



Safety Before LNG
Protecting the Shannon Estuary and its people

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Mr. Koen Roovers,
European Ombudsman,
Unit 2 - Coordination of Public Interest Inquiries,
1 avenue du Président Schuman, CS 30403, F - 67001 Strasbourg Cedex
By Email only to: koen.roovers@ombudsman.europa.eu
cc: EO@ombudsman.europa.eu;
Re: 1991/2019/KR - Refusal by DG Energy to assess sustainability criteria of 4th PCI List

Dear Mr. Roovers,

As per your reassurances to me in your email dated 11th February 2020 that the documents provided by me as part of complaint 2228/2019/KR were relevant for your inquiry, and would be taken into account in the similar inquiry 1991/2019/KR¹ you have initiated, I am now providing you with more up-to-date, worrying and questionable feedback from the Energy Commissioner Kadri Simson, dated 6th March 2020.

INTRODUCTION

On March 6th, 2020, in her reply² to an internal review request by Eddie Mitchell from "Love Leitrim" and "Communities for Environment First" (CEF) of the approval of the 4th PCI list by DG Energy (attached below), Commissioner Simson highlights the following facts which I will discuss in greater detail below:

1. **DG Energy obfuscating its Promotion of US Fracked Gas Imports**: that the 4th PCI list includes projects, such as Shannon LNG, intending to promote the new source of fracked gas imports from the USA to Europe; that this intention was declared clearly in writing by the project promoters and supported by DG Energy; and that DG Energy is now clearly attempting to obfuscate this fact to justify not assessing the sustainability and climate impacts of US fracked gas imports on the 4th PCI list;
2. **No sustainability assessment undertaken for 4th PCI list**: that no sustainability assessment was undertaken by DG Energy, by the Regional Groups or even by ENTSOG which went so far as to declare that "the current underlying assumption in the CBA is that all gas projects would automatically show only positive benefits towards CO2 mitigation with no negative impact"; and that this fact is clearly accepted by DG Energy;

¹ <https://www.ombudsman.europa.eu/en/correspondence/en/124432>

² Letter Energy Commissioner Kadri Simson to Eddie Mitchell (CEF) 6th March 2020 - ARES (2020) 1561505

3. **Climate Impacts of Methane Leakage can be measured**: that it is possible to measure the climate impacts of Methane Leakage from fracked gas because DG Energy has now agreed to do so for future PCI lists; and because there is now a clear body of peer-reviewed scientific research which had already completed this work and found that there is a functional interdependence between fracked gas imports into Europe from the US and fracking within the US, leading to accelerated global warming;
4. **DG Energy proposing a Sustainability Assessment of Methane Leakage that does not include Full Life-Cycle Emissions**: that the proposal to assess, in the future, only the climate impacts of methane leakage produced in the European Union is already disingenuously prejudging - in a comprador manner to the advantage of US fracked gas exporters as agreed by Presidents Trump and Juncker in the July 25th 2018 deal - the outcome of such incomplete sustainability assessment in favour of fracked gas imports because the most damaging Methane leakage from fracked gas imports into Europe occurs upstream in the non-territorial fracking fields and in its transportation to Europe.

DISCUSSION

1. DG Energy obfuscating its Promotion of US Fracked Gas Imports

The 4th PCI list includes projects, such as Shannon LNG, intending to promote the new source of fracked gas imports from the USA to Europe. This intention by Shannon LNG was declared clearly in writing by the project promoter and supported by DG Energy. DG Energy is now clearly attempting to obfuscate this fact to justify not assessing the sustainability and climate impacts of US fracked gas imports on the 4th PCI list.

a) Exemption from third party access already granted to Shannon LNG

Commissioner Simson stated:

"Moreover, the Commission has not received any indication that the Shannon LNG terminal would request any exemption from the regulatory regime under the Third Energy Package, which requires them to be unbundled, offer third-party access and have a regulated tariff. Therefore, under the regulated regime, the terminal cannot dedicate capacity to a single supply source, as it has to offer its capacity and services to market participants in a transparent and non-discriminatory manner. Even more, the specific conditions under which the terminal has to offer capacity to the market have to be approved by the national energy regulatory authority in Ireland".³

However, this misleading statement fails to mention the fact that in 2010 the Irish "Commission for Energy Regulation" (CER) granted Shannon LNG an exemption from regulated third party access for a period of 25 years⁴ The CER informed the European

³ Letter Energy Commissioner Kadri Simson to Eddie Mitchell (CEF) 6th March 2020 - ARES (2020) 1561505 page 9

⁴ https://www.cru.ie/document_group/shannon-lng-request-for-exemption-from-3rd-party-access/

Commission of its decision on April 15th, 2010⁵. On July 27th, 2010 the European Commission approved the granting of Third Party Exemption for 20 years to Shannon LNG as part of the Third Energy Package⁶.

b) Entitlement to Member-State Incentives by PCI Project Developers

Commissioner Simson makes no allusion to the fact that even with no third party access exemption, PCI Projects are entitled to a range of Member-State incentives under Article 13 of PCI Regulation 347/2013⁷ which effectively forces the Member States to "ensure that appropriate incentives are granted" when "a project promoter incurs higher risks for the development, construction, operation or maintenance of a project of common interest". Article 13(7) even gives the European Commission control over the incentives because it states that if the Member-State incentives "are not sufficient to ensure the timely implementation of projects of common interest, the Commission may issue guidelines regarding the incentives laid down in this Article".

c) European Commission promoting projects access to the new US Fracked Gas Market

According to the Ten-Year Network Development Plan (TYNDP) 2018 document (generated by ENTSOG PDWS on February 14th 2019) - and officially used by DG Energy for the public consultation on the 4th PCI gas list, it is stated:

"The Shannon LNG project will be the closest European import terminal to the US LNG export terminals, facilitating a new source of competitive gas supplies for Europe..."⁸.

This means that DG Energy viewed and promoted Shannon LNG as an importer of US fracked gas.

d) Shannon LNG admits in writing that it proposes sourcing its supply from fracked gas in Pennsylvania

Commissioner Simson claims that on May 7th 2019

"New Fortress Energy, promoter of Shannon LNG, made available to the Regional Group and wider stakeholder community information that point that Shannon LNG is not linked to a specific source of gas as it will have access to the global LNG market. The below map presented during the Regional Group indicatively shows at least three supply directions of gas: the Middle East, the Arctic Ocean and the Americas".⁹

⁵ <https://www.cru.ie/wp-content/uploads/2010/07/cer10013i.pdf>

⁶ https://ec.europa.eu/energy/topics/markets-and-consumers/market-legislation/third-energy-package_en#documents and

https://ec.europa.eu/energy/sites/ener/files/documents/2010_shannon_decision_en.pdf

⁷ <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:115:0039:0075:en:PDF>

⁸ https://ec.europa.eu/info/sites/info/files/pci_gas_candidates_description.zip 'PCI 4th List candidate gas projects overview' Current TYNDP : TYNDP 2018 FINAL - Annex A - generated by ENTSOG PWDS February 14th 2019, page 469 of 641

⁹ Letter Energy Commissioner Kadri Simson to Eddie Mitchell (CEF) 6th March 2020 - ARES (2020) 1561505 pages 8 and 9



Source: Website of the Shannon LNG PCI project, <http://www.shannonlng.ie/>

However, the Shannon LNG website clearly rather uses this map as an explanation of its statement that "Ireland is an excellent location to receive global LNG supplies"¹⁰, and the Commission is well aware from the 2018 TYNDP that there are plans for at least one other LNG terminal in Ireland (Next Decade in the Port of Cork)¹¹ putting that map in an all-Ireland context. This is the screenshot of the front page of the Shannon LNG website where the map is located:

Shannon LNG

Welcome to Shannon LNG

| | | | |
|--|---|----------------------------------|--|
| <p>ABOUT US</p> <p>Shannon LNG has planning permission to build an LNG import terminal with gas send-out capacity of up to 28.3 million standard cubic metres per day (MMscm/d)</p> | <p>LNG TERMINAL</p> <p>The LNG terminal will consist of up to four LNG storage tanks, each with storage capacity of 200,000 cubic metres and a jetty capable of receiving the largest LNG tankers in operation</p> | <p>USEFUL INFORMATION</p> | <p>CONTACT US</p> <p>Shannon LNG, Listowel Business Park, Listowel, Co. Kerry.</p> <p>E: info@ShannonLNG.ie</p> |
|--|---|----------------------------------|--|

Shannon LNG creates diversity of supply by providing Ireland with access to world LNG supplies

Ireland is an excellent location to receive global LNG supplies

Natural Gas Supply and Demand in Ireland (all-island basis)

The bar chart shows gas supply and demand in Ireland. The Y-axis is in MWh/day. The bars are stacked: Indigenous (Kinsale and Corrib) in red, Shannon LNG in green, and UK Imports in yellow.

source www.ShannonLNG.ie dated March 29th 2020

¹⁰ <http://www.shannonlng.ie/> accessed 29th March 2020

¹¹ <https://www.entsog.eu/sites/default/files/2018-12/TYNDP%202018%20-%20Annex%20A%20-%20Projects%20Sheets.PDF> (page 414 Next Decade LNG plans for the Inisfree LNG project)

Commissioner Simson fails to explain that when 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".¹²

he was strongly challenged on these exact remarks in the full presence of DG Energy officials that this assertion was false, given that 'New Fortress Energy', the owner of Shannon LNG, had itself confirmed in writing that it was a fracked gas exporter in a filing submitted to the United States Securities and Exchange Commission (SEC) on November 9th 2018 by the Company itself where it stated that:

"certain of our suppliers employ hydraulic fracturing techniques",
and that it

"seeks to use "stranded" natural gas to satisfy the world's large and growing power needs"[...] "We are currently developing two liquefiers in the Marcellus area of Pennsylvania, each of which is expected to have the capacity to produce approximately 3 to 4 million gallons of LNG" [...] " We intend to supply all existing and future customers with LNG produced primarily at our own Liquefaction Facilities. We have one operational liquefaction facility in Miami, are currently developing our Pennsylvania Facilities and plan to develop five to ten additional liquefaction facilities over the next five years"¹³

It must be noted that applications for projects to be added to the PCI list are made by the project promoters. The project promoter, in this case, has described its project in writing, essentially as a project to export fracked gas from the Marcellus Shale basin in Pennsylvania, USA and the Commission cannot turn a blind eye to this fact via a wishful interpretation from an amateurish map on a static website which makes no claims other than that "Ireland is an excellent location to receive global LNG supplies" to interpret that as meaning Shannon LNG intends to access LNG supplies from all over the globe.

The conclusion by Commissioner Simson that "there is no indication that the Shannon LNG Terminal would be proposed for one particular source of gas"¹⁴ is now untenable and lacks credibility in the extreme and is deeply concerning given that she has specifically insisted that "The final decision, in the form of this letter, is signed by myself, as Commissioner for Energy, also in recognition of the importance we give to the internal review process"¹⁵.

¹²

<http://www.safetybeforelng.ie/images/4th%20PCI%20List%20Public%20Conculation%20Submission%20SafetyBeforeLNG.pdf> and <https://webcast.ec.europa.eu/pci-gas-regional-group-07-05-19>

¹³ <http://www.safetybeforelng.ie/images/EvidenceShannonLNGisForFrackedGasImports.pdf>

¹⁴ Letter Energy Commissioner Kadri Simson to Eddie Mitchell (CEF) 6th March 2020 - ARES (2020) 1561505 page 9 paragraph 4

¹⁵ Letter Energy Commissioner Kadri Simson to Eddie Mitchell (CEF) 6th March 2020 - ARES (2020) 1561505 page 3 paragraph 7.

2. No sustainability assessment undertaken for 4th PCI list

No sustainability assessment was undertaken by DG Energy, by the Regional Groups or even by ENTSOG which went so far as to declare that "the current underlying assumption in the CBA is that all gas projects would automatically show only positive benefits towards CO2 mitigation with no negative impact". This fact is clearly accepted by DG Energy.

a) Commissioner Kadri Simson admits sustainability criteria not taken into account in ranking

Energy Commissioner Kadri Simson stated :

"However, due to the fact that there is a lack of detailed data and consistency in the sustainability assessment made with the tools available when drawing up the 4th PCI list, these sustainability benefits calculated for gas projects were not taken into account in the ranking of the projects by the Regional Groups".¹⁶

Sustainability assessments cannot be wished away for the benefits of project promoters and to the detriment of the climate if they are found unpalatable. The Commissioner is in effect saying that the sustainability criteria was not assessed because **DG Energy did not put the tools in place to do the sustainability assessment**. How could projects then be assessed to be in the overriding public interest with PCI accreditation if the Commission did not know the impacts? All this is being stated at a time when the Science has caught up to just how methane leakage from fracking is accelerating global warming.

b) Commissioner Kadri Simson focussing on specific criteria but it is the general criteria that obliges assessment of sustainability criteria

The Commissioner has underlined the words "to at least one of the following specific criteria"¹⁷ to draw the reader away from the general criteria that there are no exemptions allowed under PCI Regulation 347/2013 to avoid assessing proposed gas projects under the Sustainability Criteria.

Article 3(5)(a), Article 4(1)(b), Article 4(3), Article 4(4)(a), Annex IV(3) and Annex V(7) of PCI Regulation 347/2013¹⁸ (read in that order for ease of understanding) are categorical in stating that the potential overall benefits of each project must outweigh its costs and the criteria to make this assessment must include the Sustainability Criteria and Climate Impacts.

c) An assumption that all gas projects would automatically show only positive benefits is not a sustainability assessment

There is now clearly a blatant attempt by DG Energy to blur the supply source of gas presented by project promoters in order to justify the claims in the ENTSOG Cost Benefit Analysis (CBA) that "the current underlying assumption in the CBA is that all gas projects would automatically show only positive benefits towards CO2 mitigation with no negative impact"¹⁹ and to justify not assessing the GHG emissions from Methane Leakage from gas

¹⁶ Letter Energy Commissioner Kadri Simson to Eddie Mitchell (CEF) 6th March 2020 - ARES (2020) 1561505 page 5 paragraph 2.

¹⁷ Letter Energy Commissioner Kadri Simson to Eddie Mitchell (CEF) 6th March 2020 - ARES (2020) 1561505 page 4, final paragraph.

¹⁸ <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:115:0039:0075:en:PDF>

¹⁹ Letter Energy Commissioner Kadri Simson to Eddie Mitchell (CEF) 6th March 2020 - ARES (2020) 1561505 page 5 final paragraph.

projects, such as Shannon LNG, which clearly propose to deal exclusively in fracked gas and not to present the sustainability criteria to the regional groups for assessment. An assumption is not an assessment.

ENTSOG, in its Project-specific cost-benefit analysis of the Shannon LNG does not evaluate any sustainability criteria. **Only the promoter of the Shannon LNG project itself, and not ENTSOG, evaluated the only sustainability criteria** as follows:

"Fuel Switch benefits explained [Promoter]

The Shannon LNG Terminal (LNG-N-30) facilitates a switch by oil, coal and peat power plants to cleaner gas",

whereas ENTSOG only evaluated Competition, Security of Supply and Market Integration"²⁰.

3. Climate Impacts of Methane Leakage can be measured

Stating that the Sustainability Criteria were not assessed due to a "lack of detailed data and consistency in the sustainability assessment made with the tools available when drawing up the 4th PCI list," is not credible, given that the Energy Commissioner has now confirmed that DG Energy will indeed be able to measure sustainability criteria for the next list - the 5th PCI list, after all, when she stated:

"To ensure for the future a sound assessment of sustainability benefits provided by gas infrastructure projects in the PCI process is possible, the Commission has decided to carry out a study of relevant data collection and the provision of analytical methodologies. This will enable a robust analysis of the contribution of candidate PCI projects to sustainability. **An updated sustainability criterion will be available by mid-2020. It will be used for assessing candidate PCI projects for the 5th list.** Without pre-judging the results of the study, the aim of the sustainability criteria is to take into account the CO₂ and methane balance in the assessment of projects. In particular, this indicator would consider the infrastructure's expected impact on the overall GHG intensity of energy production in a given Member State and the emissions related to the functioning of the infrastructure itself".²¹

We also know that the climate effects of Methane from fracked gas imports can be measured because there is now a clear body of **peer-reviewed scientific research** which has already completed this work and found that there is a functional interdependence between fracked gas imports into Europe from the US and fracking within the US, leading to accelerated global warming²².

²⁰ Ten Year Network Development Plan 2018, Project-specific cost-benefit analysis, page 381 of 555
<https://www.entsog.eu/sites/default/files/2019-04/TYNDP%202018%20Project-Specific%20CBA%20Results.pdf>

²¹ Letter Energy Commissioner Kadri Simson to Eddie Mitchell (CEF) 6th March 2020 - ARES (2020) 1561505 page 6 paragraph 2.

²² e.g. <http://www.safetybeforelng.ie/pressreleases/pressrelease20191014-ScienceAgainstFrackedGasImportsBeatsRaceToTheBottom.html> and <https://www.youtube.com/watch?v=qR5TqEyQLJ4> and <https://www.biogeosciences.net/16/3033/2019/>

4. DG Energy proposing a Sustainability Assessment of Methane Leakage that does not include Full Life-Cycle Emissions

Commissioner Simson has stated:

"An updated sustainability criterion will be available by mid-2020. It will be used for assessing candidate PCI projects for the 5th list. Without pre-judging the results of the study, the aim of the sustainability criteria is to take into account the CO₂ and methane balance in the assessment of projects. In particular, **this indicator would consider the infrastructure's expected impact on the overall GHG intensity of energy production in a given Member State and the emissions related to the functioning of the infrastructure itself**".²³

The proposal to assess, in the future, only the climate impacts of methane leakage produced in the European Union is already disingenuously prejudging - in a comprador sleight of hand to the advantage of US fracked gas exporters as agreed by Presidents Trump and Juncker in the July 25th 2018 deal²⁴ - the outcome of such incomplete sustainability assessment in favour of fracked gas imports because the most damaging Methane leakage from fracked gas imports into Europe occurs upstream in the non-territorial fracking fields and in its transportation to Europe²⁵.

By not assessing the full climate impacts of importing fracked gas from outside the European Union one can argue quite clearly that the Commissioner is indeed attempting to pre-judge future sustainability assessments - anything to protect the international trade in filthy fracked gas.²⁶

There is a functional interdependence between fracked gas imports into Europe from the US and fracking within the US, leading to accelerated global warming. This will require any sustainability criteria to assess the full life-cycle emissions from fracked gas imports and to therefore consider all non-territorial emissions in order to be fully in compliance with PCI Regulation 347/2013.

There is also a **separate obligation** under Article 3(4)(a) of Regulation 347/2013 for each regional group (as opposed to the Commission itself) to give due consideration to sustainability in assessing proposed PCI projects. It is not for the Commission to decide what criteria the Regional Group must use in assessing projects.

²³ Letter Energy Commissioner Kadri Simson to Eddie Mitchell (CEF) 6th March 2020 - ARES (2020) 1561505 page 6 paragraph 2.

²⁴ https://ec.europa.eu/commission/presscorner/detail/en/STATEMENT_18_4687 and https://ec.europa.eu/commission/presscorner/detail/en/IP_19_2313

²⁵ e.g. <http://www.safetybeforelng.ie/pressreleases/pressrelease20191014-ScienceAgainstFrackedGasImportsBeatsRaceToTheBottom.html> and <https://www.youtube.com/watch?v=qR5TqEyQLJ4> and <https://www.biogeosciences.net/16/3033/2019/>

²⁶ <http://www.safetybeforelng.ie/pressreleases/pressrelease20200118-InternalReviewOfGasPCIProjectsByEuropeanCommission.html>

CONCLUSION

The European Commissioner for Energy has clearly pointed out that the PCI Regulation "gives an explicit priority to energy policy over environment policy"²⁷. Are we all expected to turn a blind eye for political expediency²⁸ to evidence-based decision-making in a transparent manner that not only respects the letter of the law but the spirit of the law? Doing so, I argue, would further undermine public trust in the EU's ability to establish the PCI-list in a manner that is in line with the EU's energy policy and climate objectives?

The fact of the matter is very clear: there is a difference between fracked/unconventional gas and conventional gas. DG Energy refused to even consider the fact that Shannon LNG is being proposed by the project promoter itself for the importation of fracked US gas (as per the Trump-Juncker agreement of July 2018²⁹), even though the scientific evidence has clearly shown that importing fracked US gas into Ireland has a carbon-equivalent footprint 44% greater than coal and that one third of the total increased methane emissions from all sources globally over the past decade is coming from US fracked gas (shale gas)³⁰. The impacts of fracked gas production on Global Emissions therefore can be measured scientifically and transparently³¹, but, in a form of creative accounting, DG Energy refused to allow the sustainability criteria for the different gas projects be considered by each regional group at the group meetings and refused all discussion on fracked gas imports - the elephant in the room. The Regional Group meetings should not have been a rubber-stamping exercise where serious climate issues were prevented from being discussed, contrary to EU law in the PCI Regulation. The acceptance by DG Energy that it will assess the sustainability criteria for future PCI lists does not absolve it from the obligation to do the same for the current, 4th PCI list.

The latest study by consulting firm Artelys for the European Climate Foundation published on January 20th 2020 has found that "the 32 natural gas infrastructure PCI projects combined are calculated to come at a cost of €29 billion" concluding that "most of the 32 gas infrastructure projects on the 4th PCI list are unnecessary from a security point of view, and represent a potential overinvestment of tens of billions of EUR, supported by European public funds"³². Added to this, Energy Commissioner Kadri Simson herself even acknowledged publicly to the ITRE Committee meeting of December 5th 2019³³ that the EIB ban on fossil-fuel financing³⁴ could be circumvented due to a legal loophole which states that

²⁷ Letter Energy Commissioner Kadri Simson to Eddie Mitchell (CEF) 6th March 2020 - ARES (2020) 1561505 page 2 - paragraph 4.

²⁸ <http://www.safetybeforelng.ie/index.htm> - **Why is the US putting so much pressure on the EU to import US fracked gas?**

²⁹ https://ec.europa.eu/commission/presscorner/detail/en/IP_19_2313

³⁰ <http://www.safetybeforelng.ie/index.htm> **The problem with Fracked Gas Imports: Methane Emissions - the Achilles' heel of natural gas and** <http://www.safetybeforelng.ie/pressreleases/pressrelease20191014-ScienceAgainstFrackedGasImportsBeatsRaceToTheBottom.html>

³¹ e.g. peer-reviewed scientific research such as <https://www.biogeosciences.net/16/3033/2019/>

³² <https://www.euractiv.com/section/energy/news/billions-to-be-wasted-on-unnecessary-gas-projects-study-says/>

³³ <https://www.youtube.com/watch?v=OCTzvOErWqU&feature=youtu.be>

³⁴ <https://www.climatechangenews.com/2019/11/15/european-investment-bank-ends-lending-fossil-fuel-projects/>

the ban does not apply to projects on the 4th PCI list, noting that PCI Status is a pre-condition for CEF funding³⁵.

Does the refusal by the Commission to assess the sustainability criteria undermine the Green New Deal and fail to apprehend the rules of the PCI Directive in order to give more weight to Trade in Fracked US gas over Climate impacts?

I am now hereby not only requesting that the Ombudsman considers the lack of sustainability assessment of the 4th PCI list as a breach of the PCI Regulation 347/2013 but am now asking you to consider the proposed future sustainability assessment solution by the European Commission for the 5th PCI list as outlined by Energy Commissioner Kadri Simson as also being in breach of the PCI Regulation 347/2013 due to its refusal to assess full life-cycle climate impacts of US fracked gas imports by only focussing on the emissions produced in the EU Member States.

I eagerly await your response and thank you in advance for your time in dealing with the serious issues raised in this communication.

Yours sincerely,
John McElligott

³⁵ <http://www.safetybeforelng.ie/pressreleases/pressrelease20200121-MEPsCalledOnToStop29BillionOfGasProjectsOn4thPciList.html>



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Brussels, 6 March 2020
ARES(2020)1561505

Eddie Mitchell
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Foxfield, Manorhamilton
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F91 KX79
Ireland

Dear Mr Mitchell,

I refer to your e-mail of 12 December 2019 registered on 17 December 2019 Ares(2019)7755779, in which you request, pursuant to Regulation (EC) No. 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies¹ (the “Aarhus Regulation”), on behalf of Communities for Environment First, an internal review of the European Commission Delegated Regulation amending Regulation (EU) No 347/2013 of the European Parliament and of the Council as regards the Union list of projects of common interest (the 4th PCI list).

The procedure for internal review is foreseen under Article 10 of the ‘Aarhus Regulation’. Under this provision, any non-governmental organisation which meets the criteria set out in Article 11 of the Regulation is entitled to make a request for internal review to the European Union institution, which has adopted an administrative act under environmental law.

After analysing the request and all supporting documents that you submitted, the Commission can conclude that the criteria for entitlement laid down in Article 11 of the ‘Aarhus Regulation’ (i.e. independence, non-profit making, legal personality, primary stated objective of promoting environment protection, existence for over two years and the subject matter is covered by its objectives) are respected by Friends of the Earth, which is therefore entitled to make a request for internal review.

¹ OJ L 264, 25.0.2006, p. 13

The request for internal review lodged by Friends of the Earth has been assessed against the criteria defining the subject of the requests laid down in Article 10(1) of the Aarhus Regulation that states: *'Any non-governmental organisation which meets the criteria set out in Article 11 is entitled to make a request for internal review to the Community institution or body that has adopted an administrative act under environmental law (...)'*.

The 4th PCI list cannot be considered an administrative act within the meaning of Article 2(1)(g) of the Aarhus Regulation as it is to be regarded as an act of general application addressed to all operators and Member States (see by analogy Judgment in Case T-12/17, *Mellifera (I) v Commission*, paras. 55-65, under appeal). Article 2(1)(g) of the Aarhus Regulation defines the administrative act as 'any measure of individual scope under environmental law, taken by a Community institution or body, and having legally binding and external effects'. The 4th PCI list cannot be considered an administrative act because being a regulatory act as defined by Article 290 of the Treaty on the Functioning of the European Union (TFEU), it is of a general scope of application. As it appears from its operative part, it adds an annex (Annex VII) to Regulation (EU) 347/2013 which is a legislative act.

The 4th PCI list also cannot be considered as adopted under environmental law. As it has been adopted following the delegation laid down in Articles 3(4) and 16 of Regulation (EU) 347/2013, the latter would have to be considered environmental law. Article 2(1)(f) of the Aarhus Regulation defines environmental law as *'Community legislation which, irrespective of its legal basis, contributes to the pursuit of the objectives of Community policy on the environment as set out in the Treaty: preserving, protecting and improving the quality of the environment, protecting human health, the prudent and rational utilisation of natural resources, and promoting measures at international level to deal with regional or worldwide environmental problems'*. Article 2(1)(e)(iii) of the Aarhus Regulation that lays down the definition of *'plans and programmes relating to the environment'* makes a distinction between a legislation that *'contributes to the pursuit of the objectives'* of the environment policy and a legislation that *'is likely to have significant effects on the achievement of the objectives'*. The above mentioned definition of environmental law refers only to legislation that *'contributes to the pursuit of the objectives of Community policy on the environment'*.

Regulation (EU) 347/2013 has been adopted on the basis of Article 172 TFEU which constitutes the legal basis for Union measures promoting the interconnection and interoperability of national (energy) networks and the interconnection of (energy) islands with the central regions of the Union which is a distinct legal basis from Article 191 TFEU. Furthermore, Article 1 and Recital 17 of Regulation (EU) 347/2013 explain that the latter has been adopted to lay down 'guidelines for the timely development and interoperability of priority corridors and areas of trans-European energy infrastructure' and to 'achieve the energy policy objectives of the TFEU [...]'. Consequently, Regulation (EU) 347/2013 explicitly aims at developing trans-European energy networks and at achieving the objectives of the energy policy objectives. The Regulation is not based on Article 192 TFEU which constitutes the legal basis for the Union environmental policy and it does not state that it is to contribute to that policy. Moreover, in certain cases Regulation (EU) 347/2013 gives an explicit priority to energy policy over environment policy.

Article 7(8) of Regulation (EU) 347/2013 states that PCIs are to be *'considered as being of public interest from the energy policy perspective, and thus they may be considered as being*

of overriding public interest' with regard to *'the environmental impacts addressed in Article 6(4) of Directive 92/43/EEC² and Article 4(7) of Directive 2000/60/EC³*. Finally, at the moment, it cannot be determined whether (and to which extent) the PCIs included in the Union list will contribute to, or at least will have positive effects on, the Union environmental policy. Many PCIs will be subject to an environmental assessment only at the permit granting stage of the implementation process and many of them are in an early phase and will still have to demonstrate their compliance with Union (environmental) legislation. Consequently, since Regulation (EU) 347/2013 neither aims at contributing to environmental policy nor it is possible to determine its effects on that policy, it cannot be considered as part of environmental law.

Therefore, your request for internal review is found inadmissible as the 4th PCI list cannot constitute a valid subject of a request for internal review under the Aarhus Regulation. Nevertheless, for the sake of good administration the Commission has proceeded with the assessment of the merits of your request for internal review of the 4th PCI list under Article 10 of the Aarhus Regulation.

Preliminary remarks regarding the internal review process

In your request for internal review, you ask that, if possible, in the interest of fairness and transparency, the internal review could be arranged in such a way as to be dealt with by somebody other than Director-General for Energy (or anybody who reports to her directly or indirectly).

In this respect, I would like to reassure you that our standard procedures take into account the needs for available technical expertise in the subject matter, and the broader concerns of fairness and transparency that you highlighted.

In order to ensure that the services dealing with the request have the necessary in-depth expertise in the subject matter, the review is prepared by a team of technical experts with knowledge of the concrete case and experts in the "Aarhus Regulation".

For additional scrutiny, other relevant services of the Commission, in particular, the Legal Service, the Secretariat-General, and Directorate General for Environment, were consulted in a formal interservice consultation.

The final decision, in the form of this letter, is signed by myself, as Commissioner for Energy, also in recognition of the importance we give to the internal review process.

The Union lists of projects of common interest are adopted every two years as a delegated Regulation pursuant to the TEN-E Regulation, in particular Article 3 and Annex III of the Regulation which establish Regional Groups, their composition and functioning for each

² Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora; OJ L 206, 22.7.1992.

³ Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy; OJ L 327, 22.12.2000.

priority corridor. According to these provisions, Regional Groups have a specific role in drawing up the list of project of common interest. Regional Groups are composed of representatives of the Member States, national regulatory authorities, transmission system operators and project promoters, as well as the Commission, the Agency for the Cooperation of Energy Regulators and the ENTSOs for electricity and gas.

Each Regional Groups consults with and invites to its meetings a broad and balanced range of stakeholders, including non-governmental and consumer organisations. The decision-making powers in the Groups are restricted to Member States and the Commission. Prior to the adoption by the Commission of the 4th PCI list on 31 October 2019, the draft Delegated Regulation has undergone a consultation with relevant services of the Commission. The 4th PCI list is thus the result of an extensive process within the Regional Groups and the Commission and has not been drawn up by Directorate-General for Energy alone.

In conclusion: we followed our standard procedures when addressing your request. To ensure the availability of expertise, and considering the multi-stakeholder dimension of the decision-making powers to adopt the 4th PCI list and the consultation of relevant Commission services prior to adoption, the internal review has been carried out by the relevant services in Directorate-General for Energy, as explained above. To ensure further scrutiny of the process, addressing also your concerns regarding fairness and transparency, the results of the review have been subjected to consultation of other relevant Commission services.

On substance, you base your request on three alleged grounds for review, which are individually addressed below.

1. Alleged maladministration by the European Commission in the preparation of the PCI lists

You claim that there was maladministration by the European Commission in the preparation of the PCI lists because of non-assessment of the sustainability criterion of any of the proposed gas projects as allegedly foreseen under Article 3(5)(a), Article 4(1)(b), Article 4(3), Article 4(4)(a), Annex IV(3) and Annex V(7) of PCI Regulation 347/2013.

As evidence to your claim, you attach to the request three annexes, as follows: i) a letter of 6 December 2019 from Director-General Ditte Juul Jørgensen replying to a complaint of maladministration lodged by “Safety before LNG”; ii) statements of Deputy Director-General, Klaus-Dieter Borchardt, during a meeting of the Committee on Industry, Research and Energy (ITRE) of the European Parliament on 17 October 2019 and iii) a reply from Director-General Ditte Juul Jørgensen to a joint letter signed by 7 Members of the European Parliament on 3 October 2019.

The criteria applied for the assessment of PCIs are described in Article 4 and Annex IV of the Regulation (EU) No. 347/2013 on guidelines for trans-European energy infrastructure (TEN-E Regulation). Article 4(2) provides for specific criteria applying to PCIs in each category. In line with Article 4(2) (b) *“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; (ii) security of supply; (iii) competition and (iv)

sustainability. In line with Article 4(3): “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.”

In fact, the Commission has duly assessed within the Regional Group all of the criteria listed for gas projects including sustainability as we explain below. However, due to the fact that there is a lack of detailed data and consistency in the sustainability assessment made with the tools available when drawing up the 4th PCI list, these sustainability benefits calculated for gas projects were not taken into account in the ranking of the projects by the Regional Groups.

Instead, the ranking was based on the benefits brought by gas projects in market integration, security of supply and competition, which were assessed through a robust methodology. This approach respects the requirements of the TEN-E Regulation, which provides that the sustainability criterion is one of the alternative criteria that gas projects could prove a contribution to in order to become PCIs under the current legal framework.

In fact, the TEN-E Regulation provides that only gas projects which are included in the relevant Ten Year Network Development Plan (TYNDP) adopted by the European Network of Transmission System Operators in Gas (ENTSOG) can apply for inclusion in the Union list of PCIs. Candidate projects for the PCI list are assessed and ranked by a Regional Group established for each Priority Corridor within the meaning of Article 3 of the TEN-E Regulation. The ranking of gas infrastructure candidate projects is carried out against at least one of the specific criteria defined in Article 4(2)(b) of the TEN-E Regulation.

The project specific cost-benefit analysis performed by ENTSOG as part of the TYNDP is an important input for the assessment of candidate PCIs. The methodology for the cost-benefit analysis (CBA) of gas projects is developed by ENTSOG and adopted by the Commission.

For the calculation of sustainability benefits, the information provided by candidate projects in their project fiches includes CO₂ emissions and benefits deriving from fuel switch, used as input in the CBA methodology. However, the current underlying assumption in the CBA is that all gas projects would automatically show only positive benefits towards CO₂ mitigation, with no negative impact (such as possible increase in CO₂ emissions). By only using CO₂ savings from fuel-switches from coal to gas without carrying out a detailed analysis of the different situations in the individual countries, other possible sustainability benefits remain invisible and unquantifiable, hampering the robustness of the results of the assessment of such benefits. This was also acknowledged by the Agency for the Cooperation of Energy Regulators (ACER) in its Opinion No 19/2019⁴ of the European Union of 25 September 2019 on the draft regional lists of proposed gas projects of common interest 2019. In this opinion, ACER notes that *“(28) the contribution of the PCI candidate projects to sustainability in general and to meeting the climate change policy goals of the European Union in particular, is not quite clear. ACER believes that the preliminary assessment provided by ENTSOG, which assigned a positive sustainability benefit to each and every candidate project, is tenable only under the specific assumptions that gas will be a substitute of more polluting*

⁴ Opinion No 19/2019 of the European Union Agency for the Cooperation of Energy Regulators of 25 September 2019

fuels in the European Union's primary energy mix, and also that the total volume of consumed gas will be within a range that ensures that overall greenhouse gas emissions resulting from gas use will stay below the European Union's policy targets. ' Thus, due to lack of detailed data and consistency, the sustainability benefits calculated in the CBA have not been taken forward in the Commission's methodology for ranking candidate projects for the 4th PCI list⁵. It has to be recalled, however, that, to some extent sustainability concerns were part of the assessment process upstream. By the way the PCI selection process works, gas PCIs already undergo a thorough climate proofing assessment as the needs identified for the gas infrastructure derive from the use of scenarios that are in line with the EU targets and agreements regarding the EU's energy and climate goals.

To ensure for the future a sound assessment of sustainability benefits provided by gas infrastructure projects in the PCI process is possible, the Commission has decided to carry out a study of relevant data collection and the provision of analytical methodologies. This will enable a robust analysis of the contribution of candidate PCI projects to sustainability. An updated sustainability criterion will be ready by mid-2020. It will be used for assessing candidate PCI projects for the 5th list. Without pre-judging the results of the study, the aim of the sustainability criteria is to take into account the CO₂ and methane balance in the assessment of projects. In particular, this indicator would consider the infrastructure's expected impact on the overall GHG intensity of energy production in a given Member State and the emissions related to the functioning of the infrastructure itself.

To conclude, the assessment and ranking process for projects on the 4th PCI list complies with the requirements of the TEN-E Regulation as sustainability is one of the alternative criteria that gas projects could prove a contribution to in order to become PCIs under the current legal framework. The methodology used for the 4th PCI process fully captures and evaluates the rest of the alternative criteria in line with the TEN-E Regulation: market integration, security of supply (by measuring the reduction of the demand curtailed and infrastructure disruption), competition (by measuring the reduction in the supply source dependence, increase the supply source access and decrease in the capacity diversification), ending physical isolation and access to new supply sources not currently reaching any of the Member States. Following the evaluation against the alternative criteria, the selected projects have proven reliable benefits.

2. Alleged need for reassessment of Shannon LNG and connecting pipeline in view of loss of PCI status by enabling projects

You claim that the standalone Shannon LNG project and connecting pipeline should be reassessed given that its alleged enabler projects are no longer on the 4th PCI list. In support of your claim, you refer to the contribution of 29 May 2019 by Safety before LNG to the consultation carried out by the European Commission on candidate gas projects in view of preparing the 4th PCI list.

⁵ Methodology for assessing gas candidate PCI projects PCI 2018-2019 exercise, available on CIRCABC: file://net1.cec.eu.int/homes/113/langaoa/Desktop/20190627__Methodology%20for%20gas%20TEN-E%20priority%20corridors%20PCI%20assessment_final.pdf

As mentioned under point 1, the general and specific criteria for PCIs are described in Article 4 and Annex IV of the TEN-E Regulation. The general and specific criteria form the basis of the two-step methodology for assessing candidate projects for the 4th PCI list⁶.

For the preparation of the 2018 Ten Year Network Development Plan (TYNDP 2018), ENTSOG decided on grouping the gas infrastructure in the United Kingdom into project groups corresponding to projects identification titles “Project Group West 01” and “Project Group West 02”. Project Group West 01 covers the internal gas infrastructure in the United Kingdom, whereas Project Group West 02 covers Shannon LNG and the connecting pipeline in Ireland. The grouping reflects the different infrastructure needs of the United Kingdom and Ireland, as identified by the TYNDP 2018 developed by ENTSOG.

The investments making up the internal infrastructure in the United Kingdom, i.e. Project Group West 01, cover the Islandmagee underground storage facility in Northern Ireland (Islandmagee UGS) and a number of enhancement transmission projects whose objective is to ensure the reverse flow at Moffat Interconnection Point between the United Kingdom and Ireland.

The primary objective of the Project Group West 01 is to implement a new underground gas storage facility, which would allow the United Kingdom access to the stored gas and would enable a bi-directional flow of gas between Ireland and the United Kingdom. The above-mentioned projects are not identified as PCIs on the 4th PCI list.

On the other hand, Project Group West 02 comprising Shannon LNG and its connection pipeline addresses Ireland’s need for increasing security and diversity of supply and mitigates the energy isolation of the entire island.

In line with the general criteria applicable to liquefied natural gas projects as provided by Annex IV(1)(d) under the TEN-E Regulation, in order to comply with the requirement for a significant cross-border impact, a project should aim at supplying directly or indirectly at least two Member States or at fulfilling the infrastructure standard (N-1 rule). The Shannon LNG project and connecting pipeline has been assessed from this perspective and showed a cross-border impact on two Member States, i.e. Ireland and the United Kingdom.

Furthermore, in line with the article 4(1)(b) of the TEN-E Regulation, the assessment of the Shannon LNG Terminal and its connecting pipeline showed a positive cost-benefit ratio in the North-South Interconnection West gas corridor and was approved by the Decision-Making Body for inclusion in the 4th PCI list under cluster 5.3.

To conclude, Shannon LNG terminal and its connecting pipeline has been considered and assessed as a standalone candidate project. It does not require any enabler projects to bring the full benefits found in its assessment to both Irish and UK markets, whilst mitigating Ireland’s energy isolation. Therefore, the fact that the Islandmagee UGS and a number of enhancement transmission projects whose objective is to ensure the reverse flow at Moffat Interconnection

⁶ Methodology for assessing gas candidate PCI projects PCI 2018-2019 exercise, available on CIRCABC: file:///net1.cec.eu.int/homes/113/langaoa/Desktop/20190627__Methodology%20for%20gas%20TEN-E%20priority%20corridors%20PCI%20assessment_final.pdf

Point between the United Kingdom and Ireland are no longer PCIs is of no consequence to the compliance of the Shannon LNG Terminal with the criteria of the TEN-E Regulation.

3. Alleged importation of US fracked gas by Shannon LNG into Europe

In your request, you claim that there has been no assessment of the fact that the Shannon LNG project is proposed for the importation of US fracked gas into Europe on a massive scale. This assessment would allegedly fall under the sustainability criterion provided by Article 4(2) (b) of the TEN-E Regulation.

To support your claim, you submit extracts of company filings to the US Securities and Exchange Commission (SEC), statistics from the Pennsylvania Department of Environmental Protection (DEP) and the US Energy Information Administration (EIA) on the source of gas production in Pennsylvania, different analysis by the industry and statements from Richard Bruton, T.D., Minister for Communications, Climate Action and Environment of Ireland and Donald Trump, President of the United States.

Ensuring that all Member States have access to liquid gas markets is a key objective of the European Commission's "Framework Strategy for a Resilient Energy Union with a Forward-Looking Climate Change Policy"⁷.

As a liquid, LNG takes up nearly 600 times less volume than gas at standard atmospheric pressure, making it possible to transport gas over long distances without the use of pipelines, this way allowing gas-to-gas competition and the establishment of a global and liquid gas market. LNG plays a key role in improving energy security and boosting competitiveness in the EU through the diversification of gas supply sources, making countries with access to the global liquid gas markets far more resilient than those that are dependent on a single gas supplier and on limited supply routes.

Moreover, the EU strategy for liquefied natural gas and gas storage⁸ anticipated the significant expansion in global LNG supply and the opportunity for lower prices and increased security and resilience for the European Union.

On 7 and 8 May 2019, the meeting of the Regional Group on North-South Interconnection West for gas hosted presentations of candidate gas projects to the 4th PCI list. On this occasion, New Fortress Energy, promoter of Shannon LNG, made available to the Regional Group and wider stakeholder community information⁹ that point that Shannon LNG is not linked to a specific source of gas as it will access the global LNG market. The below map presented during the Regional Group indicatively shows at least three supply directions of gas: the Middle East, the Arctic Ocean and the Americas.

⁷ COM(2015)80

⁸ COM(2016) 49 final

⁹ CIRCABC platform <https://circabc.europa.eu/ui/group/3ba59f7e-2e01-46d0-9683-a72b39b6decf/library/c82e32da-71a1-440a-8d14-4311f99a6970/details>



Source: Website of the Shannon LNG PCI project, <http://www.shannonlng.ie/>

Moreover, the Commission has not received any indication that the Shannon LNG terminal would request any exemption from the regulatory regime under the Third Energy Package, which requires them to be unbundled, offer third-party access and have a regulated tariff. Therefore, under the regulated regime, the terminal cannot dedicate capacity to a single supply source, as it has to offer its capacity and services to market participants in a transparent and non-discriminatory manner. Even more, the specific conditions under which the terminal has to offer capacity to the market have to be approved by the national energy regulatory authority of Ireland.

Sustainability considerations are addressed in dialogues with Union's energy partners, including the US, Japan and Canada, and in multi-lateral initiatives that aim at reducing methane leakage.


Furthermore, the Directorate-General for Energy is carrying out research into the climate aspects of the gas value chain in an ongoing study on methane emissions launched in 2019 and will publish a Methane Leakage Strategy in 2020.

To conclude, there is no indication that the Shannon LNG Terminal would be proposed for one particular source of gas.

In light of the aforementioned reasons, the internal review of the 4th PCI list has led to the conclusion that the grounds put forward in the request for internal review are unfounded, dismissing the claim of maladministration against the Commission in the preparation of the 4th PCI list.

Should you not agree with the present reply, you may bring proceedings before the Court of Justice of the EU or lodge a complaint with the European Ombudsman under the conditions laid down in Articles 263 and 228 respectively of the Treaty on the Functioning of the European Union.

Yours sincerely,

A handwritten signature in black ink that reads "Kadri Simson". The signature is written in a cursive, slightly slanted style.

Kadri SIMSON

RE: Re: Request for Review of Decision 2228/2019/KR

ROOVERS Koen <koen.roovers@ombudsman.europa.eu>

Tue 11/02/2020 11:06

To: 'John McElligott .' <johnmcelligott@hotmail.com>

Dear Mr McElligott,

I have to correct my previous message as regards the timing of the update on the inquiry in question: this is now planned for Thursday, 13 February, in the afternoon. My apology for this change in plans.

Thank you in advance,

Koen Roovers

From: ROOVERS Koen
Sent: 11 February 2020 11:17
To: 'John McElligott .' <johnmcelligott@hotmail.com>
Subject: Re: Request for Review of Decision 2228/2019/KR

Dear Mr McElligott,

Thank you for your correspondence of 15 January 2020. I apologise for the delay in replying to you. In your letter you ask the Ombudsman to reconsider the conclusion regarding your complaint (ref. 2228/2019/KR).

The Ombudsman has discretion as regards deciding whether or not a complaint provides grounds for an inquiry. The reason why there were insufficient grounds to open an inquiry on your complaint were set out in the Decision of 19 December 2019, and related to the fact that the Ombudsman was already dealing with the subject matter through another complaint (with ref. 1991/2019/KR).

In your letter you express concerns as regards this Decision, which can be summarised as:

- The documentation that you submitted to the Ombudsman with your complaint was more recent;
- Complaint 1991/2019/KR might fail on "a non-substantive or administrative issue".

As regards these concerns I can give you the following reassurances. Your documentation is indeed relevant for our inquiry, and we will take it into account. The inquiry into 1991/2019/KR, which was subject to some delay, is now opened.

I can inform you that we plan to publish an update on the inquiry in question on the website of the European Ombudsman tomorrow, 12 February, at 10 am CET.

I hope this is helpful.

With kind regards,

**European Ombudsman****Koen Roovers**

Strategic Inquiries Unit

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Safety Before LNG
Protecting the Shannon Estuary and its people

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15th January 2020

European Ombudsman,
Unit 2 - Coordination of Public Interest Inquiries,
1 avenue du Président Schuman, CS 30403, F - 67001 Strasbourg Cedex
By Email only to: EO@ombudsman.europa.eu

Re: Request for Review of Decision 2228/2019/KR

Dear Sir/Madam,

I am hereby requesting a review of the European Ombudsman decision concerning my complaint 2228/2019/KR as provided for by you on August 31st, 2016¹. You decided not to open an inquiry on the grounds that the Ombudsman has already opened an inquiry on a similar complaint reference 1991/2019/KR.

I am requesting a review of this decision on the grounds that my complaint has more up-to-date supporting documentation that does not exist in the similar complaint 1991/2019/KR.

Most importantly, I provided you with the official response I received directly from the Director General of DG Energy, Mrs. Ditte Juul-Jørgensen on December 6th, 2019 in which she effectively admitted that the 4th PCI list was not evaluated correctly under the legally-obliged sustainability criteria and that this will only be done for future lists. This letter substantiates my complaint beyond any reasonable doubt and should be assessed by you.

In addition, the similar complaint 1991/2019/KR could not have been in a position to raise these new facts outlined by the Director General, since these facts did not exist at the time that complaint was forwarded to your offices.

I equally provided you with the transcripts of the full statements of Deputy Director General Borchardt on October 17th, 2019 which may not have been provided in the similar complaint.

There are other supporting documents, including communications directly between me, Director General Juul-Jørgensen, certain MEPs and the Government of Ireland dealing with the exact subject matter of my complaint which cannot possibly have been submitted in complaint 1991/2019/KR.

As a minimum, I would expect that such important documentation, obtained directly as a result of following the official complaint process with the European Commission in the first instance, should be assessed as part of my complaint 2228/2019/KR or as part of complaint 1991/2019/KR.

If complaint 1991/2019/KR fails on a non-substantive or administrative issue, then it would be highly unfair that my complaint 2228/2019/KR should be ignored on the grounds that a similar complaint was closed for an unrelated reason – especially if the supporting documentation in my complaint contains the key proof of maladministration by the European Commission.

I eagerly await your response and thank you in advance for your time in dealing with this request.

Yours faithfully,
John McElligott

¹ <https://www.ombudsman.europa.eu/en/letter/en/70669>



European Ombudsman

Unit 2 - Inquiries

Mr John McElligott

johnmcelligott@hotmail.com

Strasbourg, 19/12/2019

Decision of the European Ombudsman concerning complaint 2228/2019/KR
against the European Commission

Dear Mr McElligott,

On 9 December 2019, you submitted a complaint to the European Ombudsman against the European Commission about your concerns as regards the establishment of the fourth EU list of 'Projects of Common Interest'.

After a careful analysis of all the information you submitted to me, I regret to inform you that there are insufficient grounds to open an inquiry into your complaint¹. This is because the Ombudsman has already opened an inquiry into the subject matter that you raised in your complaint, based on a previously received complaint (with reference number: 1991/2019/KR).

Therefore, the Ombudsman does not consider it justified to open another inquiry into this same issue. We have thus closed your case.

We intend to publish more information about our ongoing inquiry on our website (www.ombudsman.europa.eu).

Thank you for contacting the Ombudsman.

Yours sincerely,

Fergal Ó Regan
Head of Inquiries - Unit 2

¹ Full information on the procedure and rights pertaining to complaints can be found at <https://www.ombudsman.europa.eu/en/document/70707>.



Complaint about maladministration

Complaint submitted on: Sunday | 08 December 2019

European Ombudsman

First name: John
Surname: McElligott
Address line 1: Island View
Address line 2: 5 Convent Street
Town/City: Listowel
County/State/Province: County Kerry
Postcode: v31 pw61
Country: Ireland
Nationality: Irish
Tel.: +353-87-2804474
E-mail address: johnmcelligott@hotmail.com
Language preference: English

On behalf of (if applicable): Not applicable

Against which European Union (EU) institution or body do you wish to complain?

European Commission

What is the decision or matter about which you complain? When did you become aware of it? Add annexes if necessary.

That there was maladministration by the European Commission in the preparation of the PCI lists without any assessment of the Sustainability Criteria as is obliged under Article 3(5) and Article 4(3) of PCI Regulation 347/2013.

The final list of proposed projects of common interest (the 4th PCI List) was published on October 31st 2019 by DG Energy. On October 17th, 2019, Deputy Director General Borchardt admitted publicly that DG Energy did not assess any of the proposed gas projects under Sustainability or Climate Impact Grounds. This was the first time I became aware of this fact for sure.

What do you consider that the EU institution or body has done wrong?

1. DG Energy has not not assessed the contribution of any gas project towards the sustainability criteria of reducing emissions or taking into account expected changes in climatic conditions when deciding to approve the addition of such projects on the final 4th PCI list or any preceding PCI lists as is obliged under Article 3(5) and Article 4(3) of PCI Regulation 347/2013, Articles 11 and 191 TFEU and the Paris Agreement.

2. As pointed out in detail already in the related Ombudsman complaint 1933/2018/KR, the Shannon LNG project, among other LNG Import terminals on the proposed PCI list, is being planned for the importation of fracked gas from the US into the EU on a massive scale following agreement between Presidents Trump and Juncker on July 25th 2018. There has been no distinction made between fracked gas projects and non-fracked gas projects even though the non-territorial emissions and carbon leakage from importing US fracked gas into Europe especially is accelerating global warming more than conventional gas.

Director General, in her reply of 6/12/2018 to the complaint of maladministration has declared that :

"the available data were not sufficient to consider sustainability criteria in a meaningful manner in the selection process for the 4th PCI list",

going on to state:

"Therefore, in line with the ACER opinion, we are working to improve

the analytical tools and procedures to carry out a sustainability assessment of candidate gas projects as part of the cost-benefit analysis for future lists of PCIs. We have already started work in that respect and we will make sure that the results will be fully reflected in the next list of PCIs".

So, DG Energy Director General Ditte Juul Jørgensen has therefore admitted that the 4th PCI list was not evaluated correctly under the legally-obliged sustainability criteria, that the problem will be fixed for future lists, but has not proposed altering the now legally-unsafe proposed final 4th PCI list of projects of common interest drafted by DG Energy.

But PCI accreditation will set the framework for development consent in all Member States, where, under Article 7 of PCI Regulation 347/2013, these illegally-evaluated

"projects of common interest shall be allocated the status of the highest national significance possible and be treated as such in permit-granting processes". That is not acceptable in a rules-based system.

3. This open admission of maladministration by the both the Director General and the Deputy Director General of the European Commission, supported by the obligatory legal opinion of ACER that found that there was no property sustainability assessment, along with the legal obligations of Articles 11 and 191 of TFEU and the Paris Agreement now completely support the assertion by me that there should have been an assessment of the Climate and Sustainability Impacts of the proposed PCI project importing fracked gas from the USA and I ask you to find accordingly.

4. There are no exemptions allowed under PCI Regulation 347/2013 to avoid assessing proposed gas projects under the Sustainability Criteria. Article 4(1)(b), Annex IV(3) and Annex V(7) of PCI Regulation 347/2013 are categorical in stating that the potential overall benefits of each project must outweigh its costs and the criteria to make this assessment must include the Sustainability Criteria and Climate Impacts.

5. Director General Ditte Juul Jørgensen also seems to wrongly insinuate in her reply of 6/12/2019 that my organisation agreed with the Assessment criteria not including Sustainability when she states that:

"the Methodology for assessing the gas candidate PCI projects [...] which was agreed by the Regional Groups and discussed in the Regional Groups where organisations such as yours have been involved".

When I attended the Regional Meeting on May 7th 2019 in Brussels I orally highlighted at length that not assessing the Sustainability criteria was against the law and furthermore highlighted the same in my written submission of May 29th 2019. 'Safety Before LNG' suggested (in Section 2.1.2 Potential Overall Benefits of our May 29th Submission) that the Life Cycle Impacts of a project on Climate and the Fossil Fuel Lock In of a project would be two non-discriminatory methods of evaluation under the sustainability criteria. All our suggestions were ignored.

6. Any suggestion that the illegal Methodology used to assess the Gas projects was the fault of the Member States alone, just because the Member States were represented in the Regional Groups does not abdicate the responsibility of DG Energy to assess the projects under the Sustainability Criteria.

7. The PCI Regulation 347/2014 Article 4 is not a guideline, but law. It is unacceptable that DG Energy can assume to be allowed to turn a blind eye to the law under which it was delegated the responsibility of assessing candidate projects of common interest in Energy in the EU.

What, in your view, should the institution or body do to put things right?

DG Energy should reassess all the gas projects on the proposed 4th PCI under the sustainability criteria as is obliged under Article 3(5) and Article 4(3) of PCI Regulation 347/2013, Articles 11 and 191 TFEU and the Paris Agreement.

DG Energy should immediately inform the European Parliament and the European Council that it did not assess any of the gas projects on the proposed 4th PCI list under the obligatory "sustainability criteria" in order to allow the European Parliament and Council make an informed decision on whether or not the Parliament and Council should reject the proposed 4th PCI list as per Article 16(5) of PCI Regulation 347/2013.

The European Commission should also remove all the gas projects on the PCI list which were not evaluated under the Sustainability Criteria as is provided for under Article 5(8) of PCI Regulation 347/2013.

Have you already contacted the EU institution or body concerned in order to obtain redress?

Yes (please specify and submit copies of the relevant correspondence)

1. 6/12/2019: Reply from Director General Ditte Juul Jørgensen of DG Energy to complaint of maladministration
2. 7/11/2019: Complaint of maladministration by the DG Energy following certain admissions by Deputy Director General Borchardt on October 17th, 2019 sent by John McElligott to Director General Ditte Juul Jørgensen of DG Energy
3. 7/11/2019: Copy of online complaint of maladministration submitted by John McElligott as per the written complaint of maladministration by the DG Energy following certain admissions by Deputy Director General Borchardt on October 17th, 2019 sent by John McElligott to Director General Ditte Juul Jørgensen of DG Energy.
- 4 3/12/2019 Letters between Director General Ditte Juul Jørgensen of DG Energy and certain MEPS referred to by her in reply of /12/2019 from Director General Ditte Juul Jørgensen of DG Energy to complaint of maladministration
5. 29/5/2019 Public Consultation submission by John McElligott of Safety Before LNG, to DG Energy on the list of candidate Projects of Common Interest in gas infrastructure

If the complaint concerns work relationships with the EU institutions and bodies: have you used all the possibilities for internal administrative requests and complaints provided for in the Staff Regulations? If so, have the time limits for replies by the institutions already expired?

Not applicable

Has the object of your complaint already been settled by a court or is it pending before a court?

Please confirm that you have read the information below

You have read the information note on data processing and confidentiality

Do you agree that your complaint may be passed on to another institution or body (European or national), if the European Ombudsman decides that he is not entitled to deal with it?

Yes

Attachments:

| Name | Size |
|---|---------|
| JohnMcElligottComplaintToDGEnergyOnApprovalOfGasPCI-ListWithNoSustainabilityCriteriaAssessedNov2019.pdf | 3.23 MB |

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Listowel,
County Kerry

Dear Mr McElligott,

I am writing to you concerning your complaint of 7 November 2019 for alleged maladministration by the European Commission in the preparation of the 4th Union list of Projects of Common Interest (PCIs). You refer to the intervention by Deputy Director-General Borchardt at a meeting of the European Parliament's Committee on Industry, Research and Energy (ITRE) on 17 October 2019 and you raise two specific points: first, that no Strategic Environmental Assessment (SEA) was undertaken in the preparation of the PCI list and, second, that no assessment of the sustainability criteria was carried out.

As I have expressed in my letter of 3 October 2019 (Ares(2019)6122200), we take your concerns very seriously. The intervention by Deputy Director-General Borchardt is in line with my previous conclusions. All PCI projects, as any other non-PCI project, must fully comply with national and EU law, including environmental legislation, during their implementation. Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment sets the obligation for the preparation and/or adoption of such plans and programmes on the authority at national, regional or local level.

While measures and decisions taken in the course of the implementation process by project promoters and national authorities may have significant effects on the environment, the list of PCIs itself cannot produce such effects. Therefore, the inclusion of a given energy infrastructure project on the Union list of projects of common interest (PCIs) does not prejudice the fulfilment of EU environmental law. As explained in the above-referenced letter, the Commission can withdraw a project from the PCI list if it is found not to comply with EU law, including environmental legislation.

Concerning your point that the projects were included in the PCI list without an assessment of the sustainability criteria, Deputy-Director General Borchardt underlined in his intervention on 17 October 2019 that sustainability is an important criteria for the selection PCI projects.

Sustainability criteria need to be fully integrated in the assessment of candidate gas projects. As acknowledged in the opinion by the Agency for the Cooperation of Energy

Regulators (ACER) on the draft regional lists of proposed gas projects for the 4th PCI list, the available data were not sufficient to consider sustainability criteria in a meaningful manner in the selection process for the 4th PCI list. This is also reflected in the Methodology for assessing the gas candidate PCI projects (see in particular footnote 2)¹ which was agreed by the Regional Groups and discussed in the Regional Groups where organisations such as yours have been involved.

Therefore, in line with the ACER opinion, we are working to improve the analytical tools and procedures to carry out a sustainability assessment of candidate gas projects as part of the cost-benefit analysis for future lists of PCIs. We have already started work in that respect and we will make sure that the results will be fully reflected in the next list of PCIs. In addition, this issue will be an important element in the on-going review of the TEN-E Regulation.

I hope my letter addresses your concerns. The Commission's Directorate-General for Energy remains available for any further queries you may have.

Yours sincerely,

Ditte Juul Jørgensen
[e-signed]

Contact: Joachim BALKE, Head of Unit, ENER B.1

c.c.: Raphael Sauter (ENER B.1)

1

https://circabc.europa.eu/webdav/CircaBC/Energy/13%20Regional%20Meetings/Library/%5bPCI%202019%20gas%5d%20PCI%20assessment%20methodology_FINAL/20190627_Methodology%20for%20gas%20TEN-E%20priority%20corridors%20PCI%20assessment_final.pdf



Safety Before LNG

Protecting the Shannon Estuary and its people

John McElligott,
Safety Before LNG,
Island View,
5 Convent Street,
Listowel,
County Kerry

Telephone: +353-87-2804474
Email:
JohnMcElligott@hotmail.com /
safetybeforelng@hotmail.com
Web: www.SafetyBeforeLNG.ie

07 November 2019

Ms Ditte Juul-Jørgensen,
Director General, DG ENER,
European Commission
By email ditte.juuljoergensen@ec.europa.eu
cc: Klaus-Dieter.borchardt@ec.europa.eu ,jane.amilhat@ec.europa.eu, ENER-B1-PROJECTS@ec.europa.eu

Re: Complaint of maladministration by the DG Energy following certain admissions by Deputy Director General Borchardt on October 17th, 2019

Dear Ms. Juul-Jørgensen,

I am now urgently bringing to your attention the fact that on October 17th, 2019, the Deputy Director General of DG Energy, Klaus-Dieter Borchardt, at a meeting of the Committee on Industry, Research and Energy (ITRE), admitted that The European Commission itself broke EU law when it refused to assess emissions under the sustainability criteria of the PCI Regulation 347/2013¹ when it was deciding on which gas projects to keep on the PCI list.

At the same meeting, he also agreed that PCIs set the framework for development consent which is the main indicator that an SEA is required.

These statements from the Commission have lead me to now make the following 2 complaints to you:

1. That no SEA was undertaken for the PCI Accreditation Energy Plan:
PCI accreditation sets the framework for future development consent and the PCI process is therefore a Plan and Programme subject to SEA to assess reasonable alternatives as defined under the SEA Directive 2001/42/EC because the Deputy Director General of DG Energy himself has stated publicly on October 17th, 2019:

“PCIs are under a special regulatory framework which also facilitates the implementation”.

Article 3 of the SEA Directive 2001/42/EC² clearly obliges an SEA if plans “set the framework for future development consent of projects”. On Friday, October 4th, 2019 Ireland approved Shannon LNG being added to the proposed 4th PCI list as a member of the Gas PCI Regional Group at their high-level meeting held in Brussels . This was done without an SEA and without the European Commission demanding an SEA.

2. That there was maladministration by the European Commission in the preparation of the PCI lists without any assessment of the Sustainability Criteria:

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

² SEA Directive 2001/42/EC <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32001L0042>

Deputy Director General of DG Energy himself has stated publicly on October 17th, 2019:

*“And also, to discuss, what you have claimed, rightly so, where is the sustainability or Climate Impact Assessment. **Unfortunately, we are not doing it. This is certainly a missing link that is in our current catalogue of criteria which need to be added. And the Commission knows it**”³,*

going on to state:

*“And I take that, that here is **a missing link in our system**. That we should have, for **future projects**, a real scrutiny, a real assessment on the climate policy compatibility of these projects”.*

The PCI Regulation 347/2014 Assessment Criteria

The European Commission has only assessed gas projects under three of the 4 obligatory criteria (under Article 4(3) of the PCI Regulation 347/2013) of “Market Integration”, “Competition” and “Security of Supply”, whilst illegally omitting the fourth criteria of “Sustainability”. To not do so, is illegal by Article 3(5)(a) of the PCI Regulation. The PCI Regulation defines sustainability as “[...] *the contribution of a project to reduce emissions [...] taking into account expected changes in climatic conditions*”.

TFEU and Paris Agreement Obligations to consider Climate Impacts

Article 11 of the Treaty on the Functioning of the European Union (TFEU) states:

“Environmental protection requirements must be integrated into the definition and implementation of the Union's policies and activities, in particular with a view to promoting sustainable development”.

Along with Article 191 TFEU and the obligations under the Paris Agreement it is now clear that assessment of the “Sustainability” criteria under Article 4(3) of PCI Regulation 347/2013 is not a choice but a legal obligation on DG Energy under EU law.

ACER

The Agency for the Cooperation of European Regulators, ACER, the opinion of which the Commission must take on board, declared on September 25th, 2019 that the European Commission was not properly considering the merits of the projects in terms of potential contribution to sustainability when it concluded:

the PCI Selection methodology was “Not properly considering the merits of the projects in terms of potential contribution to sustainability”

and

“ACER notes that the approach adopted in the PCI selection process, namely of not using the sustainability assessment provided by ENTSOG and not suggesting any alternative, is suboptimal, as it leads to a large lacuna in the assessment of important merits or disadvantages of the projects. The absence of a sound assessment of the projects’ contribution to sustainability leads to great uncertainty and doubts about the viability (or even the need) for the projects in the long run.”⁴

³ <https://www.europarl.europa.eu/ep-live/en/committees/video?event=20191017-0900-COMMITTEE-ITRE> and https://www.youtube.com/watch?v=hQqF_YtNQ1w&feature=youtu.be

⁴ [https://www.acer.europa.eu/Official documents/Acts of the Agency/Opinions/Opinions/ACER%20Opinion%2019-2019%20on%20Gas%20PCI%20list.pdf](https://www.acer.europa.eu/Official%20documents/Acts%20of%20the%20Agency/Opinions/Opinions/ACER%20Opinion%2019-2019%20on%20Gas%20PCI%20list.pdf)

This open admission of maladministration by the Deputy Director General of the European Commission, supported by the obligatory legal opinion of ACER that found that there was no property sustainability assessment, along with the legal obligations of Article 11 and 191 of TFEU and the Paris Agreement now completely support the assertion by me that there should have been an assessment of the Environmental Impacts of the Energy Plan to import fracked gas from the USA for projects put on the PCI list to assess reasonable alternatives and I ask you to find accordingly.

We are in a rules-based process. It is simply unacceptable to any right-minded person for DG Energy to endorse a contravention of EU laws to import US fracked gas into Europe, on the understanding that proper assessments will be done for "*future projects*".

The full statements of Deputy Director General of DG Energy, Klaus-Dieter Borchardt at the October 17th, 2019 meeting of the Committee on Industry, Research and Energy (ITRE) are included below for your information.

I await your feedback,

Yours sincerely,
John McElligott

The full statements of Deputy Director General of DG Energy, Klaus-Dieter Borchardt at the October 17th, 2019 meeting of the Committee on Industry, Research and Energy (ITRE)⁵ are as follows:

*"There was a question of the Shannon. Thank you for that. It's a good example where our problems lay today. Also for the Commission. Because you have to understand that the PCI Process in the first place is in the hands, as I said, it's bottom up, of Member States, of what they want to have. And then it goes to regional groups, et cetera. So we as a Commission when it comes to us, we have to follow some clear rules. We cannot keep a project on the list if One Member State opposes it. And we have had these cases this time. On the other hand, if there is no opposition, and we are doing a Cost Benefit Analysis and it shows a positive social welfare ratio, then we are, at this moment in time, obliged to take it. And that is also as Mister Peterson has raised. And I take that, that here is **a missing link in our system**. That we should have, for **future projects**, a real scrutiny, a real assessment on the climate policy compatibility of these projects. ...*

Now, why is there such a keen interest to get on this PCI list. And there are mainly three reasons for that. The first is that our regulation, the TEN-E Regulation foresees that the PCI has to undergo an accelerated permit-granting procedure and it is said that the whole permit granting - all permits, by the way, should go through a one-stop shop - have to be delivered within three and a half years.

*The second is that PCIs are under a **special regulatory framework which also facilitates the implementation**. For instance, we also have the prerequisite that the hosting countries, at least two Member States, they have to agree on such an infrastructure project, which already takes away all the risk that there are some political implications that could hamper the development of a project. That is already cleared through the PCI process.*

And then last, but not least, and for the developers of course, the most important one, is the EU Financial assistance. And here, we have a direct connection between the PCI and the Connecting Europe Facility. Because we can only accept a project for funding under the Connecting Europe Facility if, it has previously been taken on the list for PCI. [...]

*And also, to discuss, what you have claimed, rightly so, where is the sustainability or Climate Impact Assessment. **Unfortunately, we are not doing it. This is certainly a missing link that is in our current catalogue of criteria which need to be added. And the Commission knows it.***

[...]

Because the danger is there. If you are putting today such a pipeline into the water, it stays there for the next 50 years. And that is certainly something where we also have, if you look into the future, the problem."

⁵ <https://www.europarl.europa.eu/ep-live/en/committees/video?event=20191017-0900-COMMITTEE-ITRE> and https://www.youtube.com/watch?v=hQqF_YtNQ1w&feature=youtu.be

From: EC FPIS DO NOT REPLY <ec-fp-internet-services-do-not-reply@ec.europa.eu>

Sent: Thursday 7 November 2019 01:33

To: John McElligott <johnmcelligott@hotmail.com>

Subject: Your complaint form has been successfully submitted

Thank you for having completed the form. The European Commission will process it promptly.

| | |
|--|-------------------|
| Are you submitting this complaint on your own behalf? | yes |
| Representative Businesses or organisation | |
| Title | |
| Representative first name | |
| Representative last name | |
| Representative E-mail | |
| Representative street and number | |
| Representative postcode | |
| Representative town | |
| Representative country | Please select... |
| Representative telephone | |
| Businesses | Safety Before LNG |

| | |
|---|--|
| or organisati on: | |
| Title | Mr |
| Firstname | John |
| Surname | McElligott |
| e-mail | johnmcelligott@hotmail.com |
| Language | English |
| Street and number | Island View, 5 Convent Street |
| Postcode | v31 pw61 |
| Town | Listowel, County Kerry |
| Country | Ireland |
| Telephone | +353-87-2804474 |
| official contact for all correspon dence | |
| Authority complaine d about name | European Commission - DG ENERGY |
| Authority complaine d about contact person | Director-General of DG Energy, Ditte Jull-Joergensen |
| Authority complaine d about email | Ditte.JUUL-JOERGENSEN@ec.europa.eu |
| Authority complaine d about | |
| Authority complaine d about telephone | +32-2-2962496 |
| Authority complaine d about address | DM24 8/84, Rue de la Loi 200 |
| Authority complaine d about | B-1049 |

| | |
|--|--|
| postcode | |
| Authority complained about town | Brussels |
| Authority complained about country | Belgium |
| National measures suspected to infringe Union law | <p>On Friday, October 4th, 2019 Ireland approved Shannon LNG being added to the proposed 4th PCI list as a member of the Gas PCI Regional Group at their high-level meeting held in Brussels .</p> <p>This was done without an SEA and without the European Commission demanding an SEA.</p> |
| EU law you think has been breached | <p>PCI Regulation (EU) No 347/2013 And SEA Directive 2001/42/EC as per following email sent on 7th November 2019:</p> <p>Ms Ditte Juul-Jørgensen, Director General, DG ENER, European Commission By email ditte.juuljoergensen@ec.europa.eu cc: Klaus-Dieter.borchardt@ec.europa.eu ,jane.amilhat@ec.europa.eu, ENER-B1-PROJECTS@ec.europa.eu</p> <p>Re: Complaint of maladministration by the DG Energy following certain admissions by Deputy Director General Borchardt on October 17th, 2019</p> <p>Dear Ms. Juul-Jørgensen,</p> <p>I am now urgently bringing to your attention the fact that on October 17th, 2019, the Deputy Director General of DG Energy, Klaus-Dieter Borchardt, at a meeting of the Committee on Industry, Research and Energy (ITRE), admitted that The European Commission itself broke EU law when it refused to assess emissions under the sustainability criteria of the PCI Regulation 347/2013 when it was deciding on which gas projects to keep on the PCI list.</p> <p>At the same meeting, he also agreed that PCIs set the framework for development consent which is the main indicator that an SEA is required.</p> <p>These statements from the Commission have lead me to now make the following 2 complaints to you:</p> <p>1. That no SEA was undertaken for the PCI Accreditation Energy Plan: PCI accreditation sets the framework for future development consent and the PCI process is therefore a Plan and Programme subject to SEA to assess reasonable alternatives as defined under the SEA Directive 2001/42/EC because the Deputy Director General of DG Energy himself has stated publicly on October 17th, 2019:</p> |

| | |
|-----------------------------------|--|
| | <p>“PCIs are under a special regulatory framework which also facilitates the implementation”.</p> <p>Article 3 of the SEA Directive 2001/42/EC clearly obliges an SEA if plans “set the framework for future development consent of projects”. On Friday, October 4th, 2019 Ireland approved Shannon LNG being added to the proposed 4th PCI list as a member of the Gas PCI Regional Group at their high-level meeting held in Brussels . This was done without an SEA and without the European Commission demanding an SEA.</p> <p>2. That there was maladministration by the European Commission in the preparation of the PCI lists without any assessment of the Sustainability Criteria: Deputy Director General of DG Energy himself has stated publicly on October 17th, 2019:</p> <p>“And also, to discuss, what you have claimed, rightly so, where is the sustainability or Climate Impact Assessment. Unfortunately, we are not doing it. This is certainly a missing link that is in our current catalogue of criteria which need to be added. And the Commission knows it “ , (https://www.europarl.europa.eu/ep-live/en/committees/video?event=20191017-0900-COMMITTEE-ITRE and https://www.youtube.com/watch?v=hQqF_YtNQ1w&feature=youtu.be)</p> <p>going on to state:</p> <p>“And I take that, that here is a missing link in our system. That we should have, for future projects , a real scrutiny, a real assessment on the climate policy compatibility of these projects”.</p> <p>The PCI Regulation 347/2014 Assessment Criteria The European Commission has only assessed gas projects under three of the 4 obligatory criteria (under Article 4(3) of the PCI Regulation 347/2013) of “Market Integration”, “Competition” and “Security of Supply”, whilst illegally omitting the fourth criteria of “Sustainability”. To not do so, is illegal by Article 3(5)(a) of the PCI Regulation. The PCI Regulation defines sustainability as “[...] the contribution of a project to reduce emissions [...] taking into account expected changes in climatic conditions”.</p> <p>.</p> |
| <p>Problem description</p> | <p>TFEU and Paris Agreement Obligations to consider Climate Impacts Article 11 of the Treaty on the Functioning of the European Union (TFEU) states: "Environmental protection requirements must be integrated into the definition and implementation of the Union's policies and activities, in particular with a view to promoting sustainable development".</p> |

Along with Article 191 TFEU and the obligations under the Paris Agreement it is now clear that assessment of the "Sustainability" criteria under Article 4(3) of PCI Regulation 347/2013 is not a choice but a legal obligation on DG Energy under EU law.

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The Agency for the Cooperation of European Regulators, ACER, the opinion of which the Commission must take on board, declared on September 25th, 2019 that the European Commission was not properly considering the merits of the projects in terms of potential contribution to sustainability when it concluded:

the PCI Selection methodology was "Not properly considering the merits of the projects in terms of potential contribution to sustainability"

and

“ACER notes that the approach adopted in the PCI selection process, namely of not using the sustainability assessment provided by ENTSOG and not suggesting any alternative, is suboptimal, as it leads to a large lacuna in the assessment of important merits or disadvantages of the projects. The absence of a sound assessment of the projects’ contribution to sustainability leads to great uncertainty and doubts about the viability (or even the need) for the projects in the long run.

(https://www.acer.europa.eu/Official_documents/Acts_of_the_Agency/Opinions/Opinions/ACER%20Opinion%2019-2019%20on%20Gas%20PCI%20list.pdf)

This open admission of maladministration by the Deputy Director General of the European Commission, supported by the obligatory legal opinion of ACER that found that there was no property sustainability assessment, along with the legal obligations of Article 11 and 191 of TFEU and the Paris Agreement now completely support the assertion by me that there should have been an assessment of the Environmental Impacts of the Energy Plan to import fracked gas from the USA for projects put on the PCI list to assess reasonable alternatives and I ask you to find accordingly.

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I await your feedback,

Yours sincerely,
John McElligott

The full statements of Deputy Director General of DG Energy, Klaus-Dieter Borchardt at the October 17th, 2019 meeting of the Committee on Industry, Research and Energy (ITRE) (<https://www.europarl.europa.eu/ep-live/en/committees/video?event=20191017-0900-COMMITTEE-ITRE> and https://www.youtube.com/watch?v=hQqF_YtNQ1w&feature=youtu.be) are as follows:

"There was a question of the Shannon. Thank you for that. It's a good example where our problems lay today. Also for the Commission. Because you have to understand that the PCI Process in the first place is in the hands, as I said, it's bottom up, of Member States, of what they want to have. And then it goes to regional groups, et cetera. So we as a Commission when it comes to us, we have to follow some clear rules. We cannot keep a project on the list if One Member State opposes it. And we have had these cases this time. On the other hand, if there is no opposition, and we are doing a Cost Benefit Analysis and it shows a positive social welfare ratio, then we are, at this moment in time, obliged to take it. And that is also as Mister Peterson has raised. And I take that, that here is a missing link in our system. That we should have, for future projects , a real scrutiny, a real assessment on the climate policy compatibility of these projects.

...

Now, why is there such a keen interest to get on this PCI list. And there are mainly three reasons for that. The first is that our regulation, the TEN-E Regulation foresees that the PCI has to undergo an accelerated permit-granting procedure and it is said that the whole permit granting - all permits, by the way, should go through a one-stop shop - have to be delivered within three and a half years.

The second is that PCIs are under a special regulatory framework which also facilitates the implementation. For instance, we also have the prerequisite that the hosting countries, at least two Member States, they have to agree on such an infrastructure project, which already takes away all the risk that there are some political implications that could hamper the development of a project. That is already cleared through the PCI process.

And then last, but not least, and for the developers of course, the most important one, is the EU Financial assistance. And here, we have a direct connection between the PCI and the Connecting Europe Facility. Because we can only accept a project for funding under the Connecting Europe Facility if, it has previously been taken on the list for PCI. [...]

And also, to discuss, what you have claimed, rightly so, where is the sustainability or Climate Impact Assessment. Unfortunately, we are not doing it. This is certainly a missing link that is in our current catalogue of criteria which need to be added. And the Commission knows it.

[...]

Because the danger is there. If you are putting today such a pipeline into the water, it stays there for the next 50 years. And that is certainly something where we also have, if you look into the future, the problem."

Does the | yes

| | |
|--|--|
| Member State concerned receive EU funding relating to the subject of your complaint | |
| Does your complaint relate to a breach of the EU Charter of Fundamental Rights? | no |
| Please explain how EU law is involved and which fundamental right has been breached | |
| List of documents | <p>7th November 2019 Letter sent to Ms Ditte Juul-Jørgensen, Director General, DG ENER, European Commission By email ditte.juuljoergensen@ec.europa.eu cc: Klaus-Dieter.borchardt@ec.europa.eu ,jane.amilhat@ec.europa.eu, ENER-B1-PROJECTS@ec.europa.eu</p> <p>Re: Complaint of maladministration by the DG Energy following certain admissions by Deputy Director General Borchardt on October 17th, 2019</p> |
| Have you already taken action in the Member State concerned | yes |

| | |
|--|--|
| to try to solve this problem? | |
| What action have you already taken in the Member State concerned to tackle the problem? | |
| What type of decision(s) resulted from your action. | <p>On 3rd October, 2019. We wrote joint letter along with 7 MEPS to, among others,</p> <p>An Taoiseach Leo Varadkar T.D., Taoiseach of Ireland (By email: taoiseach@taoiseach.gov.ie)</p> <p>Minister Richard Bruton T.D, Minister of Communications, Climate Action and Environment, Ireland (By email minister.bruton@dccae.gov.ie)</p> <p>Mr. Caoimhín Smith, Energy Security Division, DCCAE, Ireland (By email caoimhin.smith@dccae.gov.ie)</p> <p>We, the undersigned MEPS are demanding that all the candidate gas projects on the island of Ireland on the proposed 4th PCI list be rejected by members of the Gas PCI Regional Group at their high-level meeting to be held in Brussels on Friday, October 4th, 2019.</p> <p>and we called for</p> <ul style="list-style-type: none"> – to remove any project from the proposed list of Projects of Common Interest that could support the building of an LNG facility in Ireland that will act as a gateway for fracked gas entering the Irish energy mix; and – to build support in Europe to prioritise sustainability criteria in the assessment of candidate PCI projects, that will address fossil fuel lock in and the long-term impacts of fracked gas in the European energy mix, given the expected change in climatic conditions. <p>This letter was completely ignored</p> |
| Has your action has been settled by a court or | |

| | |
|--|--------------|
| is pending before a court. | |
| Why didn't you take any action to tackle your problem in the Member State concerned ? | |
| Indicate why you are not eligible for particular remedy | |
| Other reason for not taking action in the Member State concerned | |
| Have you already contacted EU institutions or other services dealing with problems of this nature | |
| Petition to the European Parliament | |
| European Ombudsman | 1933/2018/KR |

| | |
|---|-----|
| an | |
| European Commission correspondence | |
| European Commission complaint | |
| SOLVIT | |
| Other (please specify) | |
| Are you aware of any action in the Member State concerned covering the issue you raise | no |
| Please specify action you are aware of in the Member State concerned | |
| Do you authorise the Commission to disclose your identity | yes |

Submission made: 2019-11-07 2:33 AM



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR ENERGY

The Director-General

Brussels,
ENER/DJJ/ep

Mr. Ciarán Cuffe MEP
Ms. Clare Daly MEP
Ms. Grace O Sullivan MEP
Mr. Luke Ming Flanagan MEP
Ms. Martina Anderson MEP
Mr. Matt Carthy MEP
Mr. Mick Wallace MEP

Dear Members of the European Parliament,

Thank you for your letter of 3 October 2019 concerning the 4th European Union list of projects of common interest (PCIs), asking for all the candidate gas projects on the island of Ireland on the draft regional list to be rejected by the High-Level Decision-Making Body which will take place on 4 October 2019.

In response to your concerns, I would first like to explain the selection process underlying the 4th PCI list during which we have paid particular attention to an open and transparent selection process. Since November 2018, the Regional Groups, including the one for the North-South gas interconnections in Western Europe ('NSI West Gas'), met regularly to identify the infrastructure needs and to prepare the draft regional lists in line with the provisions of the Regulation (EU) No 347/2013 on guidelines for trans-European energy infrastructure (the TEN-E Regulation). Stakeholders have been involved in this process and their views and concerns have been considered in the discussions. Assistants to Members of the European Parliament from all political groups in the Industry, Research and Energy (ITRE), Environment, Public Health and Safety (ENVI) and Transport (TRAN) Committees have also been invited to attend the Regional Group meetings. All candidate projects were assessed against a methodology and a set of criteria that were agreed in the Regional Groups. On that basis, three candidate gas projects on the island of Ireland have not been proposed on the draft regional lists. Only one candidate gas project on the island of Ireland has been proposed on the draft regional list.

I agree with you that sustainability criteria need to be fully integrated in the assessment of candidate gas projects. As acknowledged in the opinion by the Agency for the Cooperation of Energy Regulators (ACER) on the draft regional lists of proposed gas projects of common interest for the 4th European Union list of PCIs, to which you refer in your letter, the available data were not sufficient to consider sustainability criteria in a meaningful manner in the selection process. Therefore, in line with the ACER opinion, it

is very important that we improve the analytical tools and procedures to carry out a sustainability assessment of candidate gas projects as part of the cost-benefit analysis for future European Union lists of PCIs. My services have already started work on that respect and I will make sure that the results will be fully reflected in the next European Union list of PCIs.

Concerning compliance with environmental legislation, I would like to assure you the inclusion of a given energy infrastructure project on the European Union list of PCIs does not prejudice the fulfilment of EU environmental law. All PCI projects, just like non-PCI projects, must fully comply with national and EU law, including environmental legislation. The Commission can withdraw a project from the PCI list if it is found not to comply with EU law, including environmental legislation.

I fully share your commitment to reduce greenhouse gas emissions and to increase the share of renewable energy sources in the energy mix in view of the transition to full decarbonisation. In this context, I would like to mention that the EU Member States agreed this week on a Commission proposal to invest €530 million under the Connecting Europe Facility to build the Celtic Interconnector between France and Ireland. The implementation of this PCI will enhance the development and integration of more renewable energy in Ireland.

Concerning the next steps of the PCI selection process, the High-Level Decision-Making Body will adopt the regional lists of proposed PCIs on 4 October 2019. It is for national governments to present their substantiated reasons in case a project on their territory should not be included in the final European Union list of PCIs. The Commission cannot *ex officio* remove a candidate project from the draft regional lists. I therefore advise you to reach out to the Irish government to explain your position.

After the High-Level Decision-Making Body, the Commission will adopt the final regional lists in the form of a delegated act. This adoption is currently foreseen for the end of October. After the adoption by the Commission, the delegated act establishing the European Union list of PCIs will be transmitted to the European Parliament and the Council who will have 2 months – which can be extended by another 2 months – to decide whether they intend to object to the list. After this period, the PCI list enters into force.

I hope my letter addresses your concerns. I remain available for any further queries you may have and stand ready to working together on how to improve the selection procedure for future European Union lists of PCIs.

Yours sincerely,

Ditte Juul Jørgensen

3rd October, 2019.

Ms Ditte Juul-Jørgensen, Director General, DG ENER, European Commission (By email ditte.juul-joergensen@ec.europa.eu)

Ms Jane Amilhat, Acting Head of Unit, ENER.B.1, DG ENER, European Commission (By email jane.amilhat@ec.europa.eu ENER-B1-PROJECTS@ec.europa.eu)

Mr. Alberto Pototschnig, Director of ACER - Agency for the Cooperation of Energy Regulators – (By Email director@acer.europa.eu; alberto.pototschnig@acer.europa.eu)

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An Taoiseach Leo Varadkar T.D., Taoiseach of Ireland (By email: taoiseach@taoiseach.gov.ie)

Minister Richard Bruton T.D, Minister of Communications, Climate Action and Environment, Ireland (By email minister.bruton@dccae.gov.ie)

Mr. Caoimhín Smith, Energy Security Division, DCCAE, Ireland (By email caoimhin.smith@dccae.gov.ie)

We, the undersigned MEPS are demanding that all the candidate gas projects on the island of Ireland on the proposed 4th PCI list be rejected by members of the Gas PCI Regional Group at their high-level meeting to be held in Brussels on Friday, October 4th, 2019.

On September 25th, 2019 the European Union Agency for the Cooperation of Energy Regulators (ACER) completed its opinion on the draft list of projects of common interest 2019ⁱ. It found that all the proposed Gas projects on the island of Ireland are "projects which did not prove that their overall benefits outweigh costs". This is a general criteria under Article 4(1)(b) of Regulation 347/2013 which should lead to automatic disqualification from the PCI list. The Commission, when adopting the Union List, is obliged to take into account the opinion of the Agency in order to ensure cross-regional consistency.ⁱⁱ We fully support this opinion and demand that the Commission respect this opinion by removing all of the projects on the island of Ireland from the final 4th PCI list.

We also fear that Ireland is proceeding, at all costs and without any public consultation in an SEA process as provided for under the SEA Directive, the Public Participation Directive and the Aarhus Convention, with the implementation of the Energy Plan to import fracked US gasⁱⁱⁱ announced by President Juncker in July 2018^{iv} following his visit to President Trump in the USA through multiple LNG terminals and countries and imposed via the PCI procedure.

On Thursday September 26th, 2019, a motion was submitted to the Irish Parliament (the Dáil), co-signed by 44 Members of Parliament (TDs) from a variety of political parties. We fully support this motion and likewise call on the European Commission:

- to remove any project from the proposed list of Projects of Common Interest that could support the building of an LNG facility in Ireland that will act as a gateway for fracked gas entering the Irish energy mix; and
- to build support in Europe to prioritise sustainability criteria in the assessment of candidate PCI projects, that will address fossil fuel lock in and the long-term impacts of fracked gas in the European energy mix, given the expected change in climatic conditions.^v

The motion reads as follows:

That Dáil Eireann:

notes that:

- this House declared a Climate and Biodiversity Emergency in May 2019;
- recent extreme weather events, including record heat waves in Europe and Asia, are a warning that Climate Change is crossing thresholds that pose a threat to all humanity and life on Earth;
- unprecedented wildfires in the Arctic and Amazon and an historic rise in methane levels in the atmosphere show the urgent need for radical action;
- the focus of climate change mitigation actions is to reduce the greenhouse gas (GHG) emissions which are driving climate change;
- methane is the second most important greenhouse gas behind carbon dioxide causing global climate change, whose global warming potential (GWP) impact on climate over a 20-year period is 87 times more potent than that of carbon dioxide^{vi};
- unlike the case for carbon dioxide, the climate system responds quickly to changes in methane emissions, and reducing methane emissions could provide an opportunity to immediately slow the rate of global warming and perhaps meet the United Nations Framework Convention on Climate Change (UNFCCC) COP21 target of keeping the planet well below 2° Celsius above the pre-industrial baseline^{vii};
- the latest peer-reviewed scientific studies have found that shale-gas production in North America may have contributed to approximately one-third of the total increased methane emissions from all sources globally over the past decade^{viii}; and

further notes that:

- this State passed the 'Prohibition of Onshore Hydraulic Fracturing Act 2017', banning fracking in Ireland in recognition of the health and climate impacts of exploiting shale gas reserves;
- 'New Fortress Energy' plans to import fracked gas from America to the proposed 'Shannon LNG' terminal,^{ix}
- projects listed as "EU Projects of common interests" (PCIs) can benefit from accelerated permitting procedures and public funding;^{xixii}
- the 'Shannon LNG' project and its enabler project - the physical reverse flow of the gas Interconnectors - are on the currently-proposed candidate list of European Projects of Common Interest (the 4th PCI list);^{xiii}
- the EU PCI Regulation states that "each individual proposal for a project of common interest shall require the approval of the Member States, to whose territory the project *relates*";^{xiv}
- the EU PCI Regulation 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";^{xv}
- the EU PCI 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";^{xvi}
- the EU PCI Regulation furthermore, states that "Projects of common interest included on the Union List [...] shall become an integral part of the relevant *regional investment plans [...] and of the relevant national 10-year network development plans [...] and other national infrastructure plans concerned, as appropriate. Those projects shall be conferred the highest possible priority within each of those plans*";^{xvii}
- currently it is proposed that 6 projects for LNG terminals be included on the PCI list (out of a total of 14 that have received support from the EU since 2013) and that these projects, if built, will result in a massive increase in the use of fracked gas and subsequent massive increase in methane emissions;
- Ireland has not yet formally approved the final 4th PCI list;
- previous statements of support for Shannon LNG by the Government were issued before it became known publicly that this project would be a hub for fracked North American shale gas and before the extent of methane leakage (including fugitive emissions) from this fuel was fully understood;^{xviii};

- Article 194 of the Treaty on the Functioning of the European Union (TFEU) states that each EU Member State maintains its right to “determine the conditions for exploiting its energy resources, its choice *between different energy sources and the general structure of its energy supply*”;^{xix} and

the Dáil further notes:

- that PCI accreditation sets the framework for development consent;
- that no Strategic Environmental Assessment (SEA) of the proposed activity to import fracked gas into the Irish energy mix has ever been undertaken to assess reasonable alternatives;
- that no account has been taken of the full life cycle emissions of GHGs from imported fracked gas;
- that a policy vacuum exists where LNG terminals and Ireland’s access to the global fracked gas market have not been considered in the ‘National Mitigation Plan’^{xx} or in the ‘Draft Statutory Climate Change Adaptation Plan for the Electricity and Gas Networks Sector’;^{xxixxxii}
- that previous policy statements that categorised natural gas as a transitional or bridging fuel are mistaken and that gas is a fossil fuel that can play no long-term role in tackling climate change;
- that LNG terminals and other related infrastructure will lock Ireland and Europe into continued use of fossil fuels and hinder attempts to transition society to renewable sources of energy;
- that facilitating LNG terminals or the importation of fracked gas from North America will render impossible the immediate goals of radical cuts in GHG emissions;

and recognizes that

- an energy plan facilitating the importation of fracked North American shale gas is contrary to the principal and logic of passing a ban on fracking in this state, while simultaneously urging households and communities to act to reduce their GHG emissions; and

therefore, calls on the Government:

- to remove any project from the proposed list of Projects of Common Interest that could support the building of an LNG facility in Ireland that will act as a gateway for fracked gas entering the Irish energy mix; and
- to build support in Europe to prioritise sustainability criteria in the assessment of candidate PCI projects, that will address fossil fuel lock in and the long-term impacts of fracked gas in the European energy mix, given the expected change in climatic conditions.^{xxiii}

Signed:

- Ciarán Cuffe M.E.P. (Group of the Greens/European Free Alliance - Green Party)
- Clare Daly M.E.P. (Confederal Group of the European United Left - Nordic Green Left - Independent)
- Grace O Sullivan M.E.P. (Group of the Greens/European Free Alliance Alliance - Green Party)
- Luke Ming Flanagan M.E.P. (Confederal Group of the European United Left - Nordic Green Left - Independent)
- Martina Anderson M.E.P. (Confederal Group of the European United Left - Nordic Green Left - Sinn Féin)
- Matt Carthy M.E.P. (Confederal Group of the European United Left - Nordic Green Left - Sinn Féin)
- Mick Wallace M.E.P. (Confederal Group of the European United Left - Nordic Green Left - Independents for change)

ⁱ https://www.acer.europa.eu/Official_documents/Acts_of_the_Agency/Individual%20decisions/ACER%20Decision%2011-2019%20on%20CORE%20RDCT.pdf

ⁱⁱ Article 3(5)(c) of EU Regulation 347/2013 - <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:115:0039:0075:en:PDF>

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

^{iv} 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)

^v Annex IV (3) (d) (Rules and indicators concerning criteria for projects of common interest), of the PCI Regulation (EU) No 347/2013 (“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.”) <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:115:0039:0075:en:PDF>

^{vi}

Myhre, G., D. Shindell, F.-M. Bréon, W. Collins, J. Fuglestedt, J. Huang, D. Koch, J.-F. Lamarque, D. Lee, B. Mendoza, T. Nakajima, A. Robock, G. Stephens, T. Takemura and H. Zhang, 2013: Anthropogenic and Natural Radiative Forcing. In: Climate Change 2013: The Physical Science Basis. Contribution of Working Group I to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change [Stocker, T.F., D. Qin, G.-K. Plattner, M. Tignor, S.K. Allen, J. Boschung, A. Nauels, Y. Xia, V. Bex and P.M. Midgley (eds.)]. Cambridge University Press, Cambridge, United Kingdom and New York, NY, USA.

https://www.ipcc.ch/site/assets/uploads/2018/02/WG1AR5_Chapter08_FINAL.pdf chapter 8 page 714):

Table 8.7 | GWP and GTP with and without inclusion of climate-carbon feedbacks (cc fb) in response to emissions of the indicated non-CO₂ gases (climate-carbon feedbacks in response to the reference gas CO₂ are always included).

| | Lifetime (years) | | GWP ₂₀ | GWP ₁₀₀ | GTP ₂₀ | GTP ₁₀₀ |
|------------------------------|--------------------|------------|-------------------|--------------------|-------------------|--------------------|
| CH ₄ ^a | 12.4 ^a | No cc fb | 84 | 28 | 67 | 4 |
| | | With cc fb | 86 | 34 | 70 | 11 |
| HFC-134a | 13.4 | No cc fb | 3710 | 1300 | 3050 | 201 |
| | | With cc fb | 3790 | 1550 | 3170 | 530 |
| CFC-11 | 45.0 | No cc fb | 6900 | 4660 | 6890 | 2340 |
| | | With cc fb | 7020 | 5350 | 7080 | 3490 |
| N ₂ O | 121.0 ^a | No cc fb | 264 | 265 | 277 | 234 |
| | | With cc fb | 268 | 298 | 284 | 297 |
| CF ₄ | 50,000.0 | No cc fb | 4880 | 6630 | 5270 | 8040 |
| | | With cc fb | 4950 | 7350 | 5400 | 9560 |

Notes:

Uncertainties related to the climate-carbon feedback are large, comparable in magnitude to the strength of the feedback for a single gas.

^a Perturbation lifetime is used in the calculation of metrics.

^b These values do not include CO₂ from methane oxidation. Values for fossil methane are higher by 1 and 2 for the 20 and 100 year metrics, respectively (Table 8.A.1).

^{vii} <https://www.ipcc.ch/sr15/>

^{viii} Howarth, R. W.: Ideas and perspectives: is shale gas a major driver of recent increase in global atmospheric methane?, Biogeosciences, 16, 3033–3046, <https://www.biogeosciences.net/16/3033/2019/>, 2019

^{ix} New Fortress Energy LLC Filing at the US Securities and Exchange Commission on November 9, 2018 https://marcellusdrilling.com/wp-content/uploads/2018/11/s002392x7_s1.pdf page 9 (“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”[...] “We are currently developing two liquefiers in the Marcellus area of Pennsylvania, each of which is expected to have the capacity to produce approximately 3 to 4 million gallons of LNG (which is the equivalent of 250,000 to 350,000 MMBtu) per day, and intend to develop five or more additional liquefiers over the next five years.”); page 14 (“We have already entered into a 15-year contract to acquire all of the feedgas needed to operate our first Pennsylvania Facility at capacity”); page 49 (“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. Moreover, hydraulically fractured natural gas wells account for a significant percentage of the natural gas production in the U.S.; the U.S. Energy Information Administration reported in 2016 that hydraulically fractured wells provided two-thirds of U.S. marketed gas production in 2015”)

^x <https://www.eia.gov/todayinenergy/detail.php?id=35892> & <https://www.eia.gov/todayinenergy/detail.php?id=33972>:

Pennsylvania produces almost 100% fracked gas. Without the Pennsylvania Facilities New Fortress Energy won't be able to bring any real LNG to the markets.

^{xi} Chapers IV and V of the PCI Regulation (EU) No 347/2013 <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:115:0039:0075:en:PDF>

^{xii} <https://ec.europa.eu/energy/en/topics/infrastructure/projects-common-interest/overview#content-heading-1>

^{xiii} https://ec.europa.eu/info/consultations/consultation-list-candidate-projects-common-interest-gas-infrastructure_en

^{xiv} Article 3.3(a) of EU Regulation 347/2013

^{xv} Article 7(3) of the PCI Regulation (EU) No 347/2013 <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:115:0039:0075:en:PDF>

^{xvi} Article 7(8) of the PCI Regulation (EU) No 347/2013 <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:115:0039:0075:en:PDF>

^{xvii} Article 3(6) of the PCI Regulation (EU) No 347/2013 <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:115:0039:0075:en:PDF>

^{xviii} https://www.merrionstreet.ie/MerrionStreet/en/ImageLibrary/Programme_for_Partnership_Government.pdf

^{xix} <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12012E%2FTXT>

^{xx} <https://static.rasset.ie/documents/news/national-mitigation-plan-2017.pdf>

^{xxi} <https://www.dccae.gov.ie/en->

[ie/energy/consultations/Documents/43/consultations/Draft%20Statutory%20Climate%20Change%20Adaptation%20Plan%20for%20the%20Electricity%20and%20Gas%20Networks%20Sector.pdf](https://www.dccae.gov.ie/en-ie/energy/consultations/Documents/43/consultations/Draft%20Statutory%20Climate%20Change%20Adaptation%20Plan%20for%20the%20Electricity%20and%20Gas%20Networks%20Sector.pdf)

^{xxii} <https://www.dccae.gov.ie/en-ie/energy/consultations/Pages/Public-Consultation-on-the-Draft-Statutory-Climate-Change-Adaptation-Plan-for-the-Electricity-and-Gas-Networks-Sector.aspx>

^{xxiii} Annex IV (3) (d) (Rules and indicators concerning criteria for projects of common interest), of the PCI Regulation (EU) No 347/2013 (“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.”) <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:115:0039:0075:en:PDF>



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.

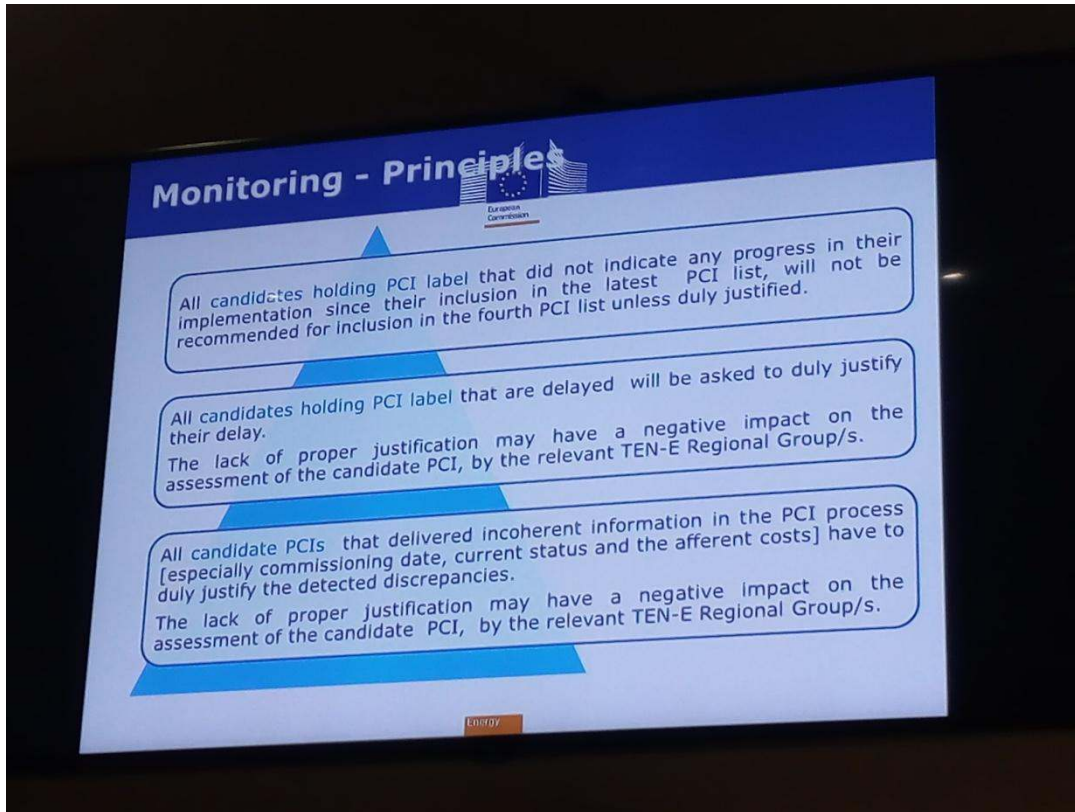


Figure 1: PCI Monitoring Principles.

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 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.antaisce.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

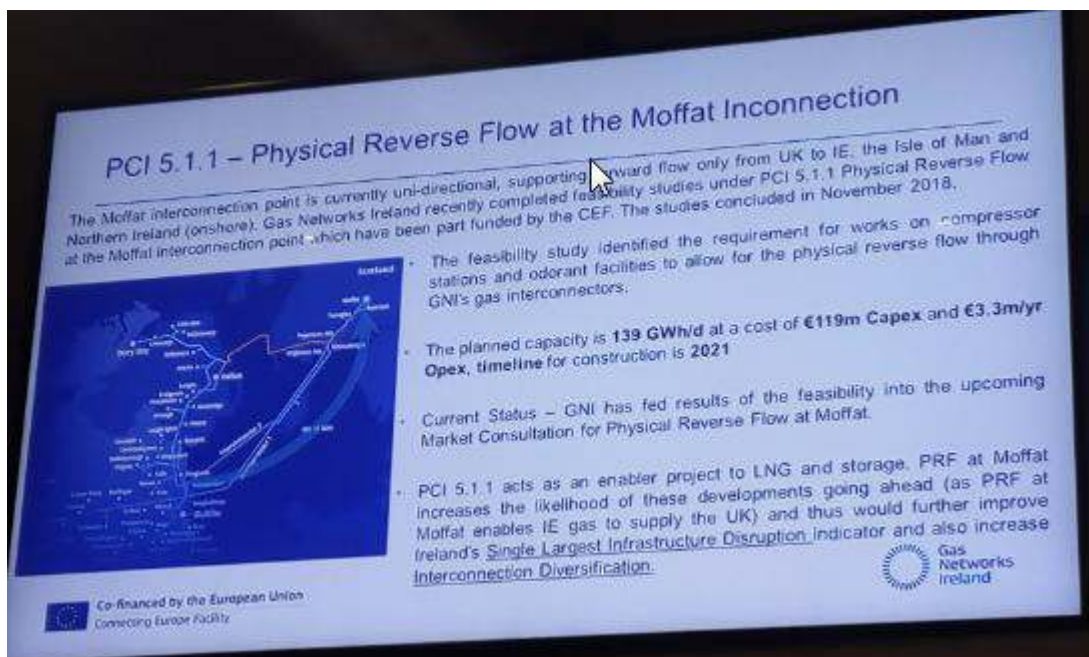


Figure 3: PCI 5.1.1. Physical Reverse Flow at the Moffat Interconnection Point

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.

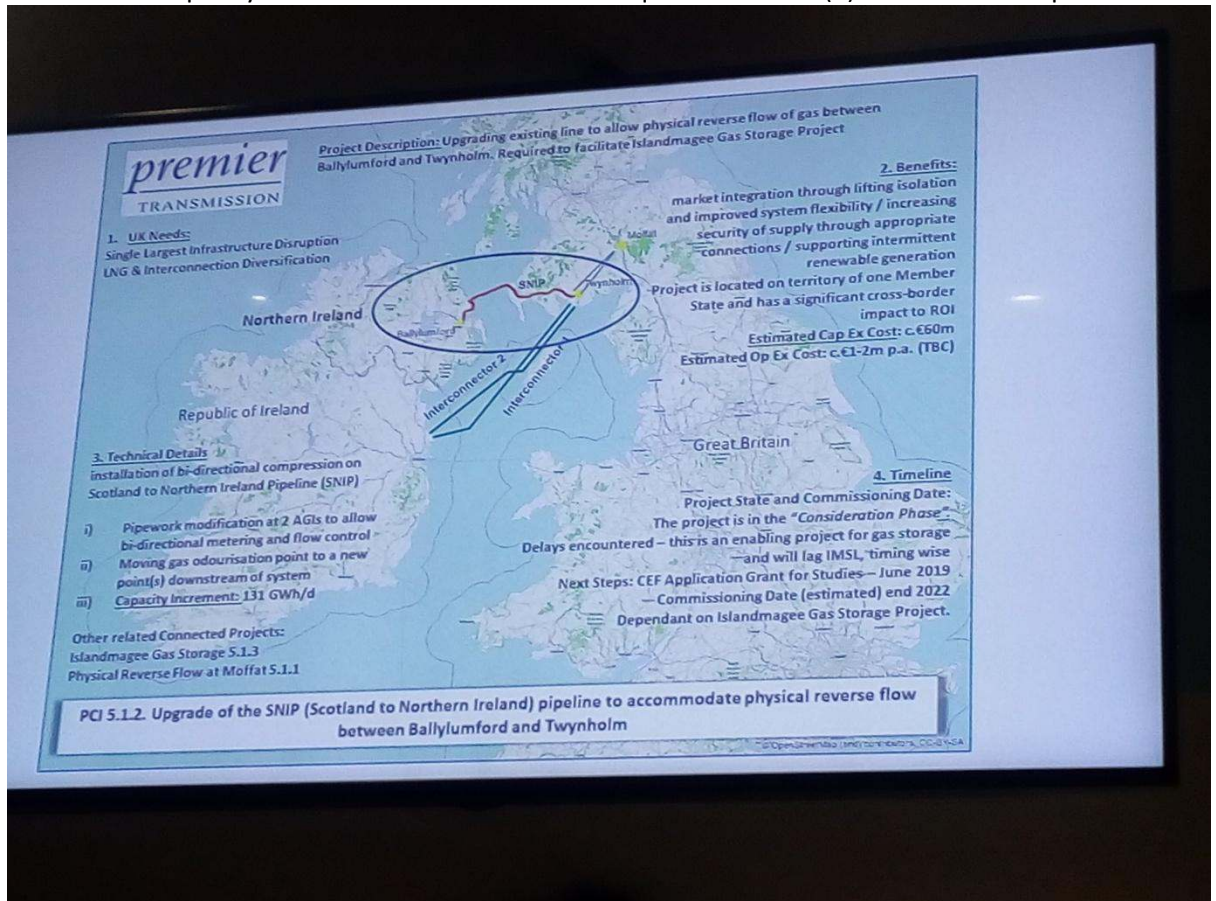


Figure 4: PCI 5.1.2 SNIP Physical Reverse Flow

- 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 IslandMagee 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.

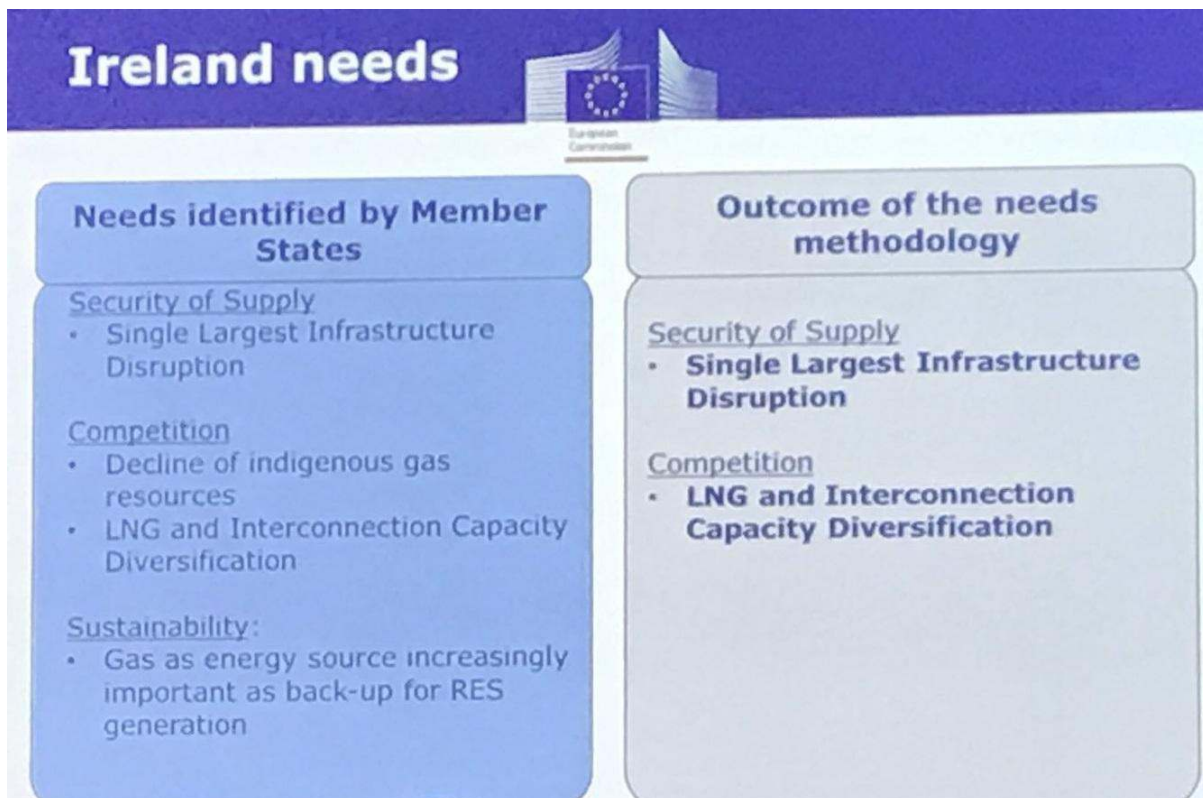


Figure 5. Ireland Needs Methodology: PCI Regional Meeting, March 27th, 2019

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

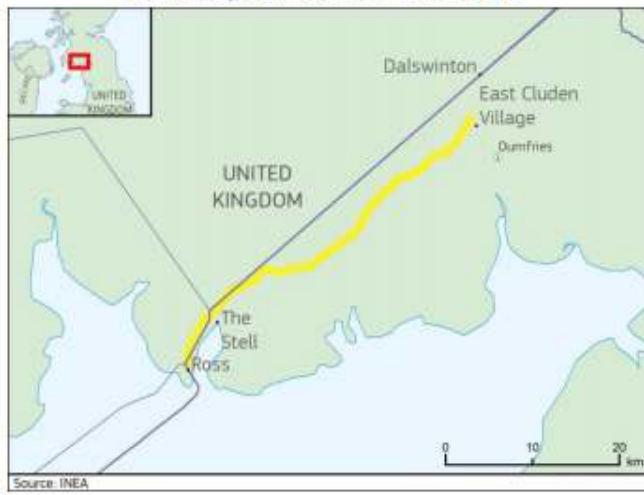
Budget:
Estimated total cost of the action: €92,860,796
Maximum EU contribution: €33,764,185
Percentage of EU support: 36.4%

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



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.

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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)

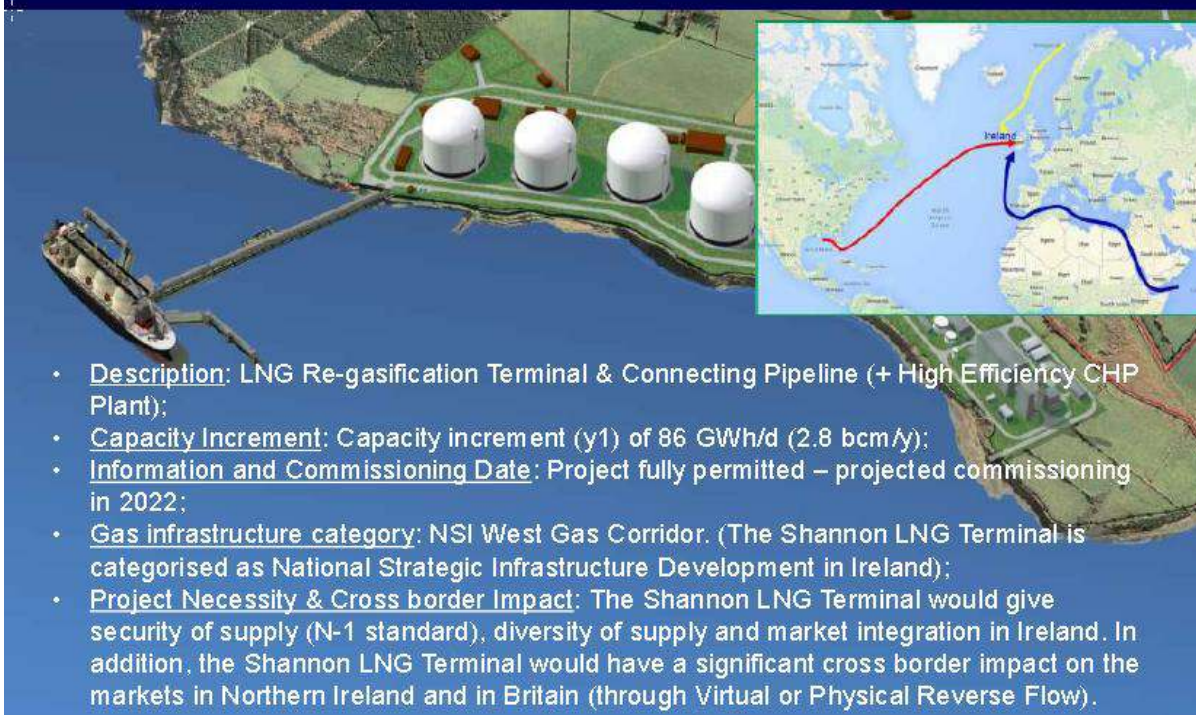


Figure 11: PCI 5.3. Shannon LNG presentation at the 3rd Union List of PCI Candidates to the NSI West Gas Regional Group Meeting 2017 with the argument of security of supply (N-1), diversity of supply and market integration in Ireland which are no longer valid arguments in 2019. The categorisation of "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:
- a. it uses the State Resources of each Member State with a PCI project,
 - b. it gives an Economics of scale advantage to US fracked gas exporters to Europe,
 - c. it selectively favours US fracked gas exporters into Europe,
 - d. it renders other renewable and sustainable energy alternatives less competitive,
 - e. 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.