.eia.gov/dnav/ng/ng_move_poe2_dcu_NUS-NUK_m.htm

³³ US Energy Information Administration: https://www.eia.gov/dnav/ng/NG_MOVE_POE2_DCU_NUS-NFR_M.htm

related proposed PCI projects of Physical Reverse Flow of the Interconnector and the Island Magee salt cavern Gas Storage projects should be eliminated from the list because the UK would no longer be an EU Member State.

Other safeguards exist, even in the scenario of a "hard Brexit". In Gaslink's (now Gas Networks Ireland) grant application to the European Commission "Connecting Europe Facility 2014-2020 Energy Call for Proposals 2014" for PCI 5.2 Twinning of Southwest Scotland onshore system between Cluden and Brighthouse Bay (United Kingdom)³⁴ the following Transportation agreements between UK & Irish Gas TSOs were noted:

- *"The Connected Systems Agreement (CSA) between National Grid and Ervia for Great Britain (UK)-Ireland gas interconnectors came into effect on the 1st October 1998. Under the CSA it was agreed that Ervia shall be entitled to have the Ervia gas system connected to National Grid's gas system at the Connected System Points, and that the agreement shall not be amended, except by agreement between NGG and Ervia.*
- *The Transportation Agreement between Ervia and Premier Transmission Limited (PTL) was signed on the 21st August 1996, and relates to the provision of capacity from Moffat to Twynholm."*

2. The European Commission admitted in a press release on August 9th, 2018 the high level of existing spare capacity that the EU already had in LNG projects which would question the necessity for adding more spare capacity to the system:

"The EU has co-financed or committed to co-finance LNG infrastructure projects worth over €638 million (see list of projects in Annex 2). In addition to the existing 150 billion cubic meters of spare capacity in the EU, the EU is supporting 14 liquefied natural gas infrastructure projects, which will increase capacity by another 15 billion cubic meters by 2021, which could welcome imports of liquefied natural gas from the U.S., if the market conditions are right and prices competitive".³⁵

3. The argument that the Shannon LNG project is entirely unnecessary is supported by a recent report entitled "Overexposed - How the IPCC's 1.5° C Report demonstrates the risks of overinvestment in oil and gas", produced by 'Global Witness',³⁶ which found that:

"Overinvestment in oil and gas creates risks for investors, regardless of whether the world is effective in tackling climate change. Either investors face assets being stranded as demand for fossil fuels falls in a transition to a low carbon economy, or the overinvestment contributes to excess emissions from fossil fuels, the failure to transition and the financial costs of a dramatically changed climate".

A 2018 study, commissioned by the EU COM, on "The role of Trans-European gas infrastructure in the light of the 2050 decarbonisation targets"³⁷ concludes that *"the utilisation level of LNG terminals and import pipelines would significantly decrease, and some assets might need to be decommissioned or used for other purposes"*. Referring to Ireland it states that *"capital expenditures will in the future be more focused on replacement rather than on expansion of the network"* and that *"the risk for stranded gas assets is in Ireland limited as it does not have LNG terminals or gas storage facilities"*

³⁴ <https://www.cru.ie/wp-content/uploads/2014/07/CER14795b-Part-D-of-Gaslink-GNIs-CEF-Grant-application.pdf> ("Connecting Europe Facility 2014-2020. Energy Call for proposals 2014" page 14

³⁵ EU-U.S. Joint Statement of 25 July: European Union imports of U.S. Liquefied Natural Gas (LNG) are on the rise Brussels, 9 August 2018 (http://europa.eu/rapid/press-release_IP-18-4920_en.htm)

³⁶ "OverExposed How the IPCC's 1.5° C Report demonstrates the risks of overinvestment in oil and gas" Global Witness, 23 April 2019 : <https://www.globalwitness.org/documents/19708/Overexposed.pdf>

³⁷ <http://trinomics.eu/wp-content/uploads/2018/11/Final-gas-infrastructure.pdf>

All the political attention and public financial support LNG projects receive go to the expense of sustainable and low-carbon solutions - with dire consequences for our climate and our economies.

4. New Fortress Energy has itself declared in its submission to the US Securities and Exchange Commission that its Shannon LNG project would have the capacity to import "*the equivalent of Ireland's total foreign gas imports*"³⁸. It is difficult to understand how a project that would potentially double Ireland's imports could be considered be described as "necessary".
5. British Company "Europa" has lodged an oil and gas application for a new site near Corrib gas field, the Irish Business Post has revealed:
*"The Inishkea site sits adjacent to Ireland's largest producing gas field, Corrib. Europa has previously said it expects the Inishkea site to have significant gas reserves which could reduce Ireland's reliance on gas imports when the Corrib field stops producing"*³⁹

The same newspaper also revealed that "Another application to drill an exploratory oil and gas well off the coast of Kerry by the Chinese National Offshore Oil Corporation and Exxon Mobil has passed its latest and final environmental assessment"⁴⁰

This news of offshore drilling in Ireland brings into question the necessity and urgency of the current project to import fracked US gas.

2.1.2. Potential Overall Benefits

The Article 4(1)(b) criteria states that

"the potential overall benefits of the project, assessed according to the respective specific criteria in paragraph 2, outweigh its costs, including in the longer term".

Article 4(3) is more precise when it states that for projects like LNG terminals:

"For projects falling under the energy infrastructure categories set out in Annex II.1 to 3, the criteria listed in this Article shall be assessed in accordance with the indicators set out in Annex IV.2 to 5."

For Gas projects, Annex IV (3) states:

"Concerning projects falling under the categories set out in Annex II.2, the criteria listed in Article 4 shall be evaluated as follows:

- a) Market integration and interoperability shall be measured by calculating the additional value of the project to the integration of market areas and price convergence, to the overall flexibility of the system, including the capacity level offered for reverse flows under various scenarios.*
- b) Competition shall be measured on the basis of diversification, including the facilitation of access to indigenous sources of supply, taking into account, successively: diversification of sources; diversification of counterparts; diversification of routes; the impact of new capacity on the Herfindahl-Hirschmann index (HHI) calculated at capacity level for the area of analysis as defined in Annex V.10.*

³⁸ https://marcellusdrilling.com/wp-content/uploads/2018/11/s002392x7_s1.pdf page 5

³⁹ <https://www.businesspost.ie/news/europa-lodges-oil-gas-application-new-site-near-corrib-gas-field-443996>
The Irish Sunday Business Post, May 19th, 2019

⁴⁰ <https://www.businesspost.ie/business/oil-gas-drilling-application-clears-hurdle-444530> The Irish Business Post, May 26th, 2019

- c) *Security of gas supply shall be measured by calculating the additional value of the project to the short and long-term resilience of the Union's gas system and to enhancing the remaining flexibility of the system to cope with supply disruptions to Member States under various scenarios as well as the additional capacity provided by the project measured in relation to the infrastructure standard (N-1 rule) at regional level in accordance with Article 6(3) of Regulation (EU) No 994/2010.*
- d) *Sustainability shall be measured as the contribution of a project to reduce emissions, to support the back-up of renewable electricity generation or power-to-gas and biogas transportation, taking into account expected changes in climatic conditions."*
1. Whereas only one of the specific criteria in paragraph 2 need to be fulfilled in order to qualify under the specific criteria obligation, the general criteria oblige an assessment of all the respective specific criteria in order to assess the potential overall benefits.

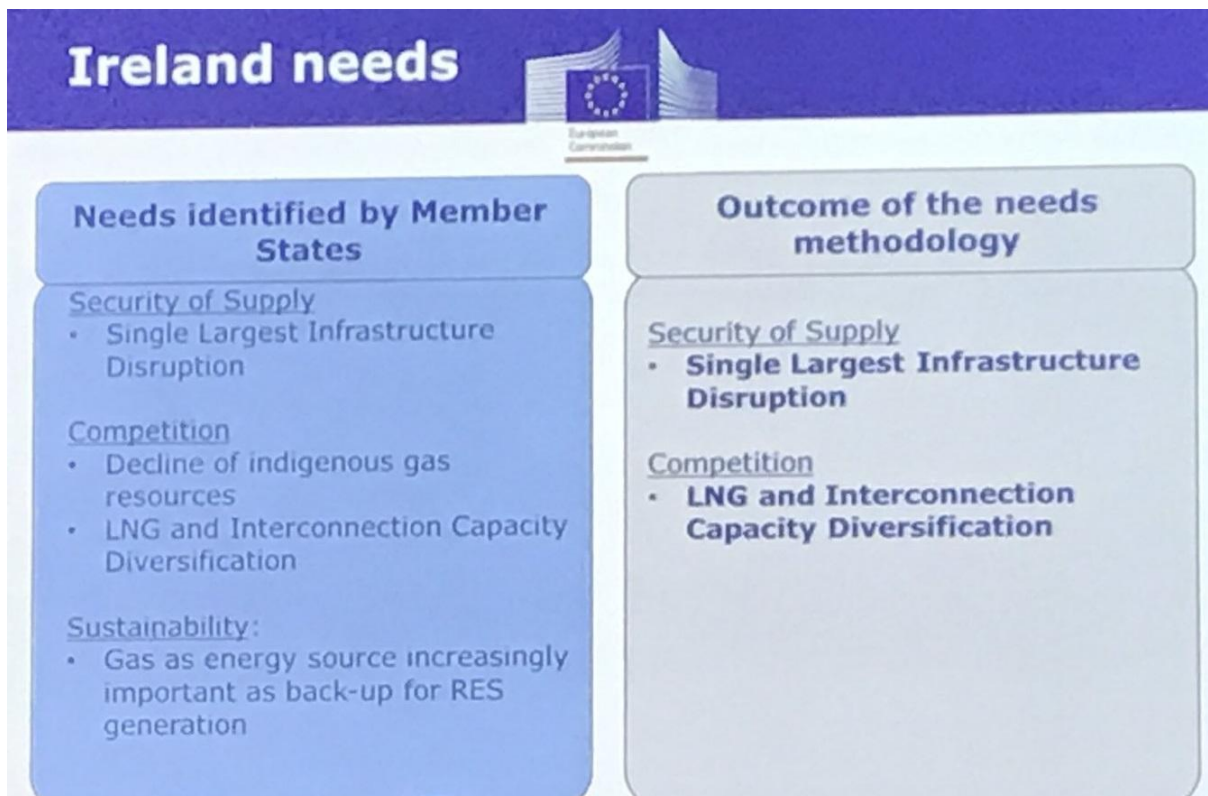


Figure 5. Ireland Needs Methodology: PCI Regional Meeting, March 27th, 2019

As per the PCI Regional meeting of 27th March 2019 (Figure 5), the Shannon LNG project is only being assessed on the Security of Supply and Competition specific criteria. However, in order to properly assess the potential overall benefits and costs then it must also be assessed on the Market Integration and Sustainability Criteria, where clearly it does not fulfil these needs in the longer term. Importing Fracked US gas, a fossil-fuel more damaging to the climate than coal over its full life cycle is clearly not fulfilling this criteria as is implicitly accepted by DG Energy in its rejection of these 2 criteria for Shannon LNG on March 27th, 2019.

Annex IV clearly determines that “*Sustainability shall be measured as the contribution of a project to reduce emissions, to support the back-up of renewable electricity generation or power-to-gas and biogas transportation, taking into account expected changes in climatic conditions*”. This project to import US fracked gas clearly does the exact opposite of the Sustainability criteria and this must be acknowledged by DG Energy.

2. The TEN-E Meeting in Brussels on May 7th, 2019 heard from the Commission itself that it was experiencing difficulties in how to include sustainability criteria in the PCI assessment process in a manner which was not-discriminatory across all the regional groups. We suggest that the following assessment criteria should be included:
 - a. The Life Cycle impacts of a project (e.g. fracked gas has a higher climate impact than conventional gas);
 - b. Fossil Fuel Lock In of the project (e.g. the Shannon LNG project has been given priority grid access for its proposed Power Plant adjacent to the proposed LNG terminal⁴¹ and we ask for a clarification that this priority access does not come ahead of renewable energy sources).
3. Any assessments of cost-benefit analysis must also include the impact on climate as obliged under Annex V Section 7 which states: *“For gas, the cost-benefit analysis shall at least take into account the results of market testing the impacts on the indicators defined in Annex IV and the following impacts: (a) disaster and climate resilience, and system security, notably for European critical infrastructures as defined in Directive 2008/114/EC; (b) congestion in the gas network”*.
4. Preamble 36 of Regulation(EU) 2017/1938 of the European Parliament and of the Council of 25 October 2017 concerning measures to safeguard the security of gas supply and repealing Regulation (EU) No 994/2010⁴² states:

“The environmental impact of any demand and supply-side measures proposed should be taken into account, with preference being given, as far as possible, to measures that have least impact on the environment”.
5. *The EIA Directive states that the environmental impact assessment shall identify, describe and assess in an appropriate manner, in the light of each individual case, the direct and indirect significant effects of a project on climate. The description of the likely significant effects of the project on climate should cover the direct effects and any indirect, secondary, cumulative, transboundary, short-term, medium-term and long-term, permanent and temporary, positive and negative effects of the project. This description should take into account the environmental protection objectives established at Union or Member State level which are relevant to the project.*⁴³
6. The TEN-E Meeting in Brussels on May 7th, 2019 identified the following thresholds to be used in Assessments of projects of Common Interest.

⁴¹ https://marcellusdrilling.com/wp-content/uploads/2018/11/s002392x7_s1.pdf Papers filed at U.S. S.E.C. by New Fortress Energy, November 9th, 2018 which state *"the planning permission approval for the terminal includes the ability to build an integrated 500MW power plant on-site with priority dispatch."*

⁴² <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:32017R1938>

⁴³ <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:02011L0092-20140515&from=EN>

Indicators , thresholds and points			
Security of supply	Curtailed demand	Threshold -> 100%	Score 1-10 (non-linear approach)
	Single largest infrastructure disruption	Threshold -> 0%	Score 1-10 (non-linear approach)
	Access to a new source	No threshold	Direct scoring (0 or 10)
Competition	Supply source dependence	Threshold -> 25%	Score 1-10 (non-linear approach)
	Supply source access	Threshold -> 3	Score 1-10 (discreet approach)
	LNG and Interconnection Capacity Diversification	Threshold -> 5000	Score 1-10 (non-linear approach)
Market integration	Physical isolation	No threshold	Direct scoring (0 or 10)
	Adaptation to high-calorific gas	No threshold	Direct scoring (0 or 10)

Figure 6: PCI Assessment Thresholds

Shannon LNG Terminal

Indicator	Without the Project
Single Largest Infrastructure Disruption	N-1: Ireland 134% (Ireland and UK one gas region) UK: 120%
Supply Source Access	3 (IC1, IC2 Corrib) since the completion of the 5.3 Twinning of the Interconnector 1 Eco Gas Potential new sources: Inishkea - Near Corrib - (Europa) and Offshore Kerry (China and Exxon)

2.1.3. Cross-Border Impact.

The Article 4(1) general criteria demands that:

“the project meets any of the following criteria:

- i. *involves at least two Member States by directly crossing the border of two or more Member States;*
- ii. *is located on the territory of one Member State and has a significant cross-border impact as set out in Annex IV.1;*
- iii. *crosses the border of at least one Member State and a European Economic Area country.”*

Annex IV.1(d) defines a “significant cross-border impact” for an LNG project as follows:

“for gas storage or liquefied/compressed natural gas, the project aims at supplying directly or indirectly at least two Member States or at fulfilling the infrastructure standard (N-1 rule) at regional level in accordance with Article 6(3) of Regulation (EU) No 994/2010 of the European Parliament and of the Council (1)”.

Annex IV.1(c) defines a “significant cross-border impact” for a Physical Reverse Flow project as follows:

“for gas transmission, the project concerns investment in reverse flow capacities or changes the capability to transmit gas across the borders of the Member States concerned by at least 10 % compared to the situation prior to the commissioning of the project;”.

1 Brexit

Brexit, which was triggered by Article 50, now means that the UK will no longer be a member of the EU or of the EEA and consequently the main pre-condition of a cross-border impact with another EU or EEA country for qualification as a PCI is not achievable (i.e. automatic disqualification)

2 No Cross Border Impact

The Interconnector between Northern Ireland and Great Britain (the SNIP - PCI 5.1.2) does not transmit gas across the border of two Member States because Northern Ireland and Great Britain is part of the United Kingdom. The idea that gas through the SNIP would be used to send gas to Ireland from Northern Ireland via Great Britain with a capability of at least 10% has not been comprehensively proved and this assertion needs to be clarified given all the other sources of gas in the UK which already get transported to Ireland.

3 The N-1 Argument

This criteria is not fulfilled since the N-1 condition was already further enhanced with the completion of the construction of the twinning of the second independent interconnector from Brighthouse to Cluden in Scotland (PCI 5.2) as per Figure 7⁴⁴.

⁴⁴ <https://www.cru.ie/wp-content/uploads/2014/07/CER14795b-Part-D-of-Gaslink-GNIs-CEF-Grant-application.pdf> ("Connecting Europe Facility 2014-2020. Energy Call for proposals 2014" page 14



Figure 7. PCI 5.2 Twinning of Interconnector for 50km in Scotland which brings increased security of supply to Ireland with 2 completely independent interconnectors, representing 2 separate pieces of gas infrastructure

In Gaslink's (now Gas Networks Ireland) grant application to the European Commission "Connecting Europe Facility 2014-2020 Energy Call for Proposals 2014" for PCI 5.2 Twinning of Southwest Scotland onshore system between Cluden and Brighthouse Bay (United Kingdom) it was stated:

"Ervia holds interconnector licences from the Office of Gas and Electricity Markets (OFGEM) in the UK, along with a gas conveyance licence from the Utility Regulator for Northern Ireland (UREGNI). In addition to the cooperation required in relation to these licences, there are a number of key agreements in place between TSOs, NRAs and the Governments of Ireland, Northern Ireland (UK) and the UK.

□ **Regulation 994** - Regulation 994/2010 permits the adoption of a regional approach towards meeting the N-1 infrastructure standard. As part of its compliance with the Regulation, the Competent Authorities in the UK (i.e. DECC) and Ireland (i.e. CER) submitted their respective national Risk Assessments to the European Commission in Q4-2011 and June 2014.

While the UK is able to meet the N-1 standard, Ireland's Risk Assessment confirmed that it is unable to meet the N-1 standard in 2011. Consequently Ireland (CER) requested DECC to adopt a regional approach between the UK and Ireland towards meeting the N-1 standard, as permitted under the Regulation. DECC agreed and both member states submitted a joint risk assessment, preventative action plan and joint emergency plan in 2011/12. Both Competent Authorities submitted the joint Regional Assessment in June 2014, with Emergency Preparedness Plan to be submitted Q4 2014"

[...]

"Transportation agreements between UK & Irish Gas TSOs

• *The Connected Systems Agreement (CSA) between National Grid and Ervia for Great Britain (UK)-Ireland gas interconnectors came into effect on the 1st October 1998. Under the*

CSA it was agreed that Ervia shall be entitled to have the Ervia gas system connected to National Grid's gas system at the Connected System Points, and that the agreement shall not be amended, except by agreement between NGG and Ervia.

• *The Transportation Agreement between Ervia and Premier Transmission Limited (PTL) was signed on the 21st August 1996, and relates to the provision of capacity from Moffat to Twynholm."*

Most importantly to be noted, is that these bilateral Transportation Agreements must still legally remain in place, even if there is a "Hard Brexit", because the agreement of both countries is required before the agreements can be amended.

The European Commission, on February 16th 2016, proposed a new security of supply regulation which clearly identified Ireland and the UK as being in the one Region (viz. North West) for the preparation of Risk Assessments and Plans at regional level⁴⁵



Figure 8. Ireland and the UK proposed by the European Commission as the one risk assessment area in 2016 (later updated by EU Regulation 2017/1938)

⁴⁵ European Commission - Fact Sheet, Security of gas supply regulation, Brussels, 16 February 2016
The Commission proposes a new security of supply regulation. [http://europa.eu/rapid/press-release MEMO-16-308 en.htm](http://europa.eu/rapid/press-release_MEMO-16-308_en.htm)

The "Joint Preventive Action Plan 2016-18 - Gas - UK and Ireland" produced by the Irish 'Commission for Energy Regulation (CER)' and the UK 'Department for Business, Energy and Industrial Strategy' on December 2nd, 2016⁴⁶ noted the following:

"The Infrastructure Standard is assessed by performing the N-1 calculation. To pass, a Member State must achieve a score of 100% or more. In the event that a Member State cannot fulfil the N-1 standard on a national basis, the Regulation permits the adoption of a regional approach towards meeting the N-1 standard. Ireland does not currently meet the N-1 calculation criteria on its own and so partnered with the UK to create a Joint Risk Assessment. In order to pass the Infrastructure Standard Ireland requested the UK to adopt a Joint Risk Assessment. The Joint Risk Assessment allows Ireland to fulfill the Infrastructure Standard. Without the Joint Risk Assessment Ireland's N-1 equals 28% (without market based measures) and 35% (with market based measures). With the Joint Risk Assessment the UK and Ireland's combined N-1 equals 134%"

Even the European Commission itself acknowledged that the Twinning of the Interconnector is “removing security of supply concerns”.⁴⁷:

⁴⁶ <https://www.cru.ie/wp-content/uploads/2016/07/CER16339-UK-and-Ireland-Joint-Preventive-Action-Plan-JPAP-2016.pdf>

⁴⁷ https://ec.europa.eu/inea/sites/inea/files/fiche_5.2-0042-uk-p-m-14_final_0.pdf

Connecting Europe Facility ENERGY

Member States involved:

United Kingdom

Implementation schedule

Start date: August 2014

End date: December 2017

Budget:

Estimated total cost of the action:
€92,860,796

Maximum EU contribution:
€33,764,185

Percentage of EU support: 36.4%

Beneficiary:

Gas Networks Ireland (UK)
www.gasnetworks.ie

Additional information:

European Commission
http://ec.europa.eu/energy/infrastructure/index_en.htm

Innovation and Networks Executive
Agency (INEA)
<http://inea.ec.europa.eu>

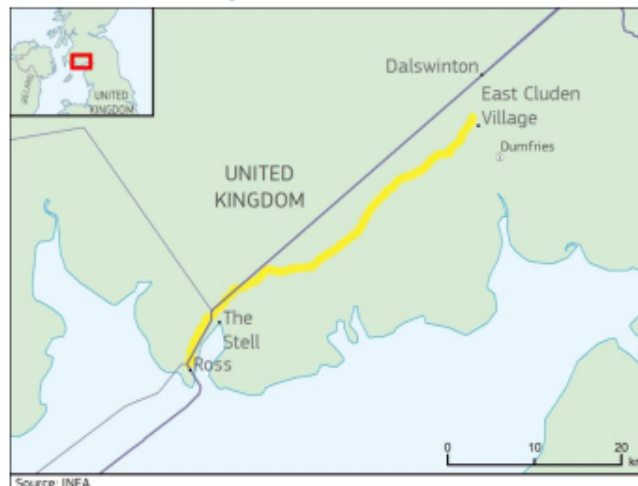
Agency for the Cooperation of Energy
Regulators (ACER)
www.acer.europa.eu

European Network of Transmission
System Operators for Gas (ENTSO-G)
www.entsog.eu

PCI Twinning of Southwest Scotland onshore system between Cluden & Brighthouse Bay (UK)

5.2-0042-UK-P-M-14

Part of Project of Common Interest 5.2



The Action will implement PCI 5.2 "Twinning of Southwest Scotland onshore System between Cluden and Brighthouse Bay in the United Kingdom (UK)". The scope of the current Action is the construction of the remaining 50 km system of transmission pipeline, with a 914 mm diameter that will operate as a high pressure transmission pipeline and transport an additional quantity of 1.1 bcm/year of natural gas to Ireland. The pipeline will be connected into the existing national gas network.

The Action aims at: i) addressing the current pressure restriction in the onshore system; ii) completing a dual pipeline system between Ireland and the United Kingdom; and iii) removing security of supply concerns, increasing thus the operational pressures by around twenty percent and gas capacity by around ten percent in the network. There are a number of activities associated with the Action's implementation, such as environmental studies, material procurement and construction, leading to the commissioning of the pipeline and the successful completion of the Action. While for the 50 km section of pipeline there are valid planning consents, the foreseen local deviation of 7km at Dumfries will be subject to the consent of the competent environmental authorities.

The completion of the Action will, as a result, reduce compressor fuel gas usage and increase pipeline storage and technical capacity, bringing about environmental benefits through a reduction in greenhouse gas emissions.

The Action is ongoing.

Please note that the present document is for information purposes only. The content and conditions of the grant agreement always prevail on any different information which may be included in this document or elsewhere.

Update: January 2016

Innovation
and Networks

Figure 9. CEF Fact sheet on PCI 5.2 Twinning of the Interconnector from Ireland to Scotland giving security of supply reasons for funding the project by almost €34 million

This same security of supply excuse cannot reasonably be argued twice for another PCI Project. The International Energy Agency 2019 Review of Ireland even acknowledges, that Ireland currently meets the N-1 standard:

"The 2016 National Risk Assessment identified the Moffat entry point (with the two subsea interconnectors IC1 and IC2) as the single largest piece of infrastructure. The risk assessment reconfirmed that if a failure happens at Moffat, Ireland is unable to meet the N-1 infrastructure standard as set out in Regulation 2017/1938. The result of the N-1 calculation

was 35% (28% without market-based measures). This calculation was done with the median supply and demand scenario set out in the GNI 2016 Network Development Plan. The analysis is based on production figures for the year 2018/19. The CRU agreed a regional approach with the competent authorities in the United Kingdom and Northern Ireland and a joint risk assessment and preventive plan. With a joint risk assessment between the United Kingdom and Ireland, the combined N-1 calculation equals 134%. In case of a gas supply emergency, Ireland is likely to call for solidarity from its EU neighbouring countries (under the EU gas SoS Regulation 2017/1938). Although it is uncertain how the solidarity mechanism will function when the United Kingdom leaves the European Union, it is important for Ireland to maintain close co-operation on this regional risk-based approach. Completion of the project to have independent compressor systems for IC1 and IC2 at Brighthouse Bay in 2020 will result in a revision of the largest piece of gas infrastructure for Ireland as defined in the EU gas SoS Regulation 2017/1938. N-1 failure will constitute a partial disruption of IC1 or IC2, instead of a complete disruption with failure of IC1 and IC2, as considered at the moment in the 2016 joint risk assessment.”⁴⁸ .

Gas Networks Ireland and Eirgrid also recognise, in their "Long Term Resilience Study, 2018"⁴⁹ that the PCI 5.2 twinning of the interconnector between Ireland and Scotland:

“will allow each interconnector to be considered as separate pieces of infrastructure for the purposes of security of supply calculations. This will mean that an “N-1” disruption will now refer to the loss of a single stream of the Interconnector system as opposed to the whole system”

and:

"The security of supply regulation allows countries to meet the requirements on a regional basis, and Ireland currently meets the requirements when assessed alongside the UK"

4 The Supply-to-the-UK Argument (the project aims at supplying directly or indirectly at least two Member States):

⁴⁸ “Energy Policies of IEA Countries. Ireland 2019 Review - International Energy Agency”, page 66

https://www.connaissancedesenergies.org/sites/default/files/pdf-actualites/Energy_Policies_of_IEA_Countries_Ireland_2019_Review.pdf

⁴⁹ “Long Term Resilience Study 2018, Gas Networks Ireland, Eirgrid”

<https://www.gasnetworks.ie/corporate/gas-regulation/system-operator/publications/Long-Term-Resilience-Study-2018.pdf>

PCI 5.1.1 PRF at the Moffat IP

- Physical Reverse Flow at the Moffat interconnection point, which is currently uni-directional, supporting physical flow only from UK to IE, the IOM and NI – planned capacity is **38.5 GWH/d**.
- Current Status – GNI(UK) Ltd has applied for funding under the CEF second call for studies in relation to PRF at Moffat, commissioning scheduled for 2020.
- TEN-E Regulation ANNEX II - Energy infrastructure category (2) concerning gas: (d) - any equipment or installation essential for the system to operate safely, securely and efficiently or to **enable bi-directional capacity, including compressor stations**;
- General assessment criteria - Article 4(1) of the TEN-E Regulation.
 - Market integration** – The intention of PRF is to enhance interoperability of the Irish and Northern Ireland (UK) gas markets with the Great Britain (UK) market,
 - Security of supply** – provide SoS to NI (UK) and GB (UK) directly, and IE by incentivising infrastructural projects, in particular storage and LNG projects.
 - Competition** – allows the most efficient sources of supply to be used to meet demand across interconnected markets.
 - Sustainability** - increased gas capacity in Ireland and Northern Ireland (UK) induced by the PRF opportunity would help generate increased switching from oil to gas in these sectors.

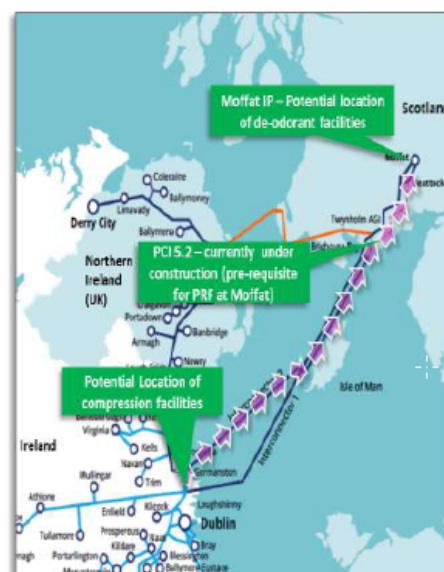


Figure 10: PCI 5.1.1. Physical Reverse Flow at the Moffat IP presentation at the 3rd Union List of PCI Candidates to the NSI West Gas Regional Group Meeting 2017 with the argument of "incentivising infrastructure projects, in particular storage and LNG projects"

If to fulfil this general criteria, the argument is used that Shannon LNG is to supply the UK directly or indirectly with gas (see Figure 10), then this cannot be a plausible argument given that Ireland will be a net importer of gas from the UK, the UK may no longer be a Member State after Brexit, and it will be cheaper for UK companies to import LNG directly into the UK via one of its LNG import terminals (South Hook and Dragon at Milford Haven and Isle of Grain near London), bypassing the extra costs of importing via the interconnector. The lack of need in the UK for gas from Ireland was highlighted from two UK sources:

1. Claire Perry, the UK Minister of State for Energy, on February 26th, 2019, stated⁵¹:

"the UK's gas system is secure and well placed to respond effectively to unexpected changes in supply and demand, benefiting, as it does, from a mature and liquid gas market and an effective regulatory regime. Our system delivers gas prices that are amongst the lowest in Europe whilst maintaining international benchmarks for security of supply. We have also stress tested our resilience over the next twenty years, and we are confident that we will retain our current high levels of security now and in the future".

She went on to state that there was no need in the UK for the proposed IslandMagee gas storage facility:

"Given this falling seasonal spread, the market demand for seasonal arbitrage in the form of gas storage has also fallen. In the absence of market demand, additional gas storage cannot be justified on purely economic grounds, and were further capacity to be regulated for, the cost would have to be borne by the consumer."

⁵¹ <https://www.parliament.uk/documents/commons-committees/business-energy-and-industrial-strategy/Correspondence/Claire-Perry-Gas-Storage.pdf>

2. The lack of need for gas from Ireland from a security of supply perspective is also outlined in the UK National Risk Assessment on Security of Gas Supply Report completed for EU Regulation 2017/1938, released in September 2018, where it states:

“The UK N-1 calculation shows that the UK passes the requirements of the Regulation with a result of 120%. Our projections over 4 different demand and supply scenarios until 2050 suggest that we will continue to pass the test. With the combination of this and careful assessment of analysis provided by relevant Member States, it is set out in this chapter that bi-directional flow is not required for security of supply reasons from three out of four UK interconnectors.”⁵²

2.2 SPECIFIC CRITERIA

Article 4(2)(b) defines the Specific criteria as follows:

“for gas projects falling under the energy infrastructure categories set out in Annex II.2, the project is to contribute significantly to at least one of the following specific criteria:

- (i) market integration, inter alia through lifting the isolation of at least one Member State and reducing energy infrastructure bottlenecks; interoperability and system flexibility;*
- (ii) security of supply, inter alia through appropriate connections and diversification of supply sources, supplying counterparts and routes;*
- (iii) competition, inter alia through diversification of supply sources, supplying counterparts and routes;*
- (iv) sustainability, inter alia through reducing emissions, supporting intermittent renewable generation and enhancing deployment of renewable gas;”*

The PCI Regional meeting of 27th March 2019 heard that the Shannon LNG project is only being assessed on the Security of Supply and Competition specific criteria.

Security of Supply and Competition (Specific Criteria)

1. Ireland and the United Kingdom are treated as a single region for Security of Supply purposes⁵³. This also means that the security of supply and competition criteria will not be met because the UK has access to appropriate connections, diversion of supply sources, supplying counterparts and routes.
2. If anything, an LNG terminal for fracked US gas in Ireland will create fossil fuel lock in and compromise the development of the indigenous renewables and energy efficiency industry. Developing domestic renewable energy sources could enhance the country's gas security in the middle to long term and Ireland has the highest potential for biogas production per capita in Europe. Gas Networks Ireland (GNI) aims to have at least 20% of renewable gas in the network by 2030.⁵⁴ Ireland is also a member of the clean energy islands initiative of the EU.⁵⁵ That is where more of the CEF money should go into.
3. The arguments presented by Shannon LNG to be accepted on the 3rd PCI List in 2017 (Figure 11) are therefore no longer valid.

⁵²

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/774288/national-risk-assessment-security-gas-supply.pdf

⁵³ “Energy Policies of IEA Countries. Ireland 2019 Review - International Energy Agency”, page 66

https://www.connaissancedesenergies.org/sites/default/files/pdf-actualites/Energy_Policies_of_IEA_Countries_Ireland_2019_Review.pdf

⁵⁴ Energy Policies of IEA Countries. Ireland 2019 Review - International Energy Agency”, page 55 & 56

https://www.connaissancedesenergies.org/sites/default/files/pdf-actualites/Energy_Policies_of_IEA_Countries_Ireland_2019_Review.pdf

⁵⁵ https://ec.europa.eu/info/news/26-european-islands-launch-clean-energy-transition-2019-feb-18_en

Shannon LNG – Import Terminal (& HE CHP Plant)

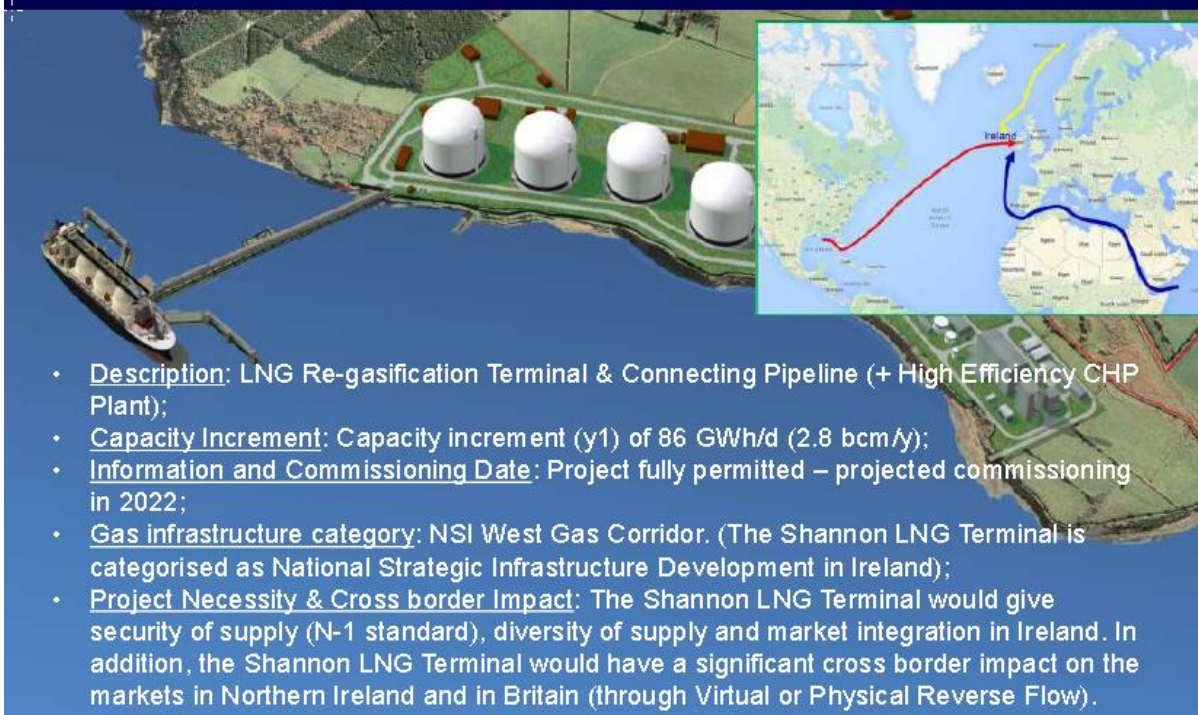


Figure 11: PCI 5.3. Shannon LNG presentation at the 3rd Union List of PCI Candidates to the NSI West Gas Regional Group Meeting 2017 with the argument of security of supply (N-1), diversity of supply and market integration in Ireland which are no longer valid arguments in 2019. The categorisation of "National Strategic Infrastructure Development in Ireland" is also misleading because this categorisation only occurred due to the development consent application being a large energy project (once the promoter paid €100,000 for fast track planning with the Irish Planning Authority - An Bord Pleanála) and no declaration was made by the authority, which it could have done, that the project was in the National Interest.

Ireland has also voted for a complete fossil-fuel divestment⁵⁶. Investment in a new fossil fuel project with an economic lifespan of 30 – 50 year that goes way beyond the point of 100% decarbonisation increases strongly the risk of creating an stranded asset and threatening the security of supply from non-fossil energy sources in the near future.

2.3 QUALITATIVE CRITERIA

Article 4(4) states:

"In order to facilitate the assessing of all projects that could be eligible as projects of common interest and that could be included in a regional list, each Group shall assess each project's contribution to the implementation of the same priority corridor or area in a transparent and objective manner. Each Group shall determine its assessment method on the basis of the aggregated contribution to the criteria referred to in paragraph 2; this assessment shall lead to a ranking of projects for internal use of the Group. Neither the regional list nor the Union list shall contain any ranking, nor shall the ranking be used for any subsequent purpose except as described in Annex III.2(14).

When assessing projects, each Group shall furthermore give due consideration to:

⁵⁶ <https://www.oireachtas.ie/en/bills/bill/2016/103/>

- (a) the urgency of each proposed project in order to meet the Union energy policy targets of market integration, inter alia through lifting the isolation of at least one Member State and competition, sustainability and security of supply;*
- (b) the number of Member States affected by each project, whilst ensuring equal opportunities for projects involving peripheral Member States;*
- (c) the contribution of each project to territorial cohesion; and*
- (d) complementarity with regard to other proposed projects.”*

2.3.1. Urgency

1. No Progress in Last 10 years

Shannon LNG had development consent for 10 years⁵⁷ and did not build the LNG terminal. The planning permission has now expired and has to be restarted. If the project was so urgent, why was it not built in the last 10 years? The Irish High Court has recently referred the Shannon LNG case to the ECJ with a number of questions relating to a five-year extension of planning permission for a liquid gas terminal on the Shannon Estuary.⁵⁸ A decision is expected in 18th months at the earliest. If this project ever goes ahead it will have to immediately start phasing-out the usage of fossil fuels – which it doesn't intend to do, breaking therefore any commitment made under the Paris Agreement or EU's climate goals.

2. Security of Supply

Since there is no longer a Security of Supply Concern following the completion of the construction of PCI 5.2 (twinning of the Interconnector from Cluden to Brighthouse Bay), there is now no urgency for the Shannon LNG project to be added to the PCI list.

3. Renewable Sector

Removing Shannon LNG from the PCI list will allow the Renewables sector to develop in Ireland without the competitive edge that a State Aided advantage that a PCI-listed fracked gas import terminal would enjoy.

4. Subsidiarity Principle

The Subsidiarity principle must be upheld which will allow Ireland to creatively live up to its 2020 Climate Change commitments without pressure from the US-EU trade deal in fracked US gas which is setting the framework for future development consent in Member States by forcing projects on to the PCI list. The European Union has clearly outlined this issue in its fact sheets on the principle of subsidiarity as follows:

“The general aim of the principle of subsidiarity is to guarantee a degree of independence for a lower authority in relation to a higher body or for a local authority in relation to central government. It therefore involves the sharing of powers between several levels of authority, a principle which forms the institutional basis for federal states.

When applied in the context of the European Union, the principle of subsidiarity serves to regulate the exercise of the Union's non-exclusive powers. It rules out Union intervention when an issue can be dealt with effectively by Member States at central, regional or local level and means that the Union is justified in exercising its powers when Member States are unable to achieve the objectives of a proposed action satisfactorily and added value can be provided if the action is carried out at Union level.

Under Article 5(3) TEU there are three preconditions for intervention by Union institutions in accordance with the principle of subsidiarity: (a) the area concerned does not fall within the Union's exclusive competence (i.e. non-exclusive competence); (b) the objectives of the proposed action cannot be sufficiently achieved by the Member States (i.e. necessity); (c) the

⁵⁷ <http://www.pleanala.ie/casenum/PA0002.htm>

⁵⁸ <https://www.irishexaminer.com/breakingnews/business/shannon-estuary-gas-terminal-project-referred-to-europe-by-high-court-904771.html>

action can therefore, by reason of its scale or effects, be implemented more successfully by the Union (i.e. added value). ”⁵⁹

5. Precautionary Principle

Fracked gas is banned in Ireland under the Precautionary Principle due to the latest scientific information pointing to fracked gas being a dirtier fossil fuel than coal. The 'Prohibition of Onshore Hydraulic Fracturing Act 2017'⁶⁰ not only banned onshore fracking in Ireland but it also made it illegal for any person to "take" or "carry away" or be involved in "storing" or "treating" any fracked gas situated in the State and its internal waters. It is therefore currently illegal for anybody in the country to "search for", "take" or "carry away" or be involved in "storing" or "treating" gas from any LNG ship with fracked gas situated in Ireland⁶¹. Putting Shannon LNG on the PCI list will force the Irish Parliament to change the law to allow the importation of US fracked gas into the Irish Network. This will send a negative market signal to the Renewable Energy Sector and runs counter to the aforementioned Subsidiarity Principle.

6. EIA Directive

The EIA Directive⁶² obliges consideration to be given to the environmental impacts of a project over its full life cycle and therefore consideration should not be limited to the pollution created by the fracked US gas at point of entry into the EU gas system only. Article 3 of the EIA Directive obliges consideration of the "direct and indirect significant effects" of a project on *inter alia* "population and human health", "climate" and the "interaction" between these factors. Annex IV of the EIA Directive is then very clear that consideration must include "the impact of the project on climate (for example the nature and magnitude of greenhouse gas emissions) and the vulnerability of the project to climate change", "the technologies and the substances used" and that the consideration "should cover the direct effects and any indirect, secondary, cumulative, transboundary, short-term, medium-term and long-term, permanent and temporary, positive and negative effects of the project"

7. TTIP Sustainability Studies

There has been no scientific-based assessment of fracked gas in the European Energy Mix. LNG is considered by DG Energy as the one source of gas and this is now highly questionable. This was already recognised in the TTIP Sustainability Studies, but was not investigated further because, at the time, the US was a net importer of gas and the TTIP negotiations were suspended. The situation has now changed dramatically with US fracked gas being one of the energy sector's leading contributors to increased GHG emissions. Indeed, DG Trade, in its final Trade Sustainability Impact Assessment (SIA) on the Transatlantic Trade and Investment Partnership (TTIP) between the EU and the USA in March 2017⁶³, citing the UN Framework Convention on Climate Change (UNFCCC), the Kyoto Protocol and the Paris Agreement declared the following:

"Climate change and the use of energy and raw materials are posed as potential risks to the human right to a clean environment and the human right to health that can indirectly also spillover into other rights. If TTIP would be concluded, asking for export permissions for LNG from the US Department of Energy will become a formality. That could facilitate LNG exports to the EU, which in turn could support a shift to LNG, away from oil and coal. This could then impact the human right to health, and human right to a clean environment. On the other hand, it could further stimulate fracking in the US, which has a negative environmental impact in its own right".

It went on:

⁵⁹ <http://www.europarl.europa.eu/factsheets/en/sheet/7/the-principle-of-subsidiarity>

⁶⁰ <http://www.irishstatutebook.ie/eli/2017/act/15/section/1/enacted/en/html>

⁶¹

<http://www.safetybeforelng.ie/pressreleases/pressrelease20180917ImportingFrackedGasToIrelandIsIllegal.html>

⁶² <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:02011L0092-20140515&from=EN>

⁶³ European Commission DG Trade: "SIA in support of the negotiations on a Transatlantic Trade and Investment Partnership (TTIP) - Final Report" - March 2017
http://trade.ec.europa.eu/doclib/docs/2017/april/tradoc_155464.pdf

“For the environment we expect that lifting the US export restriction on gas could lead to a shift away from coal in the EU with locally some environmental gains, depending on the pricing situation of each fuel. However, when placing this in a global environmental perspective we find that coal will still be exported by the US and environmental benefits from LNG over coal (which are debatable due to methane leakage during extraction and energy needed during production, conversion and transport) are perhaps even negative if a combination of LNG+coal crowded out ‘greener’ energy sources such as renewables in the global energy mix (i.e. due to price differences, which partly depends on pricing of climate change impacts per type of energy source).”

It concluded:

*“A case study on trade in unconventional resources (fossil fuels) was conducted to illuminate the figures found in the energy demand analysis. TTIP is expected to facilitate LNG export from US to the EU as national treatment rules will apply, effectively removing obstacles of a lengthy export licensing procedure. If the price for US LNG is attractive we expect that some LNG will be transported to the EU when the first LNG terminal becomes operational (2018). LNG exports to the EU are likely to be marginal in the short-run, given the current global oil and gas prices. However, strategically, if oil prices go up in the future, the LNG import option from the US could potentially keep EU gas prices down. Further, if gas replaces the use of coal in the EU, it could have a (local) positive impact on the environment (assuming this coal stays in the ground). In the longer run, the removal of the LNG export licensing requirement could lead to a diversification of Europe’s energy mix towards more LNG. Whether the global environmental impact of such a change is beneficial to the environment is however debatable as current LNG production methods (note we refer here to the share of shale gas in total LNG) result in, among others, methane leakages that have a negative impact on climate change and lead to local ground and water pollution. Secondly, it depends on whether the energy source it replaces is not more polluting, as also renewables could be replaced in cases where are not price competitive. **Recommendation 18:** TTIP will facilitate US exports of US gas, including from unconventional sources. As there are still significant if’s and but’s surrounding the environmental impact of shale gas extraction (e.g. compared with coal) it is recommended that the EC gains a) further insight in what the factual effects of shale gas (GHG emission and other impact) are compared with the energy source that is being replaced, and b) only use the option to import US gas as a means to lower prices from competitors (diversification objective) – tax the reduction in price – and invest this additional funding in long term GHG reduction projects/ research. Action b is most in line with the Paris Agreement and EU2030 energy objectives.”*

8. Permanent Peoples Tribunal

In May 2018, the Permanent Peoples Tribunal (PPT) on Human Rights, Fracking and Climate Change heard testimony and received other evidence relating to fracking and its impact. Included were very substantial reports from four prior PPT Citizens’ Tribunals that had gathered scientific, technical, social, cultural and experiential testimony from many community organizations, experts and individual citizens.

According to the preliminary statement of the PPT judges „the evidence clearly demonstrates that the processes of fracking contribute substantially to anthropogenic harm, including climate change and global warming, and involve massive violations of a range of substantive and procedural human rights and the rights of nature.... The evidence also shows that governments have, in general, failed in their responsibility to regulate the industry so as to protect people, communities and nature. In addition, they have failed to act promptly and effectively to the dangers of climate change that

*fracking represents*⁶⁴ In the final Advisory Opinion, the PPT recommended – amongst other relevant points – that “*fracking be banned*” and that “*the Special Rapporteur on Human Rights and the Environment be asked to investigate the violations of the rights of humans and nature by the Unconventional Oil and Gas Extraction industry.*”⁶⁵

This finding is echoed elsewhere: In October 2018, the UN’s CESCR issued an official warning concerning fracking for shale gas in Argentina, saying that „*The Committee is concerned that this hydraulic fracturing project contradicts the State party’s commitments to the Paris Agreement, with a negative impact on global warming and the enjoyment of the economic and social rights of the world population and future generations. (Article 1 (1) and 2 ((1))*”⁶⁶. In March 2019 the United Nations Committee on the Elimination of Discrimination Against Women (CEDAW) urged the British Government to “*consider introducing a comprehensive and complete ban on fracking.*”⁶⁷

9. US Fracked Gas Source

The Shannon LNG project will be almost exclusively for fracked US gas. In documents submitted to the United States Securities and Exchange Commission, New Fortress Energy have admitted that:

“We are an integrated gas-to-power company that seeks to use “stranded” natural gas to satisfy the world’s large and growing power needs” [...]”⁶⁸ We plan to capitalize on this growing supply-demand gap and create new markets for natural gas by developing liquefaction assets, particularly in areas with significant “stranded” reserves, which we define as natural gas reserves not connected to large interstate or transnational pipelines. That is, not only are these reserves not connected by pipeline to end users, they are not connected to any significant pipeline – as is the case in Pennsylvania”

10. New Shannon LNG Project

The project is now back at the Ideation stage as it seems, through a new and secret application (which is contrary to Article 9(7) of the PCI Regulation⁶⁹) to the Irish planning authority for a floating storage regasification unit instead of an onshore storage system. No other information has been revealed to the public other than that Shannon LNG has made a new application to the Irish Planning Authority (An Bord Pleanála) on March 20th, 2019 for a “*Proposed alteration to Shannon LNG regasification terminal to provide for a reduced footprint, less onshore facilities and equipment and the omission of four onshore storage tanks and associated pond for hydrotesting.*”⁷⁰ In 2017 Shannon LNG claimed to the NSI West Gas Regional Group Meeting, in the presentation of candidate PCIs for the third union list of PCIs, that the Project was fully permitted, which is now clearly not the case.

⁶⁴ <https://www.tribunalonfracking.org/judges-statements/>

⁶⁵ Permanent Peoples’ Tribunal. „Session on Human Rights, Fracking and Climate Change. 14-18 May 2018. Advisory Opinion. Available at: <https://www.tribunalonfracking.org/wp-content/uploads/2019/04/AO-FINAL-3-28-19.pdf>

⁶⁶ CESCR - International Covenant on Economic, Social and Cultural Rights. E/C/12/ARG/CO/4 https://tbinternet.ohchr.org/_layouts/treatybodyexternal/SessionDetails1.aspx?SessionID=1200&Lang=en

⁶⁷ CEDAW - Concluding observations on the eight periodic report of United Kingdom of Great Britain and Northern Ireland, C/GBR/CO/8 (https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2FCO%2FGBR%2FCO%2F8&Lang=en)

⁶⁸ https://marcellusdrilling.com/wp-content/uploads/2018/11/s002392x7_s1.pdf

⁶⁹ “*The project promoter, or, where national law so provides, the competent authority, shall establish and regularly update a website with relevant information about the project of common interest, which shall be linked to the Commission website and which shall meet the requirements specified in Annex VI.6.*” <https://eur-lex.europa.eu/legal-content/en/TXT/?qid=1413451972937&uri=CELEX:02013R0347-20140110>

⁷⁰ <http://www.pleanala.ie/casenum/304007.htm>

11. ECJ

Serious environmental issues concerning the Shannon LNG project have been referred to the European Court of Justice (ECJ) by the Superior Courts in Ireland⁷¹, including the fact that the location of the proposed Shannon LNG has recently been declared a European Special Area of Conservation under the EU Habitats Directive. Putting Shannon LNG on the PCI list may be interpreted as political interference by the European Commission with the ECJ.

12. Brexit Uncertainty

Brexit uncertainty means there is a lack of visibility around any PCI projects in Ireland. Uncertainty means there is a risk of making an uninformed and invalid decision. As discussed above in the General criteria section above (2.1.3. Cross-Border Impacts), Shannon LNG would no longer qualify as a PCI after Brexit, so approving it now as a PCI project would lead to it no longer being a valid PCI project at construction stage.

13. DG Competition and Unlawful State Aid

A formal complaint was lodged with DG Competition⁷² that the European Commission implementation of the Energy Plan to import fracked US gas announced by President Juncker in July 2018⁷³ following his visit to President Trump in the USA through multiple LNG terminals and countries and imposed via the PCI procedure represents unlawful State Aid and Misuse of aid at each Member State Level on the following grounds:

- A. The [Renewable Energy Directive](#) (2009/28/EC) establishes an overall policy for the production and promotion of energy from renewable sources in the EU. It requires the EU to fulfil at least 20% of its total energy needs with renewables by 2020 – to be achieved through the attainment of individual national targets. Ireland is not meeting its EU carbon emission reduction targets for 2020 and could face having to pay hundreds of millions of euro for credits.
- B. Construction of new fossil fuel infrastructure and increased fossil gas capacity in Ireland (and throughout the EU) threatens to displace renewable energy projects, leading to more carbon emissions and consequently, increased fines.
- C. Increased fossil fuel infrastructure generally, will lead to more pollution and climate chaos in Ireland (and throughout the EU), increasing risks to health and consequential financial loss, and to consumer protection rights.
- D. No consideration whatsoever has been given to the unconventional / fracked gas element of the US gas imports into Europe, which the most up-to-date scientific findings assert is more detrimental to the climate than coal due to fugitive emissions. LNG is considered by the DG Energy as being just a single gas Energy Source instead of being broken down into its origins of conventional/unconventional. A runaway increase in fracked gas in the EU Energy mix will lead to even more climate chaos and this will affect people personally from a health and financial perspective.

⁷¹ <http://courts.ie/Judgments.nsf/0/A6D3C5CE0FD82116802583A200392CCD> and <http://www.safetybeforelng.ie/pressreleases/pressrelease20190215HighCourtRulesOnExtensionOfShannonLNGPlanning.html>

⁷² 13/04/2019 (Registration: 2019/052575): "Complaint of Illegal State Aid and Misuse of Aid in US Fracked Gas Importation" received by The Directorate-General for Competition

⁷³ Joint U.S.-EU Statement following President Juncker's visit to the White House Washington, 25 July 2018 (http://europa.eu/rapid/press-release_STATEMENT-18-4687_en.htm)

- E. A project is not allowed to have the PCI status unless it is approved by the Member State because Article 3.3(a) of Regulation 347/2013 states "*each individual proposal for a project of common interest shall require the approval of the Member States, to whose territory the project relates*". The current PCI list was approved by Ireland on 17th October 2017⁷⁴.
- F. As for every Member State, proposed Irish Projects of Common Interest (**PCI approved by Ireland and the European Commission will set the framework for future development consent within the Irish Member State**). The PCI Regulation (No 347/2013) Article 7(3)⁷⁵ clearly states "*projects of common interest shall be allocated the status of the highest national significance possible and be treated as such in permit granting processes*". and Article 7(8) goes on to state "*With regard to the environmental impacts addressed in Article 6(4) of Directive 92/43/EEC and Article 4(7) of Directive 2000/60/EC, projects of common interest shall be considered as being of public interest from an energy policy perspective and may be considered as being of overriding public interest, provided that all the conditions set out in these Directives are fulfilled*".

Consequently, fossil fuel projects, such as the fracked gas import terminal proposed by Shannon LNG in Ireland, on the PCI list approved by Ireland on 17th October 2017⁷⁶ get obligatory preferential State support in the planning process ahead of competing Renewable projects. Just the fact that these fossil fuel projects are on the PCI list itself amounts to State Aid for these projects.

This represents aid from the Member States in regulatory terms and in financial terms.

- G. PCI projects such as the Shannon LNG US Fracked Gas Import project are eligible for Union Financial Assistance (as per Article 14 of the PCI Regulation No 347/2013) and qualify for funding from the Connecting Europe Facility (as per Article 15 of the PCI Regulation) and further funding and incentives as per Articles 12 and 13. This amounts to more State aid for new fossil fuel infrastructure fossil fuel projects to which EU citizens and residents will be contributors.
- H. The sheer scale at an EU-wide level of the implementation of the European Commission Energy Plan to import fracked US gas announced by President Juncker in July 2018 following his visit to President Trump in the USA through multiple LNG terminals and countries and imposed via the PCI procedure is so vast that:
- it uses the State Resources of each Member State with a PCI project,
 - it gives an Economics of scale advantage to US fracked gas exporters to Europe,
 - it selectively favours US fracked gas exporters into Europe,
 - it renders other renewable and sustainable energy alternatives less competitive,
 - it has a Europe-wide negative impact on trade between Member States in energy from other renewable and sustainable energy sources.

⁷⁴ 23 January 2019. Irish Member State Parliamentary Answer by the Minister admitting formal Member State support for the Shannon LNG PCI project (<https://www.oireachtas.ie/en/debates/question/2019-01-23/204/>)

⁷⁵ PCI Regulation (EU) No 347/2013 <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:115:0039:0075:en:PDF>

⁷⁶ 23 January 2019. Irish Member State Parliamentary Answer by the Minister admitting formal Member State support for the Shannon LNG PCI project (<https://www.oireachtas.ie/en/debates/question/2019-01-23/204/>)

- I. The amount of the aid had risen to €638 million up to 9 August, 2018 at an EU-wide level. The European Commission press release on 9 August 2018⁷⁷ stated:

"The EU has co-financed or committed to co-finance LNG infrastructure projects worth over €638 million (see list of projects in Annex 2). In addition to the existing 150 billion cubic meters of spare capacity in the EU, the EU is supporting 14 liquefied natural gas infrastructure projects, which will increase capacity by another 15 billion cubic meters by 2021, which could welcome imports of liquefied natural gas from the U.S., if the market conditions are right and prices competitive".

- J. In addition, on March 25th, 2019 the U.S. House of Representatives passed a bill (the "European Energy Security and Diversification Act of 2019") that, if it becomes law, would allocate hundreds of millions of US dollars in federal funding over two years to public and private energy development projects in Europe and Eurasia, including

*"natural gas infrastructure, such as interconnectors, storage facilities, liquefied natural gas import facilities, or reverse flow capacity" which "have already been identified by the European Commission as being integral for the energy security of European or Eurasian countries" and which "have the potential to use United States goods and services".*⁷⁸

This would therefore amount to direct State Aid by the US government for fracked gas import terminals in Ireland and throughout Europe which would make it even more difficult for the renewable energy sector in Europe to compete with the fracked gas imports.

- K. The European Commission has stated that "PCIs have access to a total of €5.35 billion in funding from the Connecting Europe Facility (CEF), the EU's €30 billion fund for boosting energy, transport, and digital infrastructure between 2014 and 2020"⁷⁹.

14. European Ombudsman

The European Ombudsman has decided to open a formal inquiry into our complaint that there was maladministration by the European Commission in the creation of a PCI list which was proposed to the EU Parliament and voted on without any proper SEA which obliges the assessment of reasonable alternatives⁸⁰. The Ombudsman has requested a written reply from the Commission to the following questions:

"1) Before adding a project to the PCI list, does the Commission have to ensure that an environmental impact assessment was conducted? If yes, how does the Commission verify that?"

"2) In the event that a national authority did not follow the necessary procedure before granting authorisation to a project, is the relevant project removed from the PCI list?"

The complaint was lodged by us on the following grounds:

"The proposed Shannon LNG project in Ireland has been added to the EU list of "Projects of Common Interest" (PCI):

⁷⁷ Annex IV: EU-U.S. Joint Statement of 25 July: European Union imports of U.S. Liquefied Natural Gas (LNG) are on the rise Brussels, 9 August 2018 (http://europa.eu/rapid/press-release_IP-18-4920_en.htm)

⁷⁸ Annex VI: US "European Energy Security and Diversification Act of 2019". Passed the House of Representatives March 25, 2019 (<https://congress.gov/bill/116th-congress/house-bill/1616/text>)

⁷⁹ <https://ec.europa.eu/energy/en/topics/infrastructure/projects-common-interest>

⁸⁰ EU Ombudsman Complaint 1933/2018/EA on the drawing up by the European Commission of the EU list of "Projects of Common Interest" in the Energy field.

However, we are of the legal opinion that the EU Parliament and the EU Commission should not have approved the EU Energy Programme of Projects of Common Interest (PCI) list without any proper Strategic Environmental Assessment or consideration of reasonable alternatives. The Trans European Energy Infrastructure projects represent a clear European Energy Programme.

The PCI Directive states that All Projects on the PCI list must be "*allocated the status of highest national significance possible*" and that "*authorisation should be given to projects which have an adverse impact on the environment for reasons of overriding public interest*"

On March 14th 2018, the EU parliament took part in what we consider to be a sleight of hand which will legally force EU members to accept massive gas infrastructure projects (such as the proposed Shannon LNG project in Ireland), where all adverse impacts on climate change and impacts on the environment will have to be ignored for reasons of overriding public interest. No environmental screening report of this plan was presented to Parliament before it voted on this plan to approve the Energy Programme of Projects of Common Interest (PCI) - a clear breach of the EU SEA Directive.

We believe this took place to help the EU Commission avoid having to live up to the Global Paris Climate Agreement that the EU ratified in 2016 by not considering "reasonable alternatives" as obliged under the SEA Directive.

We assert that the commitments made in the joint European Commission-US statement of 25 July 2018 stating that the "*European Union would import more liquefied natural gas from the United States to diversify and render its energy supply more secure*" are incompatible with the Paris Agreement and were the real, underlying reason for voting a PCI list without an SEA.

The most up-to-date scientific knowledge is categorical on the following points: The number one climate threat in Europe is fracked gas. Cornell University's Professor Robert Howarth, a leading scientist in this area, states that this is no bridge fuel, that switching from coal to shale gas is accelerating rather than slowing global warming, that methane's impact on climate is 105 times more potent than carbon dioxide, that one half of Methane emissions in the US is coming from Shale Gas Leakage and that, to put it simply, fracked gas is the dirtiest of all fossil fuels with a bigger climate footprint than coal. This was not the thinking over 10 years ago when the Shannon LNG project initially obtained planning permission.

This up-to-date scientific knowledge should have been allowed to be assessed in an SEA and leads us to claim that this is more than maladministration, it is totally illegal behaviour on the part of the European Commission Energy Unit.

Article 2 of the SEA Directive clearly states that "*'plans and programmes' shall mean plans and programmes, including those co-financed by the European Community, as well as any modifications to them*".

Article 4(1) of the SEA Directive states that "*The environmental assessment referred to in Article 3 shall be carried out during the preparation of a plan or programme and before its adoption or submission to the legislative procedure*".

Article 5 of the SEA Directive obliges the environmental assessment to consider "*reasonable alternatives*" to the plan.

By not considering the overall environmental impact of the PCI plan in its totality with all the combined projects in the plan (especially the gas projects grouped together) strategic environmental assessment of individual split projects within the plan when they are going through the permitting process is meaningless - especially since the PCI Directive forces national planning authorities to ignore all these environmental concerns because the projects must be considered to be in "*the public interest*".

The PCI Directive (Regulation (EU) No 347/2013) Article 7(3) clearly states "*projects of common interest shall be allocated the status of the highest national significance possible and be treated as such in permit granting processes*".

Article 7(8) goes on to state "*With regard to the environmental impacts addressed in Article 6(4) of Directive 92/43/EEC and Article 4(7) of Directive 2000/60/EC, projects of common interest shall be considered as being of public interest from an energy policy perspective and may be considered as being of overriding public interest, provided that all the conditions set out in these Directives are fulfilled*".

We believe that the approval of the PCI list by the EU parliament without any proper environmental report, strategic environmental assessment, or consideration of reasonable alternatives is therefore illegal under EU Directives and ask you to kindly inform us how you propose to address our complaint from this perspective"

15. Energy Plan to Import US Fracked Gas

A further complaint was lodged on the same grounds: Complaint that there was maladministration by the European Commission in the implementation of the Energy Plan to import fracked US gas announced by President Juncker in July 2018 following his visit to President Trump in the USA without any prior SEA which would assess reasonable alternatives,

A project is not allowed to have the PCI status unless it is approved by the Member State because Article 3.3(a) of Regulation 347/2013 states "*each individual proposal for a project of common interest shall require the approval of the Member States, to whose territory the project relates*". The current PCI list was approved by Ireland on 17th October 2017⁸¹.

As for every Member State, proposed Irish Projects of Common Interest (PCI) approved by Ireland and the European Commission will set the framework for future development consent within the Irish Member State. The PCI Regulation (No 347/2013) Article 7(3)⁸² clearly states "*projects of common interest shall be allocated the status of the highest national significance possible and be treated as such in permit granting processes*". and Article 7(8) goes on to state "*With regard to the environmental impacts addressed in Article 6(4) of Directive 92/43/EEC and Article 4(7) of Directive 2000/60/EC, projects of common interest shall be considered as being of public interest from an energy policy perspective and may be considered as being of overriding public interest, provided that all the conditions set out in these Directives are fulfilled*".

Consequently, when the Member State approves the PCI candidate being added to the PCI list, an SEA should have already been undertaken because the Energy plan sets the framework for future development consent and the SEA must be undertaken before the PCI list is approved by the Member State.

16. Energy Charter Treaty

The Energy Charter Treaty (ECT)⁸³ of which Ireland is a signatory gives sweeping powers to foreign investors in the energy sector, including the peculiar privilege to directly sue states in secret

⁸¹ 23 January 2019. Irish Member State Parliamentary Answer by the Minister admitting formal Member State support for the Shannon LNG PCI project (<https://www.oireachtas.ie/en/debates/question/2019-01-23/204/>)

⁸² PCI Regulation (EU) No 347/2013 <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:115:0039:0075:en:PDF>

⁸³ <https://www.energy-charter-dirty-secrets.org/>

international tribunals arbitrated over by three private lawyers. Companies are claiming dizzying sums in compensation for government actions that have allegedly damaged their investments, either directly through expropriation or indirectly through regulations of virtually any kind. The PCI candidate evaluation process should take the consequences on board.

17. Public Participation Directive

The Public Participation Directive is also not being adhered to in this PCI process because the Member States give official approval to the PCI candidates without this approval process being submitted to any public consultation in any Member State.

A project is not allowed to have the PCI status unless it is approved by the Member State because Article 3.3(a) of Regulation 347/2013 states "*each individual proposal for a project of common interest shall require the approval of the Member States, to whose territory the project relates*". The current PCI list was approved by Ireland on 17th October 2017⁸⁴.

The general public is also prevented from legally challenging the administrative environmental decision to add Shannon LNG to the PCI List contrary to Article 9 of the Aarhus Convention (Access to Justice) and Article 6 of the ECHR (Human Rights) as the process currently stands.

Article 4 TEU obliges that "*Pursuant to the principle of sincere cooperation, the Union and the Member States shall, in full mutual respect, assist each other in carrying out tasks which flow from the Treaties*"

18. Political Lobbying and Legally Challenging PCI List

We are also concerned that this proposed US fracked gas import terminal by Shannon LNG has been the subject of intensive and orchestrated political lobbying by powerful politicians in its favour, the latest one being from local politician Seán Kelly, MEP for Ireland South and a leading and highly influential member of the Irish Member State Ruling party (Fine Gael) in whose area the LNG terminal would be built.

The 'Irish Examiner' national newspaper stated on March 16th 2017:

"So significant is the project now viewed that funding may be made available from the Ireland Strategic Investment Fund and the European Investment Bank, with the project now designated as a European Project of Common Interest following a significant lobbying campaign led by MEP Seán Kelly".⁸⁵

On his own website, MEP Kelly even admits his role by stating:

"I was appointed in 2016 by the European People's Party (EPP) Group as their spokesperson for Liquefied Natural Gas (LNG). The global gas market has been developing rapidly, bringing significant opportunities for Europe – and thus Ireland – to tap into this market for energy security and to lower consumer prices. I have consistently voiced my support in Europe and in Ireland for the Shannon LNG project in Co. Kerry"⁸⁶.

Our concern is that it is simply unacceptable for the European Commission to be subjected to political lobbying by sitting MEPs to the advantage of a large fossil fuel company, where the Energy plan to import fracked US gas into Europe has not been subjected to public participation or SEA assessments before the Member State approves the PCI designation.

The PCI evaluation process should not be subjected to high-level political lobbying, be it from President Juncker or MEP Seán Kelly because it is bringing the PCI process into disrepute. Evidence-based decision

⁸⁴ 23 January 2019, Irish Member State Parliamentary Answer by the Minister admitting formal Member State support for the Shannon LNG PCI project (<https://www.oireachtas.ie/en/debates/question/2019-01-23/204/>)

⁸⁵ <https://www.irishexaminer.com/business/500m-shannon-liquefied-natural-gas-project-back-on-amid-brexit-energy-concerns-445307.html>

⁸⁶ <https://seankelly.eu/regional-development/>

making in a transparent manner devoid of political lobbying for trade and favouritism of fracked gas imports over climate is not negotiable in this process.

2.3.2. Number of Member States affected by each project

Only one Member State is affected - Ireland - unless the aim is to export gas from Shannon LNG to the UK (once the PCI project of the Reverse Flow of the Interconnector to Moffat is implemented), benefiting from lower corporation tax in Ireland and the implementation of the US-EU trade deal. The Trade Deal should have nothing to do with the PCI process, but political pressure is now putting Trade Concerns before Climate Concerns and is now the subject of a complaint to DG Competition concerning allegations of Illegal State Aid to the US Fracked gas import trade deal with the US.

2.3.3. Territorial Cohesion

Ireland and the UK is considered the one area within the North-South gas interconnections in Western Europe ('NSI West Gas') and this was recognised as fulfilling the Security of Supply criteria for the PCI 5.2 twinning of the interconnector to Scotland⁸⁷. Territorial cohesion must therefore be understood in these terms.

2.3.4. Complementarity with regard to other proposed projects

1. Celtic Interconnector (Electricity PCI 1.6) between Ireland and France providing 700 MB of electricity (equivalent to the power supply to 450,000 homes).⁸⁸
2. 'InisFree LNG' by 'Next Decade LNG' FSRU LNG import project in Cork Port, in the south of Ireland adjacent to the existing gas-fired power station of Aghada (on ACER TYNDP 2018 - LNG-N-1231).⁸⁹
3. Island Magee Storage PCI - with plans to create an LNG import terminal announced on March 7th 2019 as follows:

*"In relation to our offtake negotiations we have had one additional organisation that has become involved in these discussions with a view to taking capacity in the gas storage facility. In order to provide a stronger negotiating platform, we have engaged with market leading consultants to provide more detailed analyses on our revenue model. This will assess actual income (assuming our planned facility was in operation) for the past ten years and more importantly focus on the increasing spreads and volatile market conditions in the next five years now that the full effects of the closure of Centrica's Rough gas storage facility last year are being felt across the UK gas market. This report is due to be received later this month. As part of the ongoing discussions with two of the interested offtake parties we have been requested to explore the Floating Storage and Regasification Unit (FSRU) concept further (which would enable liquefied natural gas (LNG) to be re-gasified for transfer to and from our gas storage caverns). We have, therefore, awarded the concept development study to Costain in order to address this matter."*⁹⁰

4. Bio-gas projects: Gas Networks Ireland (GNI) aims to have at least 20% of renewable gas in the network by 2030.⁹¹

⁸⁷ https://ec.europa.eu/inea/sites/inea/files/fiche_5.2-0042-uk-p-m-14_final_0.pdf

⁸⁸ https://ec.europa.eu/energy/sites/ener/files/documents/pci_factsheet_celtic_interconnector_2017_0.pdf and <https://www.cru.ie/wp-content/uploads/2018/12/CRU18265a-Celtic-Investment-Request.pdf>

⁸⁹

https://www.entsog.eu/public/uploads/files/publications/TYNDP/2018/Copy%20of%20Project%20grouping_TYNDP%202018_FINAL.xlsx

⁹⁰ <https://markets.ft.com/data/announce/full?dockey=1323-13994517-4RN38Q38IM838MFOQ40ATJOS32>

⁹¹ "Energy Policies of IEA Countries. Ireland 2019 Review - International Energy Agency", page 55 & 56 https://www.connaissancedesenergies.org/sites/default/files/pdf-actualites/Energy_Policies_of_IEA_Countries_Ireland_2019_Review.pdf

CONCLUSION

There are too many question marks over the Shannon LNG project that remain to be answered by the European Commission as highlighted in this submission to be able to make an informed decision on whether or not it qualifies as a Project of Common Interest. Under the Precautionary Principle, this candidate PCU 5.3 should therefore be rejected in this round of assessments because it simply does not fulfil any of the basic criteria on any of the levels of general criteria, specific criteria or qualitative criteria.