

Mr Johnny McElligott

Safety Before LNG

Island View

Convent Street

Listowel

Co. Kerry

9<sup>th</sup> December 2009

Ref: 39093

Dear Mr. McElligott,

**Consent to Construct Shannon LNG Natural Gas Pipeline**

I refer to previous correspondence and submissions from Safety Before LNG on the above.

The Commission has now decided to grant Section 39A Consent to Shannon LNG to construct the pipeline. A copy of the decision is available on our website at [www.cer.ie](http://www.cer.ie).

In coming to its decision, the Commission has taken account of the submissions received from various parties and the arguments advanced at the public meeting of 26 May last, as will be clear from the text of the decision. The Commission has also considered the very recent submission from Safety Before LNG of 19 November 2009 and has concluded that the considerations set out the submission would not constitute grounds for refusing a Section 39A Consent.

I should add, incidentally, that Shannon LNG will not be entitled to actually operate the proposed LNG terminal until it has applied for and received a license to operate from the Commission. A prior condition to issuing such a license would be that the Commission has approved a Safety Case for the facility.

I trust this is helpful.

Yours sincerely

Denis Cagney

Director of Gas

cc. Dr. Paul McGowan, Director of Safety, CER.



## **Section 39 Consent to Construct Shannon LNG Connection Pipeline**

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December 2009

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Appendix 1: S.I. No. 264 of 2002 on Statutory Criteria for Consent to Construct a Pipeline.

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## **1. Introduction**

In this paper the Commission for Energy Regulation (“the CER”) sets out its decision on the application by Shannon LNG of 5<sup>th</sup> September 2008 for consent to construct a gas pipeline connecting the liquefied natural gas (LNG) regasification terminal which it is proposing to develop on the southern shore of Shannon Estuary to the national gas grid at Foynes, County Limerick. This pipeline will be generally referred to as the Shannon Pipeline.

The paper describes:

- The background to the consent application
- The applicant
- Statutory Criteria for Consent
- The procedures followed by the CER
- Views of third parties
- The CER’s assessment of the consent application by reference to the statutory criteria
- Decision

## **2. The Background**

The applicant, Shannon LNG, is planning to construct a major liquefied natural gas terminal at Kilcolgan, County Kerry. While the planned LNG terminal itself is outside the scope of this paper, as is the maritime safety aspects within the Shannon Estuary – navigation and berthing, a general description of the facility, its physical characteristics and its potential role in the Irish gas market is available at CER09098<sup>1</sup> by way of general background information.

Shannon LNG is also planning to construct its own pipeline – the subject of the present application - connecting the LNG terminal to the National Gas Grid west of Foynes in Co. Limerick. The proposed pipeline is a 762 mm diameter natural gas pipeline commencing at the proposed Shannon LNG terminal at Kilcolgan Lower, Co. Kerry and extending 26 km to connect to the existing BGE gas network at Leahy’s, Co. Limerick. This pipeline will convey dry, processed natural gas.

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<sup>1</sup> Shannon LNG - Request for Exemption from 3rd Party Access - Consultation Paper, 2<sup>nd</sup> July 2009

The design capacity of the pipeline is approximately 1 billion cubic feet per day. The pipeline design pressure will be 98 barg. The national gas network has a design pressure of 85 barg. SLNG propose to construct an Above Ground Installation (AGI) at each end of the pipeline. The Foynes AGI will accommodate the two-way flow of natural gas. The second AGI is to be located at the LNG terminal to the west. There are 72 landowners along the route and wayleaves have been secured.

### **3. The Applicant**

Shannon LNG is a wholly owned subsidiary of Hess LNG. It is an Irish registered company and was established in 2003 to promote the development of natural gas imports to Ireland. Hess LNG Limited is a joint venture of the Hess Corporation and Poten and Partners with worldwide operations. Hess Corporation is involved in oil and gas development, production and distribution. Poten and Partners provide brokerage and project development services relating to the oil and gas industry and other commodities. Shannon LNG is being fully funded by Hess LNG.

### **4. Statutory Criteria for Consent**

Section 39A of the 1976 Act (as amended by Section 12 of the Gas (Interim) (Regulation) Act 2002) provides for the issuing of a consent for the construction of gas pipelines by the CER. The criteria for determination of a consent to construct a gas pipeline were subsequently set out in Statutory Instrument 264 of 2002.

A copy of S.I. 264 is at **Appendix I**. The criteria can be summarised as follows:

- a) **Safety and Security:** no activity carried out under the consent to construct will adversely affect the safety and security of the natural gas systems;
- b) **Code of Operations:** the applicant will comply with any applicable code of operations and will have the capability of doing so;
- c) **Environmental Impact Assessment:** the applicant will prepare and submit for approval an Environmental Impact Assessment under the relevant legislation.
- d) **Construction and Commissioning:** the pipeline will be constructed and commissioned within a period which the CER shall specify;
- e) **Interoperation:** the pipeline will be capable of interoperating in a secure, safe and efficient manner with the natural gas system;

- f) **Fit and Proper Person:** the applicant is a fit and proper person and will have the necessary financial capacity and technical skills to carry out the activities and comply with a consent, and
- g) **Levy Charge:** the applicant will be capable of paying any levy charged by the CER.

The CER has considered the consent application on these criteria alone. While other issues were raised by some respondents to the public consultation process which were not relevant to these criteria (see further below) these issues were not taken into account by the CER in the application evaluation.

For general planning purposes, the Shannon Pipeline constitutes a strategic infrastructure within the meaning of Planning and Development (Strategic Infrastructure) Act, 2006 and An Bord Pleanála has already granted separate planning permissions for both the LNG terminal and the Shannon Pipeline. In addition to planning permission from An Bord Pleanála, a consent from the CER to construct the pipeline is also required in accordance with Section 39(a) of the 1976 Gas Act, as amended by Section 12 of the Gas (Interim) (Regulation) Act, 2002.

Before leaving this statutory context, it is important to keep in mind the distinction between a CER consent to *construct* a transmission pipeline and a CER licence to *operate* a transmission system/ pipeline.<sup>2</sup> The latter is covered by legislation which was enacted subsequent to the original section 39 consent to construct legislation. The ongoing operation of the Shannon Pipeline – including issues such as code compliance, third party access etc – will be the subject of a future operating licence from the CER. These ongoing obligations are not the subject of the present consent decision.

It should be noted that, gas system operation is not a statutory monopoly in Ireland – unlike electricity. In theory, therefore, the operator of the Shannon Pipeline could be either Shannon LNG or Gaslink.

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<sup>2</sup> The legislation in this area is a little confusing. The terms “pipeline” and “transmission system” are cited, apparently interchangeably, in recent separate Statutory Instruments transposing Directive 2003/55/EC into domestic law. S.I. No. 320 of 2005 cites a “pipeline operator” as a defined term described as “the holder of a natural gas licence in respect of the operation of a distribution or transmission pipeline”. S.I. No. 760 of 2005 (Regulation 24) speaks of the Commission’s power to grant or refuse a licence for “the operation of a transmission system”. These provisions, when together with the definitions of a “transmission system operator” and “system” in Directive 2003/55/EC, make it clear that the ongoing operation of the Shannon Pipeline will require a CER operating licence, as distinct from the present consent to construct.

## 5. Procedures followed by the CER

As required by statute, an application was submitted by Shannon LNG to the CER in January 2007 indicating its *bona fide* intentions to construct the pipeline. The CER certified on 23<sup>rd</sup> February 2007 that Shannon LNG had demonstrated a *bona fide* intention to apply for consent to construct the pipeline. An application under Section 39A followed on 5<sup>th</sup> September 2008.

The documentation submitted in support of the application for the Shannon pipeline included plans and drawings, schedule of pre-application consultations, the design report, and an Environmental Impact Statement (EIS). Copies of the application were forwarded in September 2008 to the prescribed bodies and copies were also made available at national and local public offices. Newspaper notices were also placed in September 2008 at the behest of the CER. In response to these notices, CER received one written submission objecting to the Shannon Pipeline, from a group known as “*Safety Before LNG*”.

The CER agreed to a request from “*Safety Before LNG*” to hold a public hearing for the Shannon LNG consent application and this took place in Tralee, Co. Kerry on 26<sup>th</sup> May 2009. The hearing was chaired on behalf of the CER by an independent inspector. The inspector’s report summarising the main issues raised during the hearing, was submitted to the CER in July 2009. A copy of the inspector’s report is at **Appendix 2**. This summarises the key points made by all contributors to the hearing.

In addition to these consultation exercises, the CER undertook a Technical Assessment of the consent application which was completed on 2<sup>nd</sup> October 2008. An independent safety assessment of the proposed pipeline was carried out by the CER and this was completed on 22<sup>nd</sup> July 2009. These are considered in the assessments in section 7 below. The CER undertook a review of the Environmental Impact Statement, which was completed on 3<sup>rd</sup> October 2008. These are considered as part of the overall assessment in section 7.

## 6. Views of Third Parties

These came mainly in the form of inputs to the oral hearing and are described in some detail in the Inspector’s Report at **Appendix 2**.

In all three speakers objected to the Shannon Pipeline, two from Safety Before LNG and one from An Taisce. Six speakers spoke in favour of the project representing the Kilcolgan Residents Association, Tarbert Residents Association and Ballylongford Enterprises Association.

A wide range of comments and views on the pipeline were aired at the public hearing, which is probably not surprising in itself. To the extent that these comments were relevant to the statutory criteria applicable to Section 39 consents, they were taken into account by the CER before reaching a final decision. It has to be pointed out, however, that quite a number of comments could not reasonably be brought within the remit of the statutory criteria and have not, therefore, be taken into account by the CER. Some of these comments may be relevant to other future CER related decisions such as the current request by Shannon LNG for an exemption from EU third party access rules for the LNG facility itself, or a future operating licence for the Pipeline.

Examples of such views which the CER has deemed not to come within the ambit of S.I. 264 of 2002 include the following:

- Financial experts should be employed to establish why shares in Hess LNG were allegedly transferred from Irish residents to an offshore company.
- It is inconceivable that there will be a lot of capital investment around this LNG terminal.
- The CER needs to consider gas suppliers strategically and not simply on a project by project basis.
- It has already been established that proposed shiploads of gas will exceed requirements, which suggests the export of some gas.
- The Kinsale gas field already has ample gas storage space to meet the country's needs.
- The CER must look at the Endesa's plans at Tarbert Island. Ireland's energy needs should not be determined by which company is first in relation to energy provision.
- The scheme will give rise to more industry and employment in the area.
- The pipeline will provide the gas to supply Tarbert, giving a benefit to North Kerry.

A detailed CER response to the various third party views submitted is contained at **Appendix 3**.

It is true that Section 12(14) of the Gas (Interim)(Regulation) Act 2002 does allow the CER to refuse consent to construct a pipeline in a particular geographic area where it has determined that the area is already adequately provided for by transmission or distribution gas pipelines. There is no evidence that this is the case with the proposed Shannon Pipeline. Nor has any party claimed that it is the case. For this reason, the CER will not be refusing consent on this "geographic adequacy" ground.



## **7. Assessment of the Application by Reference to the Statutory Criteria**

### **Criterion (a): Safety and Security of the Natural Gas Systems:**

The CER has carried out an independent safety review of:

- The Shannon Pipeline Detailed Design;
- The Quantified Risk Assessment for the Shannon Pipeline;
- The Conceptual Design Study Report for the Shannon and Foynes AGIs;
- The safety related concerns set out in the written submission of Safety before LNG dated 17<sup>th</sup> October 2008; and
- The safety related concerns raised at the public hearing held on 26<sup>th</sup> May 2009.

Following full consideration of the issues involved, and full consideration of the Safety Report received from its own independent consultants, the CER is of the view that:

- The Pipeline Detailed Design is sufficient from a safety perspective to grant approval for the construction of the Shannon Pipeline;
- The Conceptual Design Study Report for the Shannon and Foynes AGI's is sufficient to grant interim approval subject to the development and submission of the detailed design for both of the AGI's; and
- The Quantitative Risk Assessment undertaken for the Shannon Pipeline proposed route is satisfactory.

Accordingly, the CER concludes that criterion (a) is met.

### **Criterion (b): Compliance with Applicable Code of Operations:**

All gas pipelines in Ireland must be operated by a licenced system operator and in accordance with Section 13 of the Gas (Interim) (Regulation) Act, 2002 all holders of a licence must publish, subject to the approval of the CER, a 'code of operations'. The CER may give directions as to matters to be specified in the code.

At present the CER approved Code of Operations for the transmission and distribution networks, drawn up by BG Networks and used by Gaslink, applies to all gas pipelines being operated in Ireland. Should Shannon LNG itself wish to become the licensed operator of the Shannon pipeline, it will be required to produce a code of operations under the terms of the operating licence. Alternatively, Shannon may agree to Gaslink, the independent system operator for Ireland, operating the pipeline. In this case the BG Networks / Gaslink Code of Operations suitably amended and approved by the CER, will be used. The CER is satisfied from the evidence from the consent application, as well as

the CER's own technical assessment, that the existing Code of Operations may be adapted to include the Shannon Pipeline or, if Shannon LNG is to be the operator, that it will be capable of developing a satisfactory code of its own as it will be required to do under its system operation licence. As part of the Natural Gas Safety Framework, a Transmission System Operator Safety Case will also be required by the Commission.

Accordingly, the CER concludes that criterion (b) is met.

**Criterion (c): Preparation and Approval of Environmental Impact Statement:**

The CER undertook an assessment of the Environmental Impact Statement submitted by Shannon LNG in relation to the proposed pipeline. The CER has determined that the consent to construct should be conditional on the following stipulations being adhered to:

- Except where otherwise conditioned by the CER or An Bord Pleanála the development shall be undertaken in accordance with the proposals and the mitigation measures described in the EIS entitled, "Environmental Impact Statement – Shannon Pipeline" as prepared by Arup Consulting Engineers, dated 1<sup>st</sup> July 2008;
- Odours emanating from the odorant injection facility of the Shannon LNG Terminal AGI shall not exceed a level of 3 OU<sub>E</sub><sup>3</sup>/m<sup>3</sup> on a 98 percentile<sup>4</sup> basis when measured at a Terminal site boundary;
- Prior to commencing the construction works for the river crossings a detailed method statement shall be prepared and the content, and timing of the crossings, agreed in advance with the Shannon Regional Fisheries Board and the National Parks and Wildlife Service;
- The use of all radiotopes shall be in accordance with the permitting requirements of the Radiological Protection Institute of Ireland (RPII);

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<sup>3</sup> European Odour Unit (OU<sub>E</sub>) as defined in IS EN 13725:2003.

<sup>4</sup> 98th means the 98th percent of hourly average concentrations in one year.

- Shannon LNG Ltd shall ensure that all contractors and sub contractors working on their behalf act in an environmentally responsible manner at all times; and
- As part of its construction works procedures for this project Shannon LNG Ltd shall establish an Environmental Management System to ensure that the appropriate level of management is brought to bear at all times on environmental issues of relevance.

Subject to these conditions being complied with, the CER is satisfied that condition (c) is met.

**Criterion (d): Pipeline will be constructed and commissioned within a Specified Period:**

It is clear from this criterion that the legislator did not intend a consent to construct to be open ended. This is hardly surprising given the potential significant impact which a major pipeline – such as the Shannon Pipeline - can have on the planning and development of the wider gas industry both in the immediate locality and nationally. The CER considers that a reasonable consent period for the construction and commissioning of major pipeline such as the Shannon Pipeline should normally be 5 years from the date of consent.

The CER considers that criterion (d) has been met by the applicant.

**Criterion (e): Pipeline will be Capable of Interoperating in a Secure, Safe and Efficient Manner with the Natural Gas System:**

The CER considers, following its technical and safety assessment that the Shannon Pipeline will be capable of operating in a secure, safe and efficient manner with the natural gas system and has no evidence that this situation will change in the future.

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**Criterion (f): Applicant is a Fit and Proper Person and Has Necessary Financial Capacity and Technical Skills:**

Having completed a technical assessment of the proposed pipeline and a financial assessment of the applicant, the CER considers that the applicant is a fit and proper person to be granted a consent and has the financial capacity and technical skills to carry out the consent, if granted. While several

allegations were made at the public hearing on the alleged financial difficulties of the Hess Corporation, these were not substantiated and the CER has no reasonable basis to hold that Shannon LNG and its parent fail to meet this criterion. Arguments were also made at the public hearing questioning the actual commitment of Shannon LNG to the LNG project. However, the CER does not consider these to be relevant to criterion (f) which focuses exclusively on the capacity and skills of the applicant.

Accordingly, the CER considers that criterion (f) is satisfied.

**Criterion (g): Applicant will be Capable of Paying any Levy due to CER:**

Again, the CER has no reasonable grounds for doubting Shannon LNG's ability to pay any levy charged by the CER and has received no reliable evidence to the contrary. Accordingly, this criterion is met.

## 8. Decision

In the light of all the above considerations, the CER has decided pursuant to Section 39 (a) of the Gas Act 1976, as amended, to grant Shannon LNG a consent to construct the Shannon Pipeline subject to the following conditions:

- The environmental conditions set out in section 7 (c) shall be complied with;
- Any pressure reduction equipment required to reduce the pressure of the Shannon pipeline in order to safely connect it to the main gas transmission pipeline will be paid for by Shannon LNG;
- The Shannon Pipeline will be constructed and commissioned within 5 years from this date;
- The Shannon Pipeline is not to be brought into operation until the prior specific approval at the CER is sought and received. This, in turn, will be subject to:
  - o Evidence that the pipeline has been satisfactorily constructed and is I.S. 328 compliant;
  - o The submission of detailed design of the AGI.
  - o Any other conditions stipulated by the CER arising from a review of the detailed design; and

*Signed and Sealed:*

  
Michael G. Tutty

*Chairman*

*Date: 8 December 2009*

## **Appendix 1**

### **Statutory Instrument 264 of 2002**

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Link: <http://www.irishstatutebook.ie/2002/en/si/0264.html>



STATUTORY INSTRUMENT No. 264 of 2002

**REGULATIONS**

Gas (Interim)(Regulation) Act 2002 (Criteria for Determination  
of Consents) Regulations 2002

S.I. No. 264 of 2002

**Gas (Interim)(Regulation) Act 2002 (Criteria for Determination of Consents)  
Regulations 2002**

I, Joe Jacob, Minister of State at the Department of Public Enterprise, in exercise of the powers conferred on me by section 12(3)(a) of the Gas (Interim)(Regulation) Act, 2002 (No. 10 of 2002) and the Public Enterprise (Delegation of Functions) (No. 2) Order 2002 hereby make the following regulations:

1. These regulations may be cited as the Gas (Interim) (Regulation) Act 2002 (Criteria for Determination of Consents) Regulations 2002.
2. The criteria in accordance with which an application for a consent given under section 39A(1) (inserted by section 12(1)(a) of the Gas (Interim)(Regulation) Act 2002) of the Gas Act 1976 may be determined by the Commission are that the Commission is satisfied that -
  - a) if it grants the consent, no activity carried out under it will adversely affect the safety and security of the natural gas systems,
  - b) the applicant will comply with any code of operations in so far as it is applicable to the applicant and, at the relevant times, will have the capability of doing so,

- c) the applicant has complied with the requirements of section 40A (as amended by section 12(1)(c) of the Gas (Interim)(Regulation) Act 2001) of the Gas Act 1976 in relation to the proposed construction of the pipeline to which the application relates,
- d) the pipeline to which the application relates will be constructed and commissioned within a period which the Commission shall specify in relation to the application.
- e) the pipeline to which the application relates will be capable of interoperating in a secure, safe and efficient manner with the natural gas system,
- f) the applicant is a fit and proper person to be granted a consent and has the financial capacity and technical skills to carry out the activities to which the application relates and to comply with the consent, if granted, and
- g) the applicant will be capable of paying any levy charged by the Commission.



GIVEN under my hand,

4 June, 2002.

JOE JACOB, T.D.

Minister of State at the

Department of Public Enterprise

### Explanatory Note

(This note is not a part of the Instrument and does not purpose to be a legal interpretation)

These regulations set out the criteria in accordance with an application for consent to construct or upgrade a pipeline may be determined by the Commission for Energy Regulation.



## **Appendix 2**

### **The Inspector's Report**

Commission for Energy Regulation

Shannon LNG Gas Pipeline

(Tarbert to Foynes)

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# Summary of Report on Public Oral Hearing

Michael Ward

July 2009

## **1.0 PRELIMINARY**

### **1.1 The Oral Hearing**

As requested by the Commission for Energy Regulation, I held a public oral hearing with a view to establishing the concerns of objecting parties to the proposed Scheme and to elicit the responses of Shannon LNG.

### **1.2 Venue and Dates**

The oral hearing was held at the Brandon Hotel, Tralee, on Tuesday 26<sup>th</sup> May, commencing at 11.00am and ending in the afternoon.

### **1.3 Site Inspection**

A site inspection was undertaken on Monday 25<sup>th</sup> May.

### **1.4 Transcript**

A transcript of the proceedings of the oral hearing has been prepared. It is contained in one volume.

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### **1.5 The Proposed Scheme**

Shannon LNG proposes to construct a gas pipeline extending from a proposed terminal along the southern shores of the Shannon Estuary eastwards to Foynes with a view to

providing a connection to the National Gas Grid. The pipeline will be 26 kilometres long and will have a nominal diameter of 750 millimetres.

## 2.0 THE ORAL HEARING

The oral hearing commenced at 11.00am on Tuesday 26<sup>th</sup> May, 2009.

### 2.1 Appearances – Shannon LNG

Name	Position Held
Michael Biggane	Head – HR and Corporate Affairs
Sam Ibrahim	Vice President of Business Development – Project Manager Shannon LNG
Nicola Dunleavy	Legal Representative
Martin Regan	Commercial Manager – Shannon LNG

### 2.2 Objectors/Supporters of Scheme

A list of objectors/supporters who attended the oral hearing is set out below.

Name	Organisation Represented – Supporters
T. Mahony	Kilcolgan Residents Association (Chairman)
J. Murphy	Tarbert Development Association (Chairperson)
J. Fox	Tarbert Development Association (PRO)
N. Lynch	Ballylongford Enterprise Association (Chairman)
M. Finnuane	Ballylongford Enterprise Association (Member)
M. McElligott	Local resident

Name	Organisation Represented – Objectors
J. McElligott	Safety Before LNG
T. O'Donovan	Safety Before LNG (supporter of)
E. Muldowney	National Energy Officer – An Taisce
C. Griffin	Kilcolgan resident
R. O' Mahony	Kilcolgan resident

## 2.3 Submissions – Shannon LNG

### 2.3.1 Background

An Bord Pleanála granted planning permissions for the LNG terminal on the 28<sup>th</sup> of March 2008 and for the gas pipeline on the 17<sup>th</sup> of February 2009. Compulsory acquisition orders were also granted by the Board at this time in order to secure permanent wayleaves for the pipeline. There were no objections to the latter by affected landowners.

The pipeline will provide an alternative import route for the supply of natural gas throughout the country and third party users will be offered access to the pipeline. The approval of the Commission for Energy Regulation is required.

Shannon LNG was established in 2003 to promote the development of natural gas imports to Ireland. It is a wholly owned Irish subsidiary of Hess LNG Limited, which is a joint venture of the Hess Corporation and Poten and Partners with worldwide operations. Hess Corporation is involved in oil and gas development, production and distribution. It is committed to high standards in its protection of the health and safety of employees, the safeguarding of the environment and creating a positive impact in the communities served. Poten and Partners provide brokerage and project development services relating to the oil and gas industry and other commodities.

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### 2.3.2 Overview

The Shannon Pipeline will connect the LNG terminal to the National Gas Grid west of Foynes. It will have a length of 26 kilometres. There are 72 landowners along the route. Wayleaves have been secured.

The pipeline can provide direct access to multiple and diverse sources of gas from around the world whilst providing significant security of supply. It will connect with the An Bord Gais transmission network and will bring gas to County Kerry for the first time. Approximately 200 jobs will be created for up to one year.

### 2.3.3 Project Details

The design capacity of the pipeline is approximately 1 billion cubic feet per day. An Above Ground Installation (AGI) will be built at each end of the pipeline. The Foynes AGI will accommodate the two-way flow of natural gas. The second AGI is to be located at the LNG terminal to the west.

The pipeline will meet IS328 requirements. The CER is responsible for the safety of natural gas pipelines and has a comprehensive framework covering the safety of the design, construction and operational phases of gas pipelines which will be fully complied with.

A risk assessment on the pipeline was prepared and submitted to the CER as part of the Section 39A approval.

### 2.3.4 Section 39A Application

An application was submitted to the CER in January 2007 indicating its bonafide intentions to construct the pipeline. The CER certified on 23<sup>rd</sup> February 2007 that Shannon LNG had demonstrated a bonafide intention to apply for consent to construct the pipeline. An application under Section 39A followed on 5<sup>th</sup> September 2008. The documentation included plans and drawings, schedule of pre-application consultations, the design report, the EIS, etc. Copies of the application were forwarded in September 2008 to the

prescribed bodies and copies were also made available at national and local public offices. Newspaper notices were also placed in September 2008.

#### 2.3.5 Meeting Section 39A Criteria

1. Shannon LNG is committed to ensuring the safety and security of the national gas system. It will be similar to all other gas transmission pipelines complying with the appropriate codes. It will be subject to oversight by the CER. Security of supply will be enhanced by diverse sources of gas on a worldwide basis offsetting any specific interruptions from individual sources.
2. The pipeline will meet the Irish Standard IS328 Code of Practice requirements and those of An Bord Gais at Foynes. It will also comply with requirements with regard to natural gas entering the gas network in Ireland. The commissioning, maintenance and operation of the pipeline will be subject to oversight by the CER.
3. Section 40A as amended has been complied with in that an EIS has been prepared and was submitted to the CER on 5<sup>th</sup> September 2008 which meets EU and Irish law requirements. This EIS was also submitted to An Bord Pleanála in relation to Shannon LNG's planning application. Approval was granted by the Board on 17<sup>th</sup> February 2009.
4. ~~The pipeline will be constructed and commissioned within the specified construction time limit, the construction period normally being confirmed to the season between March and November. The decision of An Bord Pleanála includes a limiting period for construction of 10 years.~~



5. The pipeline will be capable of inter-operating safely and securely with the national gas system and will comply with An Bord Gais requirements on connecting to its system at Foynes.
6. The applicant is a fit and proper person to be granted consent and has the financial and technical skills to undertake the project. The application to the CER included Shannon LNG's financial and technical resources and data. The CER had accepted the bonafide intention to apply for consent for the construction of the pipeline. The applicants will be capable of paying any reasonable levy imposed by the CER.

#### 2.3.6 Design

1. The pipeline will be composed of high-strength steel with an external corrosion protection coating and a cathodic protection system. It will have a wall thickness of either 12 or 19.1 millimetres. Between the two AGIs there will be a minimum depth of cover of 1.2 metres which will increase to 1.6 metres where additional protection is required. The design pressure is 98 barg, and is intended to meet any increased pressure in the pipeline in the future.
2. AGIs will be constructed at both ends of the pipeline. At the point of origin, odourisation facilities will be introduced and pig launching and receiving facilities will be provided. The Foynes AGI will also have gas measurement and gas composition facilities available. Data will be monitored on a 24-hour basis. BGE will design its requirements with respect to the receiving gas.
3. The capacity of the pipeline is 1,180,025 cubic metres per hour. Its area classification throughout is 'R' for rural.

4. The corrosion prevention system includes a high performance coating system and a cathodic protection system. A similar coating system is being applied at pipe joints in the field. An internal coating system is also being applied to minimise potential internal corrosion. A cathodic protection system will also be included to protect the piping against any potential defects in the external coating system.
5. Where roads and watercourses are encountered, a special depth cover is required, as is pipe thickness and other measures.
6. Operational and maintenance staff will be recruited locally who will be fully trained in matters of safety, environmental stewardship and the operation and maintenance of plant.
7. Pipeline safety/management is dependent on a range of requirements, including the operation, inspection/surveillance of the pipeline, liaison with local bodies and the owner/occupiers of lands, public awareness programmes, pipe and other surveys, etc.
8. An emergency plan will be prepared, setting out measures to be taken in an emergency.
9. Health and safety issues will be addressed by implementing an appropriate management system, including staff training. Audits will ensure that controls are effective.

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10. A quantitative risk assessment was undertaken. It showed that risks to individuals along the pipeline lie within acceptable limits.

## Responses to Questions

- Shannon LNG is a wholly owned subsidiary of Hess LNG. It is an Irish registered company. Hess has published its first quarter accounts for 2009. The company is in a financial position to proceed with the project as advised to the CER. Shannon LNG is being fully funded by Hess LNG. The methodology of funding has not yet been determined.
- A local road is required to be upgraded (in the approval of An Bord Pleanála) but that relates to the terminal and not the pipeline.
- The proposed pipeline will accommodate the two-way flow of gas. Any other pipelines are not part of this application.
- The designation 'R' given to the pipeline has to do with classifications set out in IS328.
- The reference to a 'Public Awareness Programme' refers to all of the public.
- With regard to the contention that Shannon LNG's accounts have not been finally processed by the Office of the Director of Corporate Enforcement, the issue involved a late filing of a particular form. It is not relevant to this application.
- In connection with the suggestion that the Hess Corporation may not have the resources to undertake the project, there is no basis for any allegation that Shannon LNG is insolvent. The auditing company, Ernst & Young, have audited the most recent reports and financial statements which are before the oral hearing. The Hess Corporation annual reports are also available. The applicant has demonstrated a capacity to build the pipeline.

- Ernst & Young, auditors to Shannon LNG Limited, confirm that they have audited the company's financial accounts statements for the year ending 31<sup>st</sup> December 2007 and that the audit report was signed on 18<sup>th</sup> September 2008 after the Directors of the company signed and dated the financial statements on 10<sup>th</sup> September 2008. There is a requirement under the Companies Amendment Act, 1986, that copies of a company's accounts and reports be certified by the director and secretary be a true copy. This was complied with.
- With regard to loans extended by Hess LNG to Shannon LNG and foreign currency exposure, the management and directors did consider the issues in preparing and finalising the accounts. The auditor's report indicates the company's ability to continue as a going concern.
- The reference to 'Option to Purchase' agreements with landowners refers to the LNG terminal and is not part of the Section 39A consent. Issues relating to the terminal are not relevant. The amount of money required to pay for 281 acres of industrial zoned lands is not relevant to the hearing.
- **Interjection -**

Exchanges between the company and objector relating to whether or not there is a signature on the Ernst & Young accounts. Issue not resolved.

- The QRA for the pipeline was undertaken by ERM. It is a reputable company which has developed a specialist unit and produced the report which was forwarded to the CER.
- 
- With regard to the query relating to the EIS and whether or not any marine risk assessment was undertaken as part of the EIS, the EIS complies fully with the Section 39A, etc., requirements and the EC EIA Regulations, 1989. A marine QRA is not relevant in the Section 39A application with regard to the pipeline as it is a

cross-country pipeline. The issue of a marine QRA was raised in two judicial review proceedings which were not successful.

- In relation to the second proposed gas pipeline (Endessa) which is to extend from Tarbert Power Station to Foynes, Shannon LNG is not aware of any particular proposal. Third party access will be provided to the Shannon LNG pipeline, but that is a matter for the CER.

- **Interjection – Exchanges – Chairman and Others**

Shannon LNG have had no discussions with Endessa, the latter's proposed gas pipeline. Endesa want to build a separate gas pipeline from Tarbert to Foynes. Shannon LNG have indicated that their pipeline is an open access pipeline. Shannon LNG have secured the wayleaves for their proposed pipeline.

- The question of gas releasing from a gas tanker is not relevant to the Section 39A licence application.
- The provision of gas infrastructure is not influenced by the price of gas at a moment in time.
- The pipeline design pressure will be 98 barg. The national gas network has a design pressure of 85 barg.
- The need for the pipeline has already been established and confirmed through the An Bord Pleanála approvals.
- The Irish Government has set a target that 33% of electricity will be produced by renewable energy by 2020 and natural gas will be used to fuel the majority of the remaining power requirement. This makes the case for the use of natural gas.

- In relation to the effects of the proposed gas pipeline on groundwater, this is dealt with in the EIS. Pipelines can be rerouted to avoid spring or wells. An Bord Pleanála also dealt with the watercourses issue. A detailed construction management plan is required prior to the commencement of development to deal with, inter alia, surface water. (Condition No. 11 of Schedule of An Bord Pleanála conditions).
- Shannon LNG acknowledges its responsibilities for ensuring the health, safety and welfare of its employees, visitors and members of the public who may be affected by its activities.
- The gas may be used for domestic use but that is a matter for An Bord Gais to arrange. Shannon LNG have no plans for domestic distribution.

#### **2.4 Submission – J. McElligott – Objector**

- Shannon LNG is currently insolvent. Hess LNG, a company registered in the Cayman Islands, has invested only €1,000 in Shannon LNG by way of a loan. It is also proposed to build a gas-fired power station adjacent to the LNG terminal via a company called Ballylongford Electricity Company Limited.
  - It is inconceivable that there will be a lot of capital investment around this LNG terminal.
  - There does not appear to be insurance in place in the event of an accident.
- 
- The CER should ensure that there are watertight financial obligations imposed (on the Company).

- The 'Option to Purchase' agreements should be made public or made available to the CER, which should also look at agreements with Shannon Development who own the lands.
  - Financial experts should be employed to establish why shares were transferred from Irish residents to an offshore company.
  - Various sections of legislation are quoted in relation to electricity/gas and in relation to the functions and obligations of the CER. The promotion of competition is one of the obligations which the CER must address, as is the safety issue.
  - The CER is empowered under the relevant legislation to refuse to grant a licence if there is an adequate supply of gas already available in relation to demand. The CER is obliged to take a strategic view of requirements.
  - It has already been established that proposed shiploads of gas will exceed requirements, which suggests the export of some gas.
  - If Shannon LNG proceed with a gas-fired power station it is not understood how a connection will be made to the national grid as the Endessa company intends using all of the available grid connection.
  - The Kinsale gas field already has ample gas storage space to meet the country's needs. Strategically there is, therefore, no need for the current proposal.
- 
- A policy document published by the Government in November 2007 covering the entire island of Ireland in relation to gas was not made available until three days after planning permission was granted by An Bord Pleanála. It should have been available at the oral hearing. The document deals with, inter alia, the sourcing of gas for Great Britain who have an increasing supply diversity, including LNG, in a situation where supply is in surplus. The CER needs to look at this situation.

The document identified high potential gas storage areas around the coast. The islands of Ireland and Great Britain comprise one strategic (gas) market, the only weakness being the interconnector which would cause problems for Ireland if it failed. The Corrib gas reserves were identified as providing backup which should be released over a longer period than is envisaged with a view to extending the period of strategic supply.

- There is concern about the lack of a strategic environmental assessment. The CER should embrace the idea of joined up thinking in this regard.
- It has been established that the pipeline will not serve local needs for gas. It will have a national impact. The CER must look at Endessa's plans at Tarbert Island. Energy needs should not be determined by which company is first in relation to energy provision.
- In relation to safety the CER needs safety expertise to evaluate safety issues. The risk assessment should be independently corroborated. This is not similar to other schemes.
- The CER should apply a 'use it or lose it' condition to avoid a monopoly situation arising. No licence should issue until the Endessa proposals are evaluated.
- There is concern that the CER may be rubber-stamping the licensing process. False information may have been given in relation to the pipeline. A marine risk assessment should be undertaken. The CER should assess Aughinish Island again as an alternative for the terminal. The strategic argument for LNG in Ireland is not sustainable. It is considered that the gas will be mainly for export. LNG would be better landed in continental Europe rather than in Ireland. The building of the Endessa pipeline after the LNG pipeline would give rise to safety concerns. The



CER should also look at the legal implications of land ownership. The CER should examine the project in depth, including alternatives as well as safety issues.

## **2.5 Submission – E. Muldowney – Objector**

- The CER needs to look at gas suppliers strategically and not simply on a project by project basis. There is uncertainty about gas prices which currently appear to be rising. Dependence on gas in terms of electricity generation would place the country in a precarious situation. An Bord Gais is moving into the renewable energy market on a large scale. It wishes to ensure that the energy business is sustainable.
- The gas which will flow through the pipeline will service three main users. These are electricity generators, industry and domestic. The CER has an obligation to the end users. Prices should be fair and reasonable. If gas prices increase there will be upward pressure on electricity prices.
- There will be short time employment associated with the construction of the pipeline. The pipeline is being interpreted as providing energy security. This security is precarious.

## **2.6 Submission – T. Mahony – Supporter**

The witness is chairman of Kilcolgan Residents Association. Local people are anxious to secure jobs. The project is welcome in the area. Differences have arisen between the Association and the objectors to the scheme.

## **2.7 Submission – N. Lynch – Supporter**

Ballylongford Enterprise Association supports the project. The scheme will give rise to more industry and employment in the area. Gas pipelines already extend for thousands

of kilometres throughout the country without any associated issues. Shannon LNG was questioned about its finances, legality and transparency. The inquirer should be forthcoming in relation to who his professional backers are. The entire area is looking forward to the project where jobs are scarce.

## **2.8 Submission – J. Murphy – Supporter**

The witness is chairperson of Tarbert Development Association. The Association has been working to promote the Shannon Estuary as an industrial area for many years. This is the first tangible project for the area. Planning permission for the project has been secured. It was understood that the hearing would be about safety issues but this has not been the case. The main focus of the Association is to secure jobs. Everyone looks forward to a time when green energy is the primary energy source but until then other sources have to be used and gas is one of those.

## **2.9 Submission – J. Fox – Supporter**

- As a member of Tarbert Development Association, the witness understood from earlier evidence that gas will be capable of flowing both to and from the national gas grid. It is also understood that up to 30% of the national gas demand could be accommodated. There is no need therefore for a second pipeline.
  - It is understood that Shannon LNG does not require the pipeline until 2014, whereas Endessa will require a gas supply in 2011/2012. The CER should bear this in mind.
- 
- The pipeline is vital for the proposed gas (electricity) plant and for the development of north Kerry. There is huge unemployment in the area and jobs are required.

## **2.10 Submission – M. Finnuccane – Supporter**

Ballylongford Enterprise Association supports the pipeline project. A land bank was assembled in the area over the years but promised enterprises did not materialise. Shannon LNG is the first company to show a real interest in the area. The pipeline will provide the gas to supply Tarbert, giving a benefit to north Kerry. Jobs flowed when Tarbert Island was developed in the late 1960s. This was followed by other enterprises along the estuary. The objectors have done nothing to bring industry to the estuary.

## **2.11 Submission – M. McElligott – Supporter**

If the oral hearing is concerned with safety it is noteworthy that none of the residents from Tarbert to Foynes, who live along the line, have appeared at the hearing. The pipeline and terminal will be safe. Jobs are badly needed in the area. Jobs will be available during and after construction. The objectors have brought no jobs to the area.

## **2.12 Closing Statement – M. Biggane, Shannon LNG**

- Shannon LNG's submission to the CER is in accordance with the statutory criteria for a Section 39A application. The pipeline will accord with IS328. An application was submitted to the CER in January 2007 to demonstrate the company's bonafide intentions for consent. The CER certified this application. An application for consent was submitted on 5<sup>th</sup> September 2008 and a quantitative risk analysis followed on 28<sup>th</sup> November. The criteria for issuing Section 39A consents are set out in legislation and these have been met by the company.
- 
- Ernst & Young audited the company's financial statements for the year ending 31<sup>st</sup> December 2007 and signed and dated their audit report on 18<sup>th</sup> September 2008, after the directors signed and dated the financial statement on 10<sup>th</sup> September 2008. The 'Safety before LNG's' submission in relation to the accounts were considered.

The accounts were properly dealt with and the auditor's report indicated the company's ability to continue as a going concern.

- The company would welcome the opportunity to connect power stations to the Shannon pipeline which can be facilitated. It would not be appropriate to delay the pipeline whilst awaiting other developments.
- It is hoped that BGE and the CER might consider the feasibility of extending gas to towns in the region from the pipeline. Speculation at this stage is premature.

The oral hearing was formally closed.

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M. Ward.

July 2009

## Appendix 3

### A Summary of CER's Responses

### **Safety Before LNG – Objectors:**

Safety Before LNG (SBL) is the main objector to the Shannon LNG pipeline. They were represented by J. McElligott and E. Muldowney. The arguments against the pipeline consent centred around concerns for the ability of Shannon LNG to finance the pipeline, its relationship with HESS Corporation and HESS' own financial and Governance Structure. Key points made in this regard are as follows:

#### ***SLNG Finance and relationship with HESS Corporation***

- *Shannon LNG is currently insolvent.*
- *Hess LNG, a company registered in the Cayman Islands, has invested only a €1,000 in Shannon LNG by way of a loan.*
- *SLNGs accounts for 2007 were signed 'Ernst and Young' but no person had signed.*
- *Financial experts should be employed to establish why shares were transferred from Irish residents to an offshore company.*
- *It is inconceivable that there will be a lot of capital investment around this LNG terminal*
- *The 'Option to Purchase' agreements should be made public or made available to the CER, which should also look at agreements with Shannon Development who own the lands*
- *The CER should ensure that there are watertight financial obligations imposed (on the Company).*

The CER has looked at all the arguments put forward by SBL in relation to the financial arrangements of SLNG and HESS and has examined the financial information available on SLNG and HESS Corporation. The CER is satisfied that SLNG is financially sound and has the resources to undertake the project. The signing of account using the firm's name and not an individual is normal practice.

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***Another key concern of SBL was safety of the pipeline and terminal. SBL consider that:***

- *Shannon LNG could be a safety risk as not comply with its related safety criteria:*
- *The QRA for the pipeline was undertaken by ERM who is mainly an environmental consultancy not dealing with risk assessments for gas systems :*
- *In relation to safety the CER needs safety expertise to evaluate safety issues. The risk assessment should be independently corroborated. This is not similar to other schemes.*

- Shannon LNG does not seem willing to comply with all current codes of operations as can be seen in its submission to the CER Consultation on "A Natural Gas Safety Regulatory Framework for Ireland – Proposed Vision". (Framework) on September 13<sup>th</sup>, 2007;

A Qualitative Risk Assessment (QRA) was commissioned by Shannon LNG, undertaken by ERM and reviewed by PIE. The CER is happy that ERM is a reputable firm with competence in this area. CER has undertaken a safety assessment in relation to the proposed pipeline as outlined in Section 7. The operator of the SLNG pipeline will be obliged to comply with a code of operations approved by the CER. See Section 7.

**SBL were also concerned that CER would take a strategic view of requirements. Specifically:**

- The CER needs to consider gas suppliers strategically and not simply on a project by project basis
- The CER is empowered under the relevant legislation to refuse to grant a licence if there is an adequate supply of gas already available in relation to demand.
- It has already been established that proposed shiploads of gas will exceed requirements, which suggests the export of some gas.
- The Kinsale gas field already has ample gas storage space to meet the country's needs. Strategically there is, therefore, no need for the current proposal.
- The Government policy document published in November 2007 deals with, inter alia, the sourcing of gas for Great Britain who have an increasing supply diversity, including LNG, in a situation where supply is in surplus. The CER needs to look at this situation.
- The document identified high potential gas storage areas around the coast.
- The Corrib gas reserves were identified as providing backup which should be released over a longer period than is envisaged with a view to extending the period of strategic supply.

The CER considers that the above issues are not relevant to the Section 39 consent.

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**SBL were also concerned that a Strategic Environmental Assessment and a marine risk assessment should have been carried out.**

The CER's position is that these are not requirements for the Section 39.

***SBL considered that the pipeline represents project splitting and an attempt to obtain implicit retention for planning permission already obtained by the developer.***

The CER has the responsibility of issuing consents for all gas pipeline but does not have responsibility for planning permission for terminals or strategic pipelines. SLNG are not project splitting as it is necessary for them to obtain consents and permissions from the relevant parties as set out in legislation.

***SBL noted the plans of ENDESA to obtain a gas connection for the plant at Tarbert and suggested:***

- *The CER must look at the Endessa's plans at Tarbert Island. Energy needs should not be determined by which company is first in relation to energy provision;*
- *If Shannon LNG proceed with a gas-fired power station it is not understood how a connection will be made to the national grid as the Endessa company intends using all of the available grid connection.*
- *No licence should issue until the Endessa proposal's are evaluated; and*

The CER is considering the connection of the Endessa plant separately to this consent.

#### **An Taisce – Objectors**

E. Muldowney representing An Taisce objected to the Shannon pipeline. The arguments presented centered mainly around policy considerations including the cost of gas, dependence of electricity generation on gas and the move towards renewable for generating. She noted that there would not be any significant long term employment arising from the project although it could be significant during the construction phase.

The CER's position is that these are not requirements for the Section 39.

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#### ***Supporters of the Project***

The following provides details of the submissions received from supporters of the Shannon LNG Pipeline at the related public hearing. The arguments in favour of the project mainly were in relation to the potential job creation for the North Kerry area from the Shannon LNG pipeline:



**(a) Kilcolgan Residents Association**

*They were represented by T. Mahony. Key points in this regard are as follows:*

- *Local people are anxious to secure jobs; and*
- *The project is welcome.*

**(b) Ballylongford Enterprise Association**

*They were represented by N. Lynch and M. Finnucane. Key points in this regard are as follows:*

- *The scheme will give rise to more industry and employment in the area;*
- *The entire area is looking forward to the project where jobs are scarce;*
- *The pipeline will provide the gas to supply Tarbert, giving a benefit to North Kerry; and*
- *The objectors have done nothing to bring industry to the estuary.*

**(c) Tarbert Development Association**

*They were represented by J. Murphy and J. Fox. Key points in this regard are as follows:*

- *the main focus of the Association is to secure jobs; and*
- *It is understood that Shannon LNG do not require the pipeline until 2014 whereas Endessa will require a gas supply in 2011/2012, the CER should bear this in mind.*

**(d) Supporter**

*M. McElligott is a supporter of the Shannon LNG pipeline. Key points in this regards are as follows:*

- *It is noteworthy that none of the residents living on the line, have appeared at the hearing, objecting to it; and*
- *The objectors have brought no jobs to the area.*



Safety Before LNG  
Island View  
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## *Safety before LNG*

*Protecting the Shannon Estuary and its people*

19 November 2009

Mr. Denis Cagney, Director Gas,  
The Commission for Energy Regulation  
The Exchange,  
Belgard Square North,  
Tallaght,  
Dublin 24.

c.c Dr. Paul McGowan, Director Safety, CER  
Ms. Keelin O'Brien, Operations Manager, CER

By Email only to: [dcagney@cer.ie](mailto:dcagney@cer.ie), [pmcgowan@cer.ie](mailto:pmcgowan@cer.ie), [kobrien@cer.ie](mailto:kobrien@cer.ie), [info@cer.ie](mailto:info@cer.ie)

Re. Impacts of Corrib Shell pipeline ruling and European Court of Human Rights case concerning safety aspects of Milford Haven LNG project on the Shannon LNG application for consent to construct a pipeline under Section 39A of the Gas Act, 1976, as amended.

Dear Mr. Cagney,

Before a final decision is made by you on the CER Licence application by Shannon LNG we are informing you that we are of the opinion that you are under an ethical and legal obligation to consider the following issues and precedents raised by the recent An Bord Pleanála decision on the Corrib Shell pipeline and by a case on the Milford Haven LNG terminals currently being considered by the European Court of Human Rights.

### **The Shell Pipeline Decision:**

The precedent of the GA0004 Shell Pipeline decision by An Bord Pleanála<sup>1</sup> of November 2<sup>nd</sup> 2009 where for the first time the consequences of an accident are being considered and not only the probability of an accident now needs to be equally implemented with this CER licence application.

The Bord found as unacceptable in its decision letter in 2(c)

*“the impacts on the local community during the construction and operational phases of the development which would seriously injure the residential amenities of the area”.*

We also noted in 3(c) with great interest the appropriate standard against which that major hazard pipeline would now be assessed:

*“the routing distance for proximity to a dwelling shall not be less than the appropriate hazard distance for the pipeline in the event of a pipeline failure. The appropriate hazard distance shall be calculated for the specific pipeline proposed such that a person at that distance from the pipeline would be safe in the event of a failure of the pipeline”.*

The decision letter goes on to state in part (d) on page 3:

*“In order to eliminate any doubt please note that all failure modes should be included including the possibility of third party intentional damage”*

In part I of page 3 the Bord requests:

*“details of the hazard distances, building burn distances and escape distances in contours for the entire pipeline”*

LNG expert Dr. Jerry Havens, in his submission to the Shannon LNG application noted:

*“If an LNGC were to be attacked in the proximity of the shoreline, either while docked at the terminal or in passage in or out of the estuary, and cascading failures of the ship’s containments were to occur, it could result in a pool fire on water with magnitude beyond anything that has been experienced to my knowledge, and in my opinion could have **the potential to put people in harm’s way to a distance of approximately three miles** from the ship. I have testified repeatedly that I believe that the parties that live in areas where this threat could affect them deserve to have a rational, science-based determination made of the potential for such occurrences, no matter how unlikely they may be considered.”*

In fact, a leak of LNG which is heavier than air will move laterally (along ground or water) until well beyond the distance at which it is still ignitable (12.4 kilometres<sup>2</sup>);

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<sup>1</sup> <http://www.pleanala.ie/casenum/GA0004.htm>

<sup>2</sup> “Land Use Planning QRA Studies of the Proposed Shannon LNG Terminal”, September 2007 Reference 0059890-R02 QRA Issue 1 Prepared by: Dr Andrew Franks  
[http://www.shannonlngplanning.ie/files/LUP\\_QRA\\_Issue1.pdf](http://www.shannonlngplanning.ie/files/LUP_QRA_Issue1.pdf) page 32

The conclusion therefore is that allowing a CER licence application for a pipeline from and within a top-tier Seveso II LNG terminal, the most sizeable hazard in Ireland, where at least seventeen thousand people will live in harm's way up to 12.4 Kilometres from the site and route of LNG tankers travelling the Estuary is unacceptable following the precedent created by the Shell pipeline decision by An Bord Pleanla. There has not even been an initial evacuation plan proposed or assessed and we now request that the hazard, burn and escape distances of both accidental and intentional damage be integrated into the assessment of this application as has been done for the Corrib Shell pipeline. We also note that the pressure of the proposed pipeline to Foynes would have a higher pressure than that on the national grid after Foynes.

**The European Court of Human Rights Case on Milford Haven LNG terminals:**

The European Court of Human Rights has asked the British government for key clarifications on aspects of LNG safety at two large import terminals in Milford Haven, West Wales which parallel exactly the same issues raised by us concerning the Shannon LNG project.<sup>3</sup>

The court has asked the Government to explain who was responsible for assessing all risks posed by the LNG terminals, including marine risks, and what risk assessments were done and were made public and when.

The court has specifically asked the following questions:

- “1. Which bodies had responsibility for assessing the risks associated with the LNG projects and advising the planning authorities and how was responsibility divided among the various bodies concerned?”*
- 2. Have the relevant authorities discharged their positive obligations to protect the applicants’ rights under Article 2 and/or Article 8 of the Convention by ensuring that:*
  - (a) they have complied with their duties in relation to the regulation of hazardous industrial activities and, in particular, have properly assessed the risk and consequences of a collision of LNG vessels or other escape of LNG from a vessel in Milford Haven harbour or while berthed at the jetty?*
  - (b) relevant information on the nature and extent of the risk posed by the hazardous industrial activities has been disclosed to the public in accordance*

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<sup>3</sup> European Court of Human Rights Application Number 31965/07 by Alison Hardy and Rodney Maile against the United Kingdom lodged on 24 July 2007 c.f. <http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=857924&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649>

*with the principles set out by the Court (see, inter alia, Öneriyildiz v. Turkey [GC], no. 48939/99, ECHR 2004-XII; Guerra and Others v. Italy, 19 February 1998, Reports of Judgments and Decisions 1998-I; and Giacomelli v. Italy, no. 59909/00, ECHR 2006-...)?”*

### **Conclusion:**

The Corrib Shell Pipeline decision by An Bord Pleanála and the clarifications requested by the European Court of Human Rights from the UK government on the LNG siting decision in Milford Haven highlight the key ethical and political issue as being the one of acceptability of risk - as opposed to the narrower issue of the probability of accidents - by considering the possible consequences of siting extremely hazardous installations in close proximity to communities without their consent.

If, even within this narrower criteria of probability, the probability of an LNG accident on water has *not* even been assessed in the form of a marine QRA or the assessment of an LNG spill on water, then the CER Licensing process is leaving itself wide open to challenges in the courts.

The Electricity Regulation Act, 1999 (as amended by the Energy (Miscellaneous Provisions) Act 2006) in Article 9 (1) (e)(eb) states that the Commission shall have the following functions -

*“(eb) to promote the safety of natural gas customers and the public generally as respects the supply, storage, transmission, distribution and use of natural gas (excluding such activities carried out at upstream pipelines or facilities except where such pipeline or facility is engaged in the storage of natural gas),”*

The onus is now therefore on the CER to determine that any risks and consequences associated with the LNG project not assessed by any other statutory body must therefore be assessed by the CER because promoting the safety of the public generally is one of the functions of the CER.

As already highlighted by us:

- The remit of the Health and Safety Authority (HSA) stopped at the shoreline and so the HSA did not assess any marine safety aspects of the project or any intentional damage to the terminal or LNG ships;
- the Commission for Energy Regulation (CER) is only assessing limited safety aspects of the pipeline and not of the terminal itself or any marine safety aspect of the project nor of any cascading effects;
- the EIS of the pipeline has been considered in isolation from that of the LNG terminal;
- the HSA did not give any technical advice to An Bord Pleanála on the part of the pipeline within the Seveso II establishment at the oral hearing on the pipeline because it considered that it had already done this for the EIS of the LNG terminal - even though at that stage the pipeline route was not known.
- we now fully intend to audit the work of the CER in assessing the safety aspects of

this project. If a court considers that your organisation has not assessed this application properly then the CER licence may be revoked. The main criteria that must be assessed is whether the project is safe and absolutely necessary - a task you cannot complete without the information we have signalled to you as missing;

- the CER's powers are widespread and as this CER Licensing process is the last in line of the licensing processes that the CER can use to deal with the safety aspects of this LNG project then it has a duty to cover any regulatory gaps not covered by the other statutory bodies in dealing with this project to date;
- we are now strongly of the opinion that the information that should have been included in the Environmental Impact Statement has been totally inadequate. This information should have included, under paragraph 2(c) and 2(d) of the Second Schedule of the European Communities (Environmental Impact Assessment) Regulations, 1989:

*“c. a description of the likely significant effects, direct and indirect, on the environment of the development, explained by reference to its possible impact on - human beings;*”

and

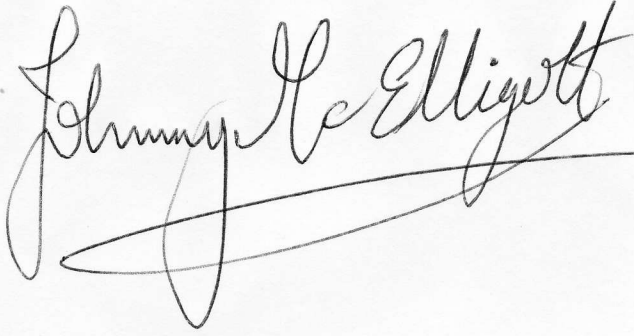
*“d. where significant adverse effects are identified with respect to any of the foregoing, a description of the measures envisaged in order to avoid, reduce or remedy those effects; “.*

The relevant An Bord Pleanála Decision on the Shell Pipeline and the Statement of Facts of the European Court of Human Rights case are attached for your information and we reserve the right to await the outcome of the court case before initiating legal action to protect our rights.

We await your feedback.

Yours sincerely,

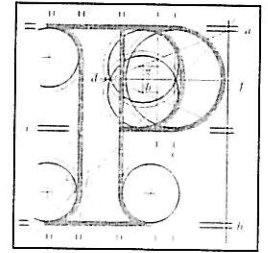
Johnny McElligott

A handwritten signature in cursive script that reads "Johnny McElligott". The signature is written in black ink and is positioned above a long, thin horizontal line that extends across the page.

**Our Ref:** 16.GA0004 & 16.DA0004

**Your Ref:** SEPIL

An Bord Pleanála



Des Cox,  
RPS Planning & Environment,  
West Pier Business Campus,  
Dun Laoghaire,  
Co. Dublin.

2nd November 2009

**Re: Onshore upstream gas pipeline facility relating to the Corrib Gas Field Project, Co. Mayo.**

Dear Sir,

I have been asked by An Bord Pleanála to refer to the above mentioned applications.

Having considered the application made under section 182C of the Planning and Development Act 2000 as amended, the submissions received and the report of the Inspector who carried out the oral hearing, the Board considers:-

- (1) The design documentation for the pipeline and the quantified risk analysis (QRA) provided with the application does not present a complete, transparent and adequate demonstration that the pipeline does not pose an unacceptable risk to the public.
- (2) That part of the route between chainages 83+910 and 89+550 (5.64 kilometres between Glengad and Aghoos) is considered unacceptable for the following reasons:-
  - (a) the proposal to route the pipeline at a proximity distance from dwellings which is within the hazard range of the pipeline should a failure occur is unacceptable,
  - (b) the limitations on the road improvement works in the Rossport area resulting in a traffic plan and haul route proposal that involves convoys of five heavy goods vehicle (HGV) trucks travelling over narrow bog rampart and bog roads partly through a rural residential area which would constitute a traffic hazard and obstruction of road users, and
  - (c) the impacts on the local community during the construction and operational phases of the development which would seriously injure the residential amenities of the area and the development potential of lands in the designated rural settlement of Rossport.
- (3) That part of the route of the pipeline which is onshore (between chainage 83+390 and 83+400) has been omitted from the application i.e. between chainage 83+400 and the high water mark (HWM).



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Furthermore, the Board having examined the detailed proposals submitted and having regard to the fact that Ireland has not adopted a risk-based framework for decision-making on major hazard pipelines (transporting wet gas) and related infrastructure considers that the following standards, when applied to the proposed pipeline, are the appropriate standards against which the proposed development should be assessed and that the Board should, therefore,

- (a) adopt the UK HSE risk thresholds for assessment of the individual risk level associated with the Corrib Gas Pipeline,  
individual risk level above  $1 \times 10^{-5}$  – intolerable,  
individual risk level between  $1 \times 10^{-5}$  and  $1 \times 10^{-6}$  – tolerable if ALARP (As low as reasonably practicable) is demonstrated,  
individual risk level below  $1 \times 10^{-6}$  broadly acceptable, and
- (b) adopt a standard for the Corrib upstream untreated gas pipeline that the routing distance for proximity to a dwelling shall not be less than the appropriate hazard distance for the pipeline in the event of a pipeline failure. The appropriate hazard distance shall be calculated for the specific pipeline proposed such that a person at that distance from the pipeline would be safe in the event of a failure of the pipeline.

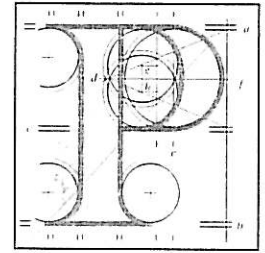
Having regard to the foregoing and to the strategic national importance and current status of the entire Corrib Gas Field development, and as it is provisionally the view of the Board that it would be appropriate to approve the proposed onshore pipeline development should alterations be made to the proposed development, you are invited to make alterations to the proposed development as follows:-

Modify the pipeline route between chainages 83+910 and 89+550 so that the route at this location would be generally in accordance with that indicated as Corridor C (that is, within Sruwaddacon Bay) in the route selection process which formed part of the Environmental Impact Statement (E.I.S.) and planning application. The revised development including this alteration shall be accompanied by a revised E.I.S. including an appropriate assessment of the impact of the development on Natura 2000 sites.

Furthermore, the applicant is requested to furnish the following further information in accordance with section 182C(5) of the Planning and Development Act, 2000 as amended in relation to the entire pipeline route modified as above:-

- (a) Clarify the code requirements and pressure test requirements for the pipeline from chainage 83+390 (HWM) approx. to chainage 83+470 (downstream weld at LVI)
- (b) Provide confirmation that the design of this section of the pipeline meets the requirements set down by the Technical Advisory Group (TAG).
- (c) Provide an integrated set of design documentation in the form of a revised Appendix Q. The documentation should integrate the analysis provided in the incidental and individual documents at the oral hearing. The whole set should provide a transparency of the design for the complete pipeline from the HWM to the terminal. This transparency should relate to the different site and design conditions along the pipeline and should relate to the codes. The design should include the analysis related to ground stability and should provide a system for monitoring movement of the pipeline in those areas of deep peat. Furthermore, the maximum allowable operating pressure (MAOP) for the pipeline should be stated.
- (d) Submit a new QRA that presents the analysis of risk at the different operating conditions and different locations along the pipeline route. The QRA should be site specific. The QRA should include ground movement and incorporate a database that matches the conditions of the proposed development. A sensitivity of the QRA is required which demonstrates the range of risk that relates to any uncertainty (in the database) of failure frequencies for the various potential

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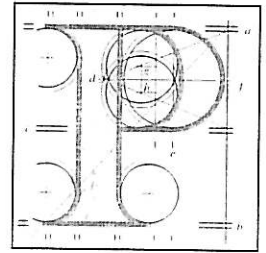
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failure modes of the pipeline. The database should be relevant for an upstream wet gas. In order to eliminate any doubt please note that all failure modes should be included including the possibility of third party intentional damage at Glengad, wet gas in the pipeline, CO2 in the pipeline and potential for Methane Hydrate in the pipeline.

- (e) Provide a qualitative assessment of risk. This should be prepared for the different operating conditions and different locations along the pipeline route and should provide a comprehensive assessment to include those events that cannot be easily defined mathematically.
- (f) Submit an analysis of the condition where the umbilical becomes severed and the control of valves at the wellhead and the subsea manifold is lost. The analysis needs to identify what conditions apply to the onshore pipeline and the risks involved in that circumstance.
- (g) An examination of the potential for pressure in the offshore pipeline to increase to wellhead pressure levels in the event that all wellhead valves had to be shut in over a prolonged period and in that period incremental leakage past the valves occurred. The concept of a vent at Glengad as a measure to protect against pressure at the wellhead side of the pipeline at the landfall rising above the maximum operating pressure should be examined. Information should also be provided on the reliability of the subsea shut down valve system proposed for the wellhead and manifold offshore.
- (h) Provide details of the examination of the potential increase in safety for the population at Glengad by the use of a straight pipe at the landfall and provide full justification for the proposed design as submitted (and any revised design that may result from the modifications requested herein).
- (i) Provide details of the hazard distances, building burn distances and escape distances in contours for the entire pipeline. The applicant should indicate the outer hazard line contour which should show the distance from the pipeline at which a person would be safe. A number of these contours were provided at the oral hearing (copies of which are attached to this letter), however, the set of hazard contours should be complete and should include the entire onshore pipeline as far as the terminal. Please indicate the assumptions made in determining these hazard contours and indicate any limitations that apply to these hazard contours.
- (j) Provide details separately of the inner zone, middle zone and outer zone contour lines for the pipeline. These shall represent the distance from the pipeline at which risk levels of  $1 \times 10^{-5}$ ,  $1 \times 10^{-6}$  and  $0.3 \times 10^{-6}$  per kilometre of pipeline per year exist.
- (k) Provide an assessment of the societal risk for Glengad and the societal risk along the revised route. This should be fully documented.
- (l) Submit precise section by section details of the proposals for temporary peat turve storage, which take into account the condition of the existing surface layer of the peat and which specifically identify where peat turves or remoulded peat will be stored on bog mats adjacent to the stone road (or elsewhere).
- (m) Submit details of the specific risk mitigation measures that would be proposed for each of the sections within the peat lands (Sections 1 to 18 were the relevant sections in the route as originally proposed and as set out in the qualitative assessment of relative peat failure potential which was presented as additional information at the oral hearing). These details should identify in particular where there would be limits on the storage of peat on bog mats adjacent to the stone road excavation and where a conservative approach would be proposed to the use of design factors and in the assessment of peat stability.
- (n) Submit an assessment of the potential impact of the estimated stone road settlements on the umbilical pipeline and service ducts that will also be constructed within the stone road, including an assessment of the risks associated with failure due to rupture of these umbilicals or services.

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Revised drawings should be submitted which fully describe the full extent of the onshore pipeline from the HWM to the terminal site. These alterations to the extent of the site the subject of this planning application shall be accompanied by revised public notices as referred to below.

The site of the proposed development has been incorrectly detailed in the EIS between chainage 91.537 and chainage 92.539, i.e, the existing stone road at the Terminal end of the pipeline. The applicant is invited to amend the details of the proposed development at this location.

The undertaker should consider whether or not the construction of a pipeline along the altered route as referred to in this communication would require the compulsory acquisition of any lands or rights over land not covered in the application to the Board, (file ref. 16.DA0004), under Section 32 of the Gas Act 1976. In the event of an acquisition order being required for any additional land or rights over land an application for such order should be prepared under the provisions of the Gas Act 1976 and submitted to the Board in conjunction with the information requested herein. Any alterations or modifications required to the application already submitted (file ref. 16.DA0004) should be indicated. As an alternative an application for an acquisition order to cover the entire revised route may be submitted.

Please note that upon receipt and examination of any response to its request, the Board can at that stage invoke its powers pursuant to subsection (7) and (8) of Section 182C of the said Act which require the undertaker to publish a newspaper notice of the furnishing of the further information and to make same available for inspection or purchase. Any such newspaper notice would provide that written submissions or observations in relation to the further information may be made to the Board. The undertaker would also be required to send to the local authority and to each prescribed body to which notice was given of the application, a copy of the further information and E.I.S. indicating that submissions / observations may be made to the Board. You will also be requested to erect site notices at specified locations along the route.

A response to this request for further information and revised E.I.S. should be received by the Board on or before 5<sup>th</sup> February, 2010.

If you have any queries in relation to the matter please contact the undersigned officer of the Board.

Please quote the above mentioned An Bord Pleanála reference number in any correspondence or telephone contact with the Board.

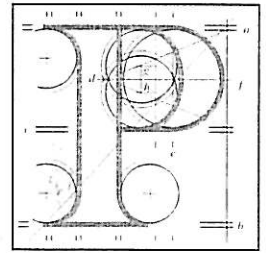
Yours faithfully,

PP *Alan McArdle*

Alan McArdle  
Executive Officer

**Registered Post**

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European Court of Human Rights

28 October 2009

## FOURTH SECTION

Application no. 31965/07  
by Alison HARDY & Rodney MAILE  
against the United Kingdom  
lodged on 24 July 2007

### STATEMENT OF FACTS

#### THE FACTS

The applicants, Ms Alison Hardy and Mr Rodney Maile, are British nationals who were born in 1946 and 1935 respectively and live in Milford Haven. They are represented before the Court by Mr R. Buxton, a lawyer practising in Cambridge.

#### **A. The circumstances of the case**

##### *1. The Background facts*

The facts of the case, as submitted by the applicants, may be summarised as follows.

##### **a. The Dragon site**

In around 2002, Petroplus applied to Pembrokeshire County Council for planning permission to develop a liquefied natural gas (LNG) terminal on a site at Milford Haven harbour (“the Dragon terminal” or “the Dragon site”).

On 21 October 2002, Milford Haven Port Authority (“MHPA”) wrote to Pembrokeshire County Council acknowledging receipt of an extensive Environmental Impact Assessment. MHPA noted that:

“As a Port Authority, we have a duty to assess anticipated building works in the waterway in respect of their impact upon navigation, and also of course have a responsibility for maintaining and regulating the use of the waterway in a safe and effective manner.”

MHPA indicated that its marine department had been working closely with marine advisers to Petroplus to assess the feasibility of LNG vessels

transiting the port area and berthing at the proposed jetties. The conclusion was that the identified and agreed means of navigation and operation “more than adequately” contained the risk associated with handling such vessels. MHPA also pointed to the benefit to the marine service community of the increase in traffic which would result from the development and the diversification into new sectors of activity. In short, MHPA was:

“...supportive of [the] proposed development and have no concerns regarding safety or navigation in this respect”.

On 19 March 2003, Pembrokeshire County Council granted planning permission for an LNG terminal at the Dragon site.

On 25 April 2003, an application was made by Petroplus to extend the LNG terminal at the Dragon site. The application, together with an environmental statement, was considered at Pembrokeshire County Council’s Planning and Rights of Way Committee meeting on 21 October 2003. The minutes noted that the Health and Safety Executive (“HSE”) had not advised against the granting of permission for the extension on safety grounds. They also recorded that MHPA strongly supported the proposal and was confident that the port had the capacity to handle the extra shipping traffic and that there would be no negative impacts on the satisfactory risk assessment already undertaken. The environmental statement highlighted safety aspects as a matter for assessment, noting that an HSE safety report would be required before the plant could be operated. It concluded:

“An independent risk assessment of both the currently approved development and the proposed expansion has been carried out by [Petroplus]. This assessment considered adjacent residential property ... The assessment concluded that the level of risk presented by the extended LNG Terminal remains within the levels that the HSE considers tolerable and broadly represents an acceptable level of risk.”

On 11 February 2004, Petroplus made an application, accompanied by an environmental statement, for amendments to the approved LNG terminal.

On 1 March 2004, Petroplus applied for hazardous substances consent for the storage of LNG.

A report prepared by the HSE for consideration on 2 September 2003 demonstrated some initial examination of the modalities and consequences of a major release from a delivery ship whilst moored at the jetty. The relevant section concluded:

“It is clear that such plumes, centred on the jetty, are capable of engulfing the densely populated developments of Milford Haven (town), Neyland or Pembroke Dock. But without PCAG Guidance on the frequency to be assigned to the release, an ignition probability analysis cannot be undertaken to determine the significance in risk terms ...

...

The paper has included some consideration of releases from delivery ships whilst moored at the jetty, but the analyses are incomplete due to shortage of data. A complete methodology could be developed over time.”

On 10 September 2004, planning permission was granted for an extension at the Dragon site and for the amended scheme.

In a report dated 12 October 2004, the Director of Development of Pembrokeshire County Council summarised the views regarding the application by Petroplus for hazardous substances consent in respect of the amendments to the LNG terminal. The report recorded that strong objections had been received from residents of nearby areas calling, in particular, for “all health and safety information concerning the proposed Milford Haven LNG Terminals [to be] made publicly available and openly debated before any further consents are given to build”. It also recorded that the HSE had confirmed that its statutory obligation was complete when all shore-based activities had been assessed and had been taken into account. Such activities, in the present case, would include the transfer of LNG from the ship to the shore and storage and regasification of the LNG. They would not, however, include the risks from ships moored at or approaching the jetty. The assessment of such risks would fall to the Maritime and Coastguard Agency (“MCA”).

The report continued as follows:

“The MCA has confirmed that as the national maritime administration, it would have responsibility for the safety of LNG tankers, transporting the cargo, whilst inside UK territorial waters. Although it would continue to have some general responsibility for the vessel when it passed from UK territorial waters into the Milford Haven Port Authority’s jurisdiction area, the MCA take the view that primary responsibility passes to the competent harbour authority. The MCA has stated that it would be reasonable to assume that there is some, unspecified increase in ‘risk’ by virtue of the explosive nature of LNG as a cargo. The Port Authority would be expected to allow the proposed activity to go ahead only where this risk has been reduced to ‘as low as reasonably practicable’. The mitigating actions initiated by the Port Authority would then be reflected in the Port’s safety management system which they are required to have in place through the Port Maritime Safety Code. The MCA have a range of responsibilities for various ‘operational’ aspects of the code including a general monitoring role for compliance with the Code by Port Authorities.”

The Port Authority’s submissions were recorded in the report as follows:

“The Port Authority has confirmed its jurisdiction including responsibilities (and powers) to regulate the use of the Haven and the overarching views of the MCA on a UK basis ... The MCA’s role in regard to LNG ships specifically would be that of Port State Control Inspectors looking into the condition and standard of shipboard operations of the vessels from a safety standpoint. The Port Authority has confirmed that its marine personnel, including pilots, have participated in risk assessments with teams from both proposed terminals facilitated by independent risk consultants. The Port Authority state that the outcome has been to confirm that Milford Haven has the capability of handling these vessels safely. The Port Authority has also confirmed that the security issue addressed through the International Ship and Port Facility Security Code which sets out detailed security requirements for ships and port facilities based on risk assessments to determine the level of risk and the measures

necessary to meet that risk. Port facilities including Petroplus have been required to produce a security plan before operations start and this plan has been and will continue to be approved by Transec as the UK Government body responsible for security.”

The report recommended that the application be approved.

On 7 December 2004, Pembrokeshire County Council approved the application for hazardous substances consent in respect of the Dragon Site.

**b. The South Hook site**

On 21 January 2003, Qatar Petroleum and ExxonMobil applied for hazardous substances consent for the storage and gasification of LNG at another site at Milford Haven harbour (“the South Hook terminal” or “the South Hook site”). Unlike the Dragon terminal, the South Hook site fell within the authority of both Pembrokeshire County Council and Pembrokeshire Coast National Park Authority and an application was accordingly made to both bodies.

Qatar Petroleum and ExxonMobil instructed an environmental statement with relation to the proposed development at the South Hook site. Chapter 14 of the statement dealt with major hazards and explained, at 14.12, as follows:

“The COMAH Regulations govern land based industrial hazards. Under these, the proposed terminal will include the jetty, to the point where the loading arms connect to a berthed LNG carrier. The jetty comes within the jurisdiction of the Milford Haven Port Authority, which has responsibility for marine navigational safety and loss prevention issues within the 200 square mile Waterway.”

On 28 April 2003, Qatar Petroleum and ExxonMobil applied to Pembrokeshire County Council and Pembrokeshire Coast National Park Authority for planning permission to develop an LNG terminal at the South Hook site.

On 15 May 2003, MHPA wrote to Pembrokeshire County Council in support of the proposed development in terms similar to their letter of 21 October 2002 in respect of the Dragon site.

The minutes of a meeting of Pembrokeshire County Council’s Planning and Rights of Way Committee on 21 October 2003 recorded that the HSE had not advised against the granting of permission for the development on health and safety grounds and that MHPA supported the proposed development and had no concerns regarding safety or navigation. One letter of objection from a member of the public had been received. The environmental statement accompanying the application highlighted the issue of health and safety and referred to the HSE’s work in examining the proposal for planning permission and the application for hazardous substances consent. No other body was mentioned with regard to the health and safety aspects of the proposal.

On 12 November 2003, planning permission was granted by Pembrokeshire Coast National Park Authority in respect of the South Hook Site.

On 18 December 2003, planning permission was granted by Pembrokeshire County Council in respect of the South Hook Site.

On 8 January 2004, the HSE provided observations in respect of the application for hazardous substances consent at the South Hook terminal. It noted that:

“Our specialist team has assessed the risks to the surrounding areas from the activities likely to result if these Consents are granted. Only the risks from the hazardous substance for which the Consent is being sought have been assessed, together with the risk from these same substances in vehicles that are being loaded or unloaded. Risks that may arise from the presence of other substances have not been taken into account in this assessment.”

On 10 February 2004, the Chief Executive of MHPA wrote to Pembrokeshire Coast National Park Authority with responses to some questions raised. He wrote:

“What we need to ensure is that these large LNG ships are managed in such a way that they are safely and effectively accommodated ...

...

Our approach for accommodating these potential LNG vessels, as it is with managing all ship movements, is by detailed risk assessment taking into account the characteristics of the ships and the terminal to be used, and through a detailed approach making use of simulators and our own pilots and technical teams working with those of the project proposers, together with a wide range of specialist consultants to determine the requirements to meet this objective. The result will take into account, for example, the number of tugs required for a movement; the number of pilots; whether tugs should be escorting the vessel ...; the limits on any weather conditions to allow a movement to take place (e.g. only when the wind is say less than x knots); the timing of any movement related to tidal conditions etc.

...

Similarly, because we have a duty to support and allow all shipping movements, we do not intend to close the Port whilst an LNG ship enters or leaves – it is not necessary and does not improve the assessed situation, indeed would probably make things worse in that other movements would bunch up either before or afterwards and cause operational difficulties and pressures as a consequence. What we will probably be seeking to do (and I say probably because we are still very much involved in the risk assessment of a wide variety of scenarios) is that there will be a restriction on vessels being within a given distance of an LNG ship when transiting the Haven ...

I also understand that some questions have been raised about the distance at which other vessels will be allowed to pass an LNG ship at the South Hook Jetty, given that this stretches some way into the Haven and that the main shipping channel in this vicinity is used by all other commercial ships being that their berths are further upriver. Again, we are researching this, testing on the simulators and undertaking



risk assessments, but it is likely that we will be looking to undertake some dredging to widen the shipping channel to the South so that some vessels, including the ferry, will be able to pass the South Hook Jetty with an LNG ship alongside at a further distance than would be the case otherwise. We are also looking at other ways of controlling shipping passing the South Hook Jetty in such circumstances which could include criteria of speed, tugs in attendance, maybe even a ‘guard’ tug in the vicinity of the LNG ship and restricting any movements to one vessel at a time, certain weather conditions etc”

On 4 March 2004, the Western Telegraph newspaper published a question and answer article with ExxonMobil regarding the LNG terminal. Relevant extracts are quoted below:

“Could LNG explode if there was a collision at sea or in the Haven? Or could it explode for any other reason?”

The South Hook sponsors have been working closely with organisations such as Milford Haven Port Authority to ensure that the possibility of a shipping incident is extremely low. Vessels are also designed to withstand significant impact. If an LNG release were to occur from a shipping incident, and if it were ignited, then the effect would be localised to the vessel and its immediate surroundings and unlikely to impact the land. The recent Health and Safety Executive assessment examined the consequence of such an incident and found no cause for local concern.

...

What would happen if there were a spill on sea or on land?

Health and Safety Executive experts have considered potential spill scenarios and have found no areas of concern. An incident at sea is extremely unlikely, and the current design of ship is aimed at minimising the likelihood of release in the event of collision. Milford Haven Port Authority has emphasised its ability to safely handle LNG shipping.

...

Would it not be better if such a terminal was in a more uninhabited area?

The HSE’s review has concluded there are no safety reasons to object to the proposed development. Our plans will be subject to a further safety review by the HSE, Environment Agency and the Coastguard under the Control of Major Hazards (COMAH) requirements. We, as operator, will have to demonstrate that all necessary measures have been taken to prevent major accidents. Any issues raised locally relating to safety systems, operating procedures and emergency response plans will have to be fully addressed.”

On 10 March 2004 Pembrokeshire Coast Park Planning Committee considered the application for hazardous substances consent. Concerns were

raised at the meeting regarding the absence of any quantitative risk assessment on tankers and the need to dredge the channel to increase its depth.

On 2 April 2004, Pembrokeshire County Council approved the application for hazardous substances consent in respect of the South Hook Site.

Pembrokeshire Coast National Park Authority approved the application on 19 August 2004. On the same day, the development planning officer of Pembrokeshire Coast National Park Authority, in a letter to the HSE, MHPA and Pembrokeshire County Council’s Emergency Planning Officer, highlighted concerns about the lack of comprehensive structure for assessing the risks of the project, saying:

“Members however were still extremely concerned about safety issues and are hoping that the COMAH process is rigorous and very demanding and addresses all issues.

This concern has arisen partly because of the fact that there does not appear to be one overriding Authority but a number of bodies involved whose responsibility does not overlap – and where the edge of that responsibility may be a bit blurred, and a genuine concern about exactly which body is responsible for what.

The major concern appears to be the possible conflict between ships using the channel whilst an LNG slip is tied up at the jetty. Objectors seem to think that the space available is too narrow and that there is the potential for accidents if the jetty remains where it is ...

I assume that this will be an issue that will be addressed in some detail during the COMAH process and given my members’ concern I would be grateful if you could keep this Authority informed of progress in respect of the COMAH submission.”

ExxonMobil’s representatives were also advised of this concern by letter of 19 August 2004 and were asked to “ensure that the issue is fully addressed at the time of the COMAH submission”.

**c. The Health and Safety Executive’s risk assessment of the two projects**

The HSE is a government body responsible for supervision of health and safety matters.

In the context of its assessment, the HSE conducted a preliminary examination of potential marine spill scenarios, including the consequences of a major release from a delivery ship while moored at the jetty. It concluded that this could result in a flammable cloud capable of engulfing, among other towns, the town of Milford Haven. However, it ceased work on this aspect of risk before it was concluded and therefore never completed its assessment of the marine risks.

On 2 February 2006, in a letter to the *Guardian* newspaper, Geoffrey Podger, Chief Executive of the HSE, wrote:

“Re your report on the gas terminals at Milford Haven: I am happy to make clear that the HSE gave independent advice in the public interest and was not swayed by any external pressure... The reason the HSE examined the shore side operation but not the risk of an accident at sea is simply because we have no legal competence to assess risks from ships while at sea or under the direction of the ship’s master. We made this clear to the local authorities and suggested they consult others, including the Maritime and Coastguard Agency, to assess these risks prior to any consent being granted.”

**d. Milford Haven Port Authority’s risk assessment of the two projects**

MHPA is an independent, commercially run organisation. It is responsible for safety issues at Milford Haven harbour. It has a statutory duty to both Government and its stakeholders.

On 23 February 2004 the Chief Executive of MHPA was asked which body had ultimate responsibility for assessing the risks involved in the movements of LNG tankers in Milford Haven. He replied on 25 February 2004, confirming that;

“The Milford Haven Port Authority is responsible for the conservancy (management, regulation, provision of navigation aids and systems etc) of the Waterway. This includes the regulation and management of all shipping movements. We have a statutory responsibility to support all traffic and indeed, in common with all UK ports, cannot forbid a ship to enter (except in particular circumstances as laid down in appropriate Acts of Parliament). What we can and do lay down are the conditions under which movements will take place – e.g. time of entry, state of tide, number of pilots, number of tugs etc.”

On 27 September 2004, in a letter to Pembrokeshire County Council, the Harbourmaster of MHPA clarified the extent of MHPA’s responsibilities:

“[MHPA] has navigational jurisdiction over the Waterway ...

This jurisdiction includes responsibilities (and powers) to regulate the use of the Haven. Our primary objectives in this regard are to maintain, improve, protect and regulate the navigation and in particular the deep water facilities in the Haven ...

Whilst the HSE have said that the Maritime and Coastguard Agency are the UK competent authority, this is correct inasmuch as they regulate shipping at sea and through legislation. As a competent authority they have an overarching view UK wide. Indeed, they advise on primary legislation which can affect the Port Authority and may act as auditors for the Port Marine Safety Code to which this Authority wholeheartedly subscribes. Their role in regard to LNG ships specifically would be that of Port State Control inspectors looking into the condition and standard of shipboard operations of the vessels from a safety standpoint.

Marine personnel from the [MHPA], including pilots, have participated in risk assessments with teams from both proposed terminals facilitated by independent risk consultants. The outcome has been to confirm that Milford Haven has the capability of handling these vessels safely

...

[Security] is addressed through the International Ship and Port Facility Security Code ... which sets out detailed security requirements for ships and port facilities based on risk assessments to determine the level of risk and the measures necessary to meet that risk.

Port facilities throughout the Haven including Petroplus have been required to produce a security plan, appoint a security officer, provide additional security equipment, monitor and control access of people, cargo and stores as well as ensuring effective security communications. There will be a similar requirement for the South Hook terminal to prepare a security plan before they start operation.”

In a report dated 13 April 2005, Lloyd’s Register Risk Assessment Services, on the instructions of MHPA, examined and summarised high level statistics for worldwide accidents involving ships. Experience of just a fire or explosion on board a ship large enough to potentially injure people nearby was “as likely per year as being struck by lightning”. The report observed that the likelihood of an LNG incident was extremely low and that there had never been a recorded incident of a major release of LNG from a ship to external atmosphere and no member of the public had ever been injured by LNG from a ship. The authors explained that the report carried a moderate level of error in light of the high level statistics used and concluded that more detailed research could be carried out to address the specific risks at Milford Haven.

In a paper of 20 May 2005, the Chief Executive of MHPA summarised the position regarding the LNG terminals. On the matter of risk assessments, the paper noted:

“One of the concerns constantly banded about by Safe Haven [a campaign group which opposed the LNG developments] ... is the lack of quantified risk assessment. This is a fallacy either through genuine misunderstanding or a deliberate refusal to accept what has been told.

We have undertaken a significant amount of risk assessment both ourselves with the terminal operators, their advisers and making use of specialist third parties. The terminal developers themselves have also undertaken quantified risk assessment some of which related to shipping movements and we have made use of these in our own processes.

To assist us in this we recently commissioned a report from Lloyds Register Risk Assessment Services looking specifically at the risk of incidents in Milford Haven large enough to potentially injure people nearby.

Their conclusion was that there is as much risk of being struck by lightning as there is of being injured by any explosion including fire from LNG in the Haven ...”

On 9 June 2005, a journalist contacted the Chief Executive of the MHPA

asking “What risk assessments have Milford Haven Port Authority undertaken in relation to plans to import LNG to South Hook and Waterson sites (with specific regard to the marine-based risk)?”. In an email response dated 15 June 2005, Mr Sangster, Chief Executive of the MHPA indicated that a number of risk assessments had been undertaken as part of the process of determining the way in which LNG ships would be managed. He referred to the commissioning of “studies and reports from experts and consultants”. He indicated that, as a port, the MHPA had a statutory duty to facilitate and support any use of the waterway, noting:

“... as a port authority we have no say in the selection of the sites, our responsibility is managing the ships that will visit the sites chosen.”

Accordingly, he explained, the studies were not designed to determine whether MHPA would handle LNG ships, but rather how it would handle them.

In its summary grounds lodged with the High Court in subsequent judicial review proceedings (see further below), MHPA provided details of the risk assessment work it had carried out. In particular, it stated:

“The Authority has been and continues to be under the Port Marine Safety Code to assess safety. It has worked closely with the developers to ensure that what is proposed will be safe and has undertaken a series of robust risk assessments.

In summary, the Authority has been an active participant in the process of risk assessment undertaken by [Petroplus and ExxonMobil] since Spring 2002. It has undertaken simulation tests and made specific recommendations about navigation and procedures to minimize hazards. The Authority has visited LNG tankers, other Port Authorities and terminals which handle LNG, trained pilots, harbour masters and managers and obtained and commissioned advice from consultants about potential hazards.

...

The Authority’s risk assessment has been open in that it has, for example, explained what has been happening in its annual reports. Moreover, it has taken part in a range of public presentations and responded to any enquiries that it has received from interested members of the public and other stakeholders.”

The grounds continued to set out in paragraph 28, by way of illustration, some of the specific risk assessments undertaken, including: a marine traffic analysis of vessel movements through the port during a 25-day period in November 2002 by a marine and risk consultant, Marico Marine; a concept risk assessment by South Hook LNG Terminal Company Ltd, with the participation of MHPA, dated 9-10 December 2002 identifying hazards, consequences and possible mitigation measures relating to potential use of Milford Haven port for the importation of LNG; a report by the Maritime Research Institute Netherlands (MARIN), dated 14 February 2003, on simulations to check the nautical consequences of future 200,000m<sup>3</sup> LNG

carriers; a March 2003 navigational risk assessment by Marico Marine; a MARIN report of 19 May 2003 on fast time simulations for large LNG ships; a technical report dated 13 October 2003 by Det Norske Veritas (USA) Inc., a major classification society, in respect of South Hook LNG Terminal Company Ltd's proposal assessing the marine risk associated with vessel manoeuvres in the channel and around the South Hook terminal for discharging cargo from LNG vessels; a report dated 20 February 2004 by ABS Consulting, an international consulting operation experienced in the analysis of shipping collisions, for South Hook LNG Terminal Company Ltd, dealing with potential damage to LNG tankers due to ship collisions; a report dated March 2005 from Burgoyne Consultants, international consulting engineers and risk consultants, updating a report on the potential consequences of fires and explosions involving ships carrying petroleum products (including LNG); a November 2003 report commissioned by South Hook LNG Terminal Company Ltd from HR Wallingford, the former research facility for the Ministry of Defence, dealing with mooring safety and the possibility of disturbance caused to moored vessels; and a report by Gordon Milne, senior risk analyst at Lloyd's Register of Shipping, commissioned by MHPA assessing the risk of explosion and gas release from LNG carriers. MHPA refused to disclose any of these reports citing commercial confidentiality.

*2. The first judicial review proceedings (planning permission and hazardous substances consent)*

On 4 March 2005, the applicants filed an application for leave to apply for judicial review in respect of the grant of planning permissions and hazardous substances consent for the South Hook and Dragon terminals. They alleged a failure to carry out a comprehensive environmental impact assessment of the project as a whole; a failure to have regard to the risk arising from marine traffic and to consider alternative locations for the LNG terminals; and a fundamental misunderstanding as to the characteristics of LNG in the event of an escape.

On 26 July 2005, leave to apply for judicial review was refused on the grounds that the challenge was not made sufficiently promptly and there was undue delay and that quashing the planning and hazardous substances decisions would substantially prejudice the rights of ExxonMobil and Petroplus and cause them substantial hardship and would be very detrimental to good administration.

Mr Justice Sullivan summarised the decisions being challenged in respect of the South Hook site as: (1) planning permission by Pembrokeshire Coast National Park Authority on 12 November 2003; (2) planning permission by Pembrokeshire County Council on 18 December 2003; (3) hazardous substances consent by Pembrokeshire County Council on 2 April 2004; and (4) hazardous substances consent by Pembrokeshire Coast National Park Authority on 19 August 2004. The decisions being challenged in respect of the Dragon site were: (1) planning permission by Pembrokeshire County Council on 19 March 2003; (2) planning permission by Pembrokeshire

County Council for an extension on 10 September 2004; (3) planning permission by Pembrokeshire County Council for an amended scheme on 10 September 2004; and (4) hazardous substances consent by Pembrokeshire County Council on 7 December 2004.

Mr Justice Sullivan noted that, insofar as the applicants complained of the absence of a comprehensive environmental impact assessment or its failure to take account of marine risks, the complaints were directed towards the grant of planning permission itself, rather than hazardous substances consent. In both cases, relevant planning permissions had been granted more than three months before the judicial review proceedings were brought.

Having concluded that there was no good reason why the three month deadline for bringing judicial review proceedings had not been respected as regards all of the decisions except the 7 December 2004 decision and that there was no good reason that the 7 December 2004 decision was not challenged “promptly” as required by the relevant Civil Procedure Rules, Sullivan J went on to consider the extent of any hardship or prejudice to third party rights and detriment to good administration which would be occasioned if permission were nonetheless granted. He concluded that it was clear that the grant of relief to the applicants “would cause really significant damage in terms of hardship and/or prejudice” to the rights of the owners and operators of the South Hook and Dragon terminals. He further considered that it would be detrimental to good administration to allow a challenge to decisions going back as far as March 2003.

Finally, Sullivan J considered whether the public interest required that the application should proceed. In this context, he considered Article 2 of the Convention but concluded that the public interest did not merit the granting of permission out of time, noting (at paragraph 82):

“... It would not be possible to resolve the substantive matters in dispute without examining in considerable detail the decision-making processes that were employed by [Pembrokeshire County Council and Pembrokeshire Coast National Park Authority] in respect of each of the decisions under challenge. In these circumstances it would not be right to start from the premise that it would not be in the interests of good administration to maintain the decisions because they were unlawful, as on occasions the claimants’ submissions appeared to do.”

The applicants appealed.

On 24 January 2006, the applicants indicated their intention, in the event that permission was granted, to apply for a disclosure order seeking disclosure of all the documents referred to in paragraph 28 of MHPA’s summary grounds and any other documents relevant to the proceedings. The application notice specified that the application was made in order to “cover the situation should the Court grant permission to apply for Judicial Review”. They also applied for a protective costs order in respect of the second applicant, who had at that stage not been granted legal aid.

On 17 March 2006, the Court of Appeal handed down its judgment. Lord Justice Keene considered the applicants’ arguments under Article 2 of the Convention. Referring to *Vo v France*, he pointed out that the Court had upheld a four-year limitation period on the right of access to court in a case

where the right to life was invoked. He concluded (at paragraph 26):

“It is obvious that public safety is potentially an issue of importance and that, if there is evidence that it has been overlooked or not properly considered by the decision-maker, then that may justify permission to seek judicial review. Public safety must be a material consideration in the decision-making process carried out by the hazardous substances authority, irrespective of Article 2 considerations.”

However, he considered that Sullivan J had been alive to the Article 2 and public safety issues which arose in the case, noting that:

“The Milford Haven Port Authority is a statutory body required to ensure the safety of waters within its jurisdiction. The evidence before Sullivan J made it clear that the Port Authority was satisfied as to the safety of the terminal proposals, so far as its own sphere of responsibility was concerned, while the Health and Safety Executive had advised that it was content so far as the land-based activities were concerned. Both these bodies had advised the decision-makers, the County Council and the Park Authority, who were entitled to rely on the specialist advice received from those bodies.”

Keene LJ accordingly concluded that it was open to Sullivan J to find that the merits of the applicants’ claim did not outweigh the undue delay and the prejudice which permission to proceed would produce.

Observing that it was “strictly speaking unnecessary to scrutinise in greater depth” the planning decisions in light of his findings on delay, Keene LJ nonetheless addressed briefly the issues raised. He noted that the applicants’ argument was that while MHPA had assessed the likelihood of a collision, this was insufficient in itself and they ought also to have carried out a risk assessment into the consequences of any such collision. Keene LJ disagreed that the risk assessment had been inadequate. He considered that the risk of collision “was undoubtedly dealt with by the Port Authority”, as counsel for the applicants conceded during the hearing. He pointed out that the Port Authority had advised both bodies responsible for granting planning permission and consents that it had the “capability of handling these vessels safely”. As to counsel for the applicants’ argument that an assessment of the risk of collision was insufficient and there had to be an assessment of the consequences for the local population of a vapour cloud, Keene LJ concluded (at paragraphs 32 and 33):

“One has to bear in mind in this connection the very extensive assessments carried out by the Health and Safety Executive, because these provide the context for the Port Authority’s assessment. The Health and Safety Executive did assessments which considered both the consequences and the likelihood of an escape of LNG for all land-based and jetty-based activities. Those included the risk of catastrophic failure of an LNG storage tank at the terminal; the failure of a loading arm at the jetty while LNG was being transferred from ship to shore; and ‘major release from a delivery ship while tied up at a jetty’: see HSE responses to Park Authority, 5 March 2004, and the HSE Summary Grounds of Resistance, paragraphs 10 and 11. Having carried out these assessments, the Health and Safety Executive did not object to the proposal for either terminal on safety grounds. The applicants do not criticise the work done by the Health and Safety Executive.



That body made it clear in its response of 5 March 2004 that it was not responsible for advising on accidents ‘whilst the ship is not attached to the jetty’. But the Port Authority, which is responsible for advising on such accidents, did participate in an assessment process which led to a risk assessment submitted by the South Hook LNG Terminal Company Limited in December 2002 ‘to identify hazards, *consequences* and possible mitigation measures’ relating to the use of the port as proposed: see the Port Authority’s Summary Grounds of Resistance, paragraph 28(b) (emphasis added). It refers in those grounds to a number of other reports and exercises carried out, so that it could fulfil its statutory responsibilities for safety. In any event, once the Health and Safety Executive had concluded that there were no unacceptable risks to the local population arising from either a catastrophic storage tank failure on land or a major release of LNG from a tanker tied up at a jetty, the crucial element in any assessment of risk from a vessel not moored to the jetty must have been the risk of a collision. The risks to the population from a vapour cloud travelling over land or sea had already been considered by the Health and Safety Executive, since the jetties end far out in the Haven. What the Port Authority needed to concentrate on above all else was the risk of a collision, and that it seems to have done.”

Permission to appeal was refused. In a subsequent discussion of the application for disclosure, Lord Justice Keene noted that it was related to the prospect of a substantive hearing had permission to bring judicial review proceedings been granted, and that permission had not been granted. Accordingly, no order as to disclosure was made.

Prior to the judgment being handed down, the applicants had been provided with a copy in draft for comment on typographical errors. The applicants’ legal advisers immediately recognised that the judgment contained an error of fact at paragraph 32, where Keene LJ had made reference to the HSE assessment of the consequences of a “major release from a delivery ship while tied up at a jetty”. The applicants’ solicitor wrote to the court on 15 March 2006 advising that no such assessment had in fact been carried out and requested the court to consider the implications of the factual error before confirming its conclusions in the draft judgment. In the event, no change was made to the relevant paragraph of the draft judgment before it was handed down in its final form.

On 10 April 2006, the solicitor for the applicants made an application to the Court of Appeal under the Civil Procedure Rules (“CPR”) Part 52.17 to have the judgment of 17 March 2006 re-opened. The application was made on the basis, *inter alia*, of an obvious factual error, namely, the court’s finding that there had been an assessment of the marine risks, and the court’s failure to rectify the error before handing down its final judgment despite having been advised of the error by the applicants’ advisers. The solicitor noted in the application that although as a matter of routine such applications go back to the original tribunal, he would imagine that the members would recuse themselves in this case.

On 27 April 2006, solicitors for the Health and Safety Executive advised all parties involved in the proceedings as well as the Court of Appeal of a mistake in the HSE’s Summary Grounds of Resistance. The statement to the effect that the HSE’s comprehensive risk analysis included risks associated with “major release from a delivery ship while tied up a jetty” was incorrect. The correct position was reflected in a previous letter dated 16 August 2004:

“Risks that may arise from the presence of other substances, or from the presence of LNG on a delivery ship, either when sailing or when berthed, have not been taken into account in the assessment.”

On 8 May 2006 the Court of Appeal ordered that there should be an oral hearing on the question of permission in the Part 52.17 proceedings, limited to the question whether the application for permission to appeal should be re-opened in light of the information provided by the HSE.

On 19 May 2006, the applicants’ solicitor requested that the matter go to a freshly constituted tribunal and that the scope of the hearing be widened to allow them to canvass all of their complaints concerning the judgment. On 13 June 2006, the Court of Appeal declined to vary its order of 8 May 2006.

On 12 July 2006, the matter came before the original tribunal. It heard and refused an application that its members recuse themselves.

On 19 July 2006, the Court of Appeal refused permission to re-open the application. Lord Justice Keene highlighted that the error of fact arose in the context of his discussion of a matter which he had indicated was not strictly necessary in light of his other findings. He nonetheless considered the implications of the factual error identified and concluded that although MHPA might well have concentrated on the safety of navigation, it was clear that in light of the work it had done it felt able to advise that it had no concerns regarding safety or navigation in respect of the proposed developments. He concluded (at paragraphs 20 to 23) that:

“... The significance of the error in terms of public safety has to be seen in context.

That context is that both the HSE and the Port Authority had undoubtedly carried out a number of exercises and studies before advising the planning authorities that there was no objection on safety grounds. The HSE for its part had assessed the consequences of an escape of LNG from a land-based storage tank; from the failure of a loading arm at the jetty; and from the guillotine rupture of a thirty inch pipeline between the jetty and the storage tanks ... Those assessments have not been criticised. It is to be observed that the HSE assessments of the failure of a storage tank on land included that of a catastrophic failure, which would take place at a location not obviously more distant from the areas of population than the proposed jetties. Yet the HSE was satisfied that public safety would not be jeopardised, presumably because of the very low likelihood of such an incident.

The Port Authority for its part had carried out a range of studies referred to in its summary Grounds of Resistance at paragraph 28. Those were, as one might expect, largely directed towards an assessment of marine risks. They included a report from a Senior Risk Analyst at Lloyd’s Register of Shipping, commissioned to assess the risk of explosion and gas release from LNG carriers ... There was also evidence before the judge and before this court that there had never been an incident of major release of LNG from a ship to the external atmosphere ...

The Port Authority has statutory responsibilities for safety within the Haven and it advised the decision-makers, the County Council and the Park Authority, that there was no such risk to public safety as to warrant refusal of the applications. It was principally for the Port Authority to decide on what research was necessary for it to

be so satisfied. It is not for this court or any court to try to second guess the Authority's decision on what it needs by way of research in order to advise the decision-makers, unless it is obvious that it has neglected its statutory duties. The evidence falls far short of that. In short, the factual point now seen to be mistaken was of limited significance even on this aspect of the case. Moreover, as Mr Straker on behalf of the Port Authority submits, that Authority has powers, if at any time it should appear to it that the risks are likely to be greater than presently seem to be the case, to prevent the jetties being used for LNG unloading, and of course the planning authorities also have powers to revoke the consents with which these proceedings are concerned."

Having set out the position as regards assessment of marine risk, Keene LJ concluded:

"But in any event, I come back to the fundamental point, which I indicated earlier, namely that the mistake of fact now relied on by the applicants did not occur in an essential part of this court's reasoning when it dismissed this application for permission to appeal."

The applicants' solicitors subsequently wrote to the then Head of Civil Justice asking for advice on what could be done. He replied that a new Part 52.17 application could be made, which would be considered by a Lord Justice who had not been on the original tribunal. The applicants' solicitor duly lodged a new Part 52.17 application. Wall LJ considered the application and, concluding that the members of the tribunal had not erred in refusing to recuse themselves, dismissed the application by order of 2 October 2006.

The applicants sought leave to appeal to the House of Lords the decision of the Court of Appeal tribunal not to recuse itself. The House of Lords refused leave on 13 March 2007 on the grounds that it "discerned no error of law".

In or around May 2007, the second applicant was advised by the Legal Services Commission that his application for legal aid had been granted.

### *3. The requests for information*

On 23 December 2004, the solicitor for the applicants wrote to MHPA requesting access to environmental information. On 5 January 2005, MHPA responded stating that it did not see any benefit in responding.

On 7 January 2005, following the entry into force of the Environmental Information Regulations 2004 ("EIR 2004"), the solicitor for the applicants wrote again to MHPA. On 31 January 2005, he wrote a third time explicitly under the EIR 2004. On 1 February 2005, MHPA responded stating that it did not see any benefit in responding.

On 15 February 2005, the solicitor for the applicants asked MHPA to reconsider its response in accordance with Regulation 11 of EIR 2004. By letter dated 18 March 2005, MHPA responded that it remained to be convinced that EIR 2004 was applicable.

On 22 April 2005, the solicitor for the applicants wrote to the Information

Commissioner asking him to confirm whether MHPA was a “public authority” for the purposes of EIR 2004.

On 22 October 2005, a request was made to MHPA by members of the public under the Freedom of Information Act 2000 to see all formal, documented risk assessments which had informed MHPA’s decision that it could handle LNG vessels safely. MHPA replied on 2 November 2005 advising that it was not subject to the Freedom of Information Act. It indicated that it sought to respond to questions and concerns but that it did “not intend, however, to make the large amounts of information obtained through the planning process publicly available as raw data”, although the information had been made available to regulatory bodies and agencies.

On 10 November 2005, solicitors for the applicant made a further request to the solicitors for MHPA to see copies of risk assessments and reports referred to in their summary grounds of defence lodged in the judicial review proceedings. They also requested copies of any subsequent marine risk assessments undertaken in respect of the LNG terminals.

On 14 November 2005, the Information Commissioner’s Office confirmed that MHPA did constitute a “public authority” for the purposes of EIR 2004. It further advised that MHPA could nonetheless continue to refuse to disclose the information sought if it did not constitute “environmental information” for the purposes of the regulations, or if any of the exceptions to the disclosure obligation applied.

On 17 May 2006, solicitors for the applicant wrote to the Information Commissioner’s Office requesting an update on the investigations into MHPA’s failure to disclose requested documents.

By letter of 26 June 2006, MHPA replied to the applicants’ solicitor’s requests for disclosure under EIR 2004. MHPA indicated that while it had concluded that it did fall within the ambit of those regulations, it was not required to disclose the risk assessments carried out in respect of the LNG terminals at Milford Haven, on the basis that these constituted operational, and not environmental, information. MHPA did, however, provide a copy of an Environmental Assessment undertaken prior to the widening of the channel opposite the two terminals. It also offered to provide such environmental information as could be extracted from operational reports, on the basis that the costs of doing so would have to be met by the applicants. The letter concluded:

“... we have gone to great lengths to explain and describe not only the details of what we are doing but why, and the outcomes in terms of the formation of our plans for handling LNG ships. What we have not done is make freely available large volumes of information, as it is our firm belief, that to do so would be irresponsible and confusing for the public. The information needs to be put into context of not only the purposes for which it was obtained, but also the explanations and conclusions drawn from it. We maintain that the best way to do that is through personal contact, presentations and explanations on given courses of action ...”

On 29 June 2006, the applicants’ solicitor write to MHPA asking it to reconsider its decision and challenging the assertion that information pertaining to risk assessment did not constitute “environmental information”

in terms of regulation 2 of the EIR 2004.

On 14 July 2006, MHPA responded. It advised that many of the risk assessments undertaken were not instructed in order to advise the planning authorities but in order to assess MHPA's own operational requirements for handling LNG ships in Milford Haven. However, the assessments subsequently assisted MHPA in providing the necessary advice to the planning authorities. MHPA offered to extract relevant environmental information for the sum of approximately GBP 400. The solicitor for the applicants subsequently asked for information from two reports only, namely, a report by Gordon Milne, senior risk analyst at Lloyd's Register of Shipping, commissioned by MHPA assessing the risk of explosion and gas release from LNG carriers ("the Milne report"); and (ii) relevant extracts containing environmental information of a report entitled "Qatargas II Project: Milford Haven Marine Concept Risk Assessment" ("the Qatargas report"). He requested a new quote on that basis.

On 28 September 2006, the Chief Executive of MHPA advised the applicants' solicitor that he was unable to disclose any of the material requested as to do so "may seriously jeopardise the fairness of the [judicial review] proceedings ...". He also relied on the refusal of the companies concerned to consent to the disclosure of material from the reports. In weighing up the public interest test, as required by EIR 2004, he noted that notwithstanding the presumption in favour of disclosure, MHPA had concluded that disclosure was not in the public interest as the information requested should not be made publicly available without an explanatory context and where it would cause unnecessary confusion or concern. The applicants' solicitor replied on 29 September 2006 expressing his disappointment and disputing MHPA's reliance on the exceptions set out in regulation 21 of EIR 2004. He referred the matter to the Information Commissioner.

On 16 November, the applicants' solicitor wrote to MHPA advising that in light of this Court's findings in *Giacomelli v. Italy*, no. 59909/00, ECHR 2006-..., it would commence judicial review proceedings regarding the failure of MHPA to disclose documents unless the information was provided within 12 days.

On 12 March 2007 the Information Commissioner issued a Decision Notice under section 50(1) of the Freedom of Information Act 2000 ordering disclosure of the Milne report and the Qatargas report. As regards the public interest test, the notice advised that:

"In this particular case, the Commissioner believes that there is a very strong public interest in the disclosure of environmental information relating to the development of LNG terminals in Milford Haven. The LNG developments are locally controversial ... Disclosure of environmental information of the type requested in this case could add significantly to public knowledge of the risks posed by the development and better inform public debate.

Furthermore, the Commissioner believes that there is a public interest in ensuring that the Port Authority is undertaking its duties effectively and that it adequately

assesses and manages risk within the Haven. In terms of high-profile and potentially hazardous developments such as the LNG terminals, there is a legitimate public interest in demonstrating that public safety has been fully considered by all relevant authorities, including the Port Authority, at each stage of the development process.”

On 25 April 2007 MHPA appealed the ruling to the Information Tribunal. However, on 1 October 2007 it withdrew its appeal and provided copies of the Milne Report and relevant extracts of the Qatargas report to the applicants.

#### *4. The second judicial review proceedings (disclosure of documents)*

While the MHPA appeal was outstanding, the first applicant sought leave to bring judicial review proceedings in respect of MHPA’s continuing refusal to disclose documents related to the risk assessments it claimed to have conducted with regard to the LNG terminals.

On 4 July 2007, permission was refused following an oral hearing. As regards information falling within EIR 2004, Beatson J referred to the existence of an alternative remedy, namely an application to the Information Commissioner and the Information Tribunal. To allow judicial review, he said, would be duplication and would risk circumventing the system set out in the regulations.

In respect of information not falling within those regulations, Beatson J concluded that the applicant had failed to demonstrate an arguable case that there was an obligation to provide the information arising from a positive duty on the authority under Articles 2 and 8. He noted that the MHPA had advised the decision-making authorities that the risks were so low as not to warrant the refusal of planning permission or hazardous substances consent and that the Court of Appeal had, in the earlier judicial review proceedings, found that the authorities were entitled to accept that advice. Accordingly, the activities in question could not be considered “dangerous” such as to give rise to an obligation under the Convention to allow the public access to the information. He further considered that insofar as the applicant sought disclosure of assessments required for the previous judicial review proceedings, the claim was an “improper use of judicial review”. He noted that the matter was before Sullivan J in the original judicial review proceedings and found that had it been arguable that the applicant was entitled to this information, then the matter would have been dealt with then. He concluded that the application was either out of time or an attempt to reopen a matter which had already been decided.

The applicant sought leave to appeal the ruling. In a judgment dated 30 November 2007, the Court of Appeal dismissed the application. Toulson LJ indicated that while he did not consider that Beatson J had erred as regards the applicability of Articles 2 and 8, he would have allowed the applicant to argue the matter before the full court. However, he concluded (at paragraph 11):

“As it seems to me, the plain and obvious purpose [of the present proceedings] is to endeavour to elicit material which could have been, and indeed to a point was, asked

for in the earlier proceedings, in order to present continuing argument that those previous consents ought not to have been granted. This is exactly the sort of endeavour which the court ought not to support. This appellant has had the opportunity to seek these documents at the time of the earlier proceedings, and it seems to me that the conclusion arrived at by Beatson J was entirely apposite: that this is indeed a reformulation of what was being sought in those proceedings. Those proceedings have already occupied the time of the Administrative Court for a lengthy leave hearing, followed by two considerations by the Court of Appeal and it would be wholly wrong that permission should now be granted to bring judicial review in the present form.”

## **B. Industry reports**

SIGTTO (The Society of International Gas Tanker and Terminal Operators Limited) is a non profit making company, formed to promote high operating standards and best practices in gas tankers and terminals throughout the world. It provides technical advice and support to its members and represents their collective interests in technical and operational matters. It has published several guidance papers on matters related to LNG.

### *1. SIGTTO Information Paper No. 14 Site Selection and Design for LNG Ports and Jetties (1997)*

The paper emphasises in its introduction that the level of marine risk is determined by the position chosen for the LNG terminal. As to jetty location, section 6 of the paper advises that they be placed “in sheltered locations remote from other port users”. Section 7 highlights the need for ignition controls extending around and beyond the immediate terminal area.

### *2. SITTCO LNG Operations in Port Areas: Essential best practices for the Industry (2003, Witherbys Publishing)*

Section 1.1 notes the following:

“... the hazards arising from [LNG], should it escape to atmosphere are: the eventual prospect of a gas cloud, many times the volume associated LNG with an accompanying risk of fire or explosion ...

...

Release of LNG into the atmosphere of any area having within it low energy ignition agents carries with it a risk of fire or explosion. Such conditions will prevail in any port area where ignition agents are not effectively prohibited, as they are in installations specifically constructed for the handling of hydrocarbons.”

Section 1.3 highlights the risks occasioned upon collision between vessels:

“... it is clear, their inherently robust constructions notwithstanding, that LNG tankers are vulnerable to penetration by collisions with heavy displacement ships at all but the most moderate of speeds. Such incidents ought to be treated as credible within any port where heavy displacement ships share an operating environment with LNG tankers.”

Section 1.4 of the publication observes:

“Since there has never been a catastrophic failure of an LNG tanker’s hull and containment system there are no incident data upon which to construct scenarios following the release of large quantities of LNG into the atmosphere. However the behaviour of released LNG has been carefully studied in the light of certain important experiments involving controlled releases ...

After a release of liquefied gas a cloud will develop and travel horizontally from the spill point under the influence of prevailing winds. The cloud will contain the gaseous components of the LNG ... and air. Mixing with air the cloud will develop flammable properties [through] much of its volume ...

As it travels away from the spill point the cloud will warm, becoming progressively less dense. As it warms to ambient temperature it will become buoyant in air and disperse vertically. Pure methane is lighter than air ... but it is the temperature of the entire cloud, not just its gaseous component, [that] determines its behaviour. Other components too must warm to higher temperatures before vertical dispersal ensues. Meanwhile the cloud will continue to disperse in a generally horizontal direction, developing a shape similar to an elongated plume.

In practice the geometry and behaviour of a gas cloud will be determined by the specific circumstances of the release. The single biggest determinant will always be the volume of LNG released. Thereafter the shape and behaviour of the cloud will be determined by the rate at which liquid gas is released to the atmosphere. Dispersal in specific incidences will also be greatly influenced by wind conditions, atmospheric stability, ambient temperature and relative humidity. The topography and surface roughness of the terrain over which a cloud moves will greatly influence dispersal characteristics ...

When the gas cloud is no longer fed by fresh volumes of gas it will disperse in the atmosphere until its entire volume is diluted below the lower explosive limit for methane. Its flammable properties will then be extinguished and no further risk will remain.”

On assessing the cloud behaviour in a specific situation, section 1.4 provides the following guidance:

“... First there must be established a realistic estimate of the maximum credible release, or spill. Second, the released gas cloud is modelled using realistic values for air temperature, wind forces and atmospheric stability at the location in question. From such analysis it is possible to predict with credible accuracy the likely scenario following a worst probable gas release into the atmosphere.”

Section 1.5 observes:



“There has never been an incident involving the penetration or catastrophic failure of an LNG tanker’s containment system – indeed, the safety record for this class of ship is exemplary. Nevertheless, this safety record notwithstanding, the risk profile of LNG tankers presents a very serious residual hazard in port areas if the vital structure of the tanker is penetrated.”

Section 2 concludes:

“Risk exposures entailed in an LNG port project should therefore be analysed by a Quantitative Risk Assessment (QRA) study. Such a study must involve the operations at the terminal and the transit of tankers through the port.

Risk assessments do not of themselves improve safety, but they should be regarded as decision tools in order to satisfy company safety policy and the Authorities that risk is acceptable.”

The section specifies that quantitative risk assessment results should yield, as a minimum, a high confidence in there being a low risk of the tanker failing to maintain track during the transit; a high confidence of the tanker not encountering other vessels in situations that present risks of collision; no credible scenario leading to a high energy grounding that holds the prospect of the inner hull being penetrated; and no credible scenario that might lead to the tanker encountering a heavy displacement vessel in situations where the resulting collision impact could be sufficient to penetrate the transiting tanker’s inner hull.

Section 4 clarifies that:

“The most important single determinant of risk attached to LNG operations in port areas is the selection of the site for the marine terminal – the location of the tanker berth(s).”

It provides that whatever the prevailing circumstances, no terminal should be sited in a position where it may be approached by heavy displacement ships which have an inherent capability to penetrate the hull of an LNG tanker. It adds that all port traffic must be excluded from the environs of an LNG marine terminal, having regard to the assessment made of the maximum credible spill and likely dispersal of the gas.

## **C. Relevant domestic law and practice**

### *1. Public access to environmental information*

Public access to environmental information is set out in the Environmental Information Regulations 2004. Regulation 5 establishes a duty to make available environmental information on request:

“ (1) Subject to paragraph (3) and in accordance with paragraphs (2), (4), (5) and (6) and the remaining provisions of this Part and Part 3 of these Regulations, a public authority that holds environmental information shall make it available on

request.

(2) Information shall be made available under paragraph (1) as soon as possible and no later than 20 working days after the date of receipt of the request.

(3) To the extent that the information requested includes personal data of which the applicant is the data subject, paragraph (1) shall not apply to those personal data.

(4) For the purposes of paragraph (1), where the information made available is compiled by or on behalf of the public authority it shall be up to date, accurate and comparable, so far as the public authority reasonably believes.

(5) Where a public authority makes available information in paragraph (b) of the definition of environmental information, and the applicant so requests, the public authority shall, insofar as it is able to do so, either inform the applicant of the place where information, if available, can be found on the measurement procedures, including methods of analysis, sampling and pre-treatment of samples, used in compiling the information, or refer the applicant to the standardised procedure used.

(6) Any enactment or rule of law that would prevent the disclosure of information in accordance with these Regulations shall not apply.”

Regulation 12 provides for exceptions to the duty to disclose environmental information:

“(1) Subject to paragraphs (2), (3) and (9), a public authority may refuse to disclose environmental information requested if –

(a) an exception to disclosure applies under paragraphs (4) or (5); and

(b) in all circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information.

(2) A public authority shall apply a presumption in favour of disclosure.

...

(4) For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that –

(a) it does not hold that information when an applicant’s request is received;

(b) the request for information is manifestly unreasonable;

(c) the request for information is formulated in too general a manner and the public authority has complied with regulation 9;

(d) the request relates to material which is still in course of completion, to unfinished documents or to incomplete data; or

(e) the request involves the disclosure of internal communications.

(5) For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that its disclosure would adversely affect –

(a) international relations, defence, national security or public safety;

(b) the course of justice, the ability of a person to receive a fair trial or the ability of a public authority to conduct an inquiry of a criminal or disciplinary nature;

(c) intellectual property rights;

(d) the confidentiality of the proceedings of that or any other public authority where such confidentiality is provided by law;

(e) the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest;

(f) the interests of the person who provided the information where that person –

(i) was not under, and could not have been put under, any legal

obligation to supply it to that or any other public authority;

(ii) did not supply it in circumstances such that that or any other public

authority is entitled apart from the Regulations to disclose it; and

(iii) has not consented to its disclosure; or

(g) the protection of the environment to which the information relates.

...

(9) To the extent that the environmental information to be disclosed relates to information on emissions, a public authority shall not be entitled to refuse to disclose that information under an exception referred to in paragraphs (5)(d) to (g).

...

(11) Nothing in these Regulations shall authorise a refusal to make available any environmental information contained in or otherwise held with other information which is withheld by virtue of these Regulations unless it is not reasonably capable of being separated from the other information for the purpose of making available that information.”

## *2. Time limits for bringing judicial review proceedings*

Section 31 of the Supreme Court Act 1981 provides that the High Court may refuse an application for judicial review where there has been undue delay. The relevant subsections provide as follows:

“(6) Where the High Court considers that there has been undue delay in making an application for judicial review, the court may refuse to grant –

- (a) leave for the making of the application ; or
- (b) any relief sought on the application,

if it considers that the granting of the relief sought would be likely to cause substantial hardship to, or substantially prejudice the rights of, any person or would be detrimental to good administration.

(7) Subsection (6) is without prejudice to any enactment or rule of court which has the effect of limiting the time within which an application for judicial review may be made.”

Rule 54.5 of the CPR sets out specific time limits for filing a claim form in judicial review proceedings:

“(1) The claim form must be filed –

- (a) promptly; and
- (b) in any event not later than 3 months after the grounds to make the claim first arose.

(2) The time limit in this rule may not be extended by agreement between the parties.

(3) This rule does not apply when any other enactment specifies a shorter time limit for making the claim for judicial review.”

In *Caswell v. Dairy Produce Quota Tribunal for England and Wales* [1990] 2 AC 738, the House of Lords held that, where the application for permission to seek judicial review was not made in compliance with the Civil Procedure Rules, the delay was to be regarded as “undue delay” within section 31(6) of the Supreme Court Act 1981.

### *3. Re-opening of final appeals under Part 52.17 of the Civil Procedure Rules*

CPR Part 52.17 permits the re-opening of final appeals in the Court of Appeal in exceptional circumstances. It provides as follows:

“(1) The Court of Appeal or the High Court will not reopen a final determination of any appeal unless –

- (a) it is necessary to do so in order to avoid real injustice;
- (b) the circumstances are exceptional and make it appropriate to reopen the appeal;  
and
- (c) there is no alternative effective remedy.

(2) ... ‘appeal’ includes an application for permission to appeal.”

There is no further appeal from the decision of the judge on the application for permission.

## COMPLAINTS

The applicants complain under Articles 2 and 8 of the Convention that the United Kingdom failed in its duties relating to the regulation of hazardous industrial activities. They also complain under these articles about the lack of information disclosed regarding the risks associated with the siting of the LNG terminals in Milford Haven.

The applicants further complain under Article 6 § 1 of the Convention about: (i) the domestic courts’ failure to make a disclosure order in the judicial review proceedings concerning the grant of planning permission and hazardous substances consent; (ii) the Court of Appeal’s failure to hear arguments relating to an application for a protective costs order; and (iii) the Court of Appeal panel’s failure to recuse itself in the proceedings on whether to reopen its judgment in light of an error of fact.

The applicants complain under Article 13 of the Convention that the

implementation by the Court of Appeal of the procedure under Part 52.17 of the Civil Procedure Rules denied them an effective remedy in respect of their Convention complaints.

### **QUESTIONS TO THE PARTIES**

1. Which bodies had responsibility for assessing the risks associated with the LNG projects and advising the planning authorities and how was responsibility divided among the various bodies concerned?

2. Have the relevant authorities discharged their positive obligations to protect the applicants' rights under Article 2 and/or Article 8 of the Convention by ensuring that:

- (a) they have complied with their duties in relation to the regulation of hazardous industrial activities and, in particular, have properly assessed the risk and consequences of a collision of LNG vessels or other escape of LNG from a vessel in Milford Haven harbour or while berthed at the jetty?
- (b) relevant information on the nature and extent of the risk posed by the hazardous industrial activities has been disclosed to the public in accordance with the principles set out by the Court (see, *inter alia*, *Öneryıldız v. Turkey* [GC], no. 48939/99, ECHR 2004-XII; *Guerra and Others v. Italy*, 19 February 1998, *Reports of Judgments and Decisions* 1998-I; and *Giacomelli v. Italy*, no. 59909/00, ECHR 2006-...)?

3. Have the applicants exhausted all effective domestic remedies in respect of their complaints under Articles 2 and 8, as required by Article 35 § 1 of the Convention (see *Lam and Others v. the United Kingdom* (dec.), 41671/98, 5 July 2001; and *Vo v. France* [GC], no. 53924/00, §§ 92-93, ECHR 2004-VIII)?

## Public Hearing for Shannon LNG Pipeline Connection.

Brandon Hotel, Tralee, Co. Kerry.  
26<sup>th</sup> May 2009 .

**Chairman:** “I have been appointed by the Commission for Energy Regulation to conduct this public hearing, which relates to the proposed Shannon LNG Gas Pipeline. This is an informal hearing which does not have any statutory basis. The hearing will be confined to issues relating directly to the pipeline itself.

Just a few points before we proceed:

We will continue working until one o clock as people have been advised already in some cases. We will adjourn for lunch between one and two. Resuming after lunch until 5 o clock if that is necessary.”

“Now, the proceedings are being recorded. On my left hand side there is somebody here who is working the amplification system and the recording but it will require people to give their names individually each time they speak, so please be aware of that. It’s not an easy thing to do but if there’s a change in the situation I will advise.”

“Could I request that anyone who has a mobile phone to turn them off please?”

“Now on the question of procedure I am going to request Shannon LNG to present their proposals in relation to the pipeline and their consent application. Parties opposite will get an opportunity to question the individuals from Shannon LNG or their engineering company and then following this the parties opposite will have an opportunity of picking their case in the same way. Again, if any questions arise from Shannon LNG, or from their engineers then that will be acceptable of course.

And finally I will invite the resident’s association and others to make a final submission, ending with Shannon LNG with their final submission, if they wish to do that. What I’m going to do initially is take the names of the parties, and again to remind you that when speaking, if you wouldn’t mind giving your name. So I’ll start off with Shannon LNG please if I may.

Who is going to introduce the party?”

**Michael Biggana:** “Chairman, my name is Michael Biggana, and Sam Ibrahim will be our second speaker.”

**Chairman:** “And what is your position Mr. Biggana?”

**MB:** “I am head of HR and Corporate Affairs with Shannon LNG.”

**Chairman:** “And your colleague, Mr Ibrahim, what is his position?”

**Sami Ibrahim:** “I am vice president of Business Development with LNG and the Project Manager of the Shannon LNG Project.”

**Chairman:** “That’s good, are there any other speakers from your group?”

**MB:** “Not initially, Chairman.”

**Chairman:** “It would be helpful for the hearing if we could get the entire submission on one side, otherwise we will be to-ing and fro-ing, which is not a good way of doing business.”

**MB:** “This will be our entire submission, Chairman.”

**Chairman:** “That will be your submission from both of you?”

**MB:** Yes.

**Chairman:** “Now, Killcolgan Resident’s Association, are they represented?”

**Tim Mahony:** “Yes, my name is Tim Mahoney, and I am the Chairman of Kilcolgan Resident’s Association.”

**Chairman:** “And we will move on to the group opposite here.”

**Johnny MacElligott:** “Johnny MacElligott, representing Safety Before LNG.”

**Caitriona Griffin:** “Caitriona Griffin, member of Kilcolgan Resident’s Association.”

**Thomas O’Donovan:** “Thomas O’Donovan, supporter of Safety Before LNG.”

**Elizabeth Muldowney:** “Elizabeth Muldowney, National Energy Officer with An Taisce.”

**Raymond O’Mahony:** “Raymond O’Mahony, Kilcolgan Resident’s Association.”

**Joan Murphy:** “Joan Murphy, Chairperson of Tarbert Resident’s Association, supporting the LNG project.”

**John Fox:** “John Fox, PRO Tarbert.”

**Noel Lynch:** “Noel Lynch, Chairman of Ballylongford Enterprise Association, supporting the LNG project.”



### **Shannon LNG:**

“Good morning Mr Chairman, my name is Michael Biggana, I am head of Human Resources and Corporate Affairs with Shannon LNG. The Shannon Pipeline will connect the permitted LNG terminal with the existing National Gas Grid, and this can be clearly seen on Figure One, on page 2 of my submission. By way of background Mr Chairman, An Bord Pleanala granted planning permission for the proposed LNG terminal on the 28th of March 2008. And An Bord Pleanala also granted permission for the Shannon Pipeline on the 17th of February 2009. At that time An Bord Pleanala also granted a number of compulsory acquisition orders for the permanent waylay for the pipeline. None of the compulsory acquisition orders arose from a landowner objection to the pipeline waylay. The Shannon Pipeline will serve as an alternative import route for supplying natural gas to customers throughout the island of Ireland and in line with European and Irish legislation, Shannon LNG will offer third party access to potential users of the Shannon Pipeline. The framework for third party access and connections to the Pipeline will be approved by the Commission for Energy Regulation, that’s the organisation that proved under statute for this purpose. In terms of our profile, Chairman if I may, Shannon LNG was established in 2003, to promote the development of natural gas imports to Ireland. Shannon LNG has a seemingly highly experienced Project Development team to design the Shannon Pipeline. Shannon LNG is a wholly owned Irish subsidiary of SLNG which is a joint venture of H.E.S. Corporation Poten and Partners. H.E.S. Corporation is a global integrated energy company, headquartered in New York, with operations in 20 countries around the world. H.E.S. is engaged in the exploration for, and the development, production, purchase, transportation and sale of crude oil and natural gas. Copies of the H.E.S. Corporation annual report for 2008, 2007 and 2006 and the latest H.E.S Corporate sustainability report are available on the website and in hard copy here at the hearing on the table in front of me. H.E.S. Corporation confirms in this corporate sustainability report that we are committed to meeting the high standards of corporate citizenship by protecting the health and safety of our employees, safeguarding the environment, and creating a long-lasting, positive impact on the communities in which we do business.

Poten and Partners provide brokerage consulting and project development services related to trading and transportation of crude oil, petroleum products, natural gas, liquified gas, LPG (Liquified Petroleum Gas) and other commodities.

On the question of the need for the project, the need for the Shannon LNG terminal and pipeline has been accepted through the planning approvals granted by An Bord

Pleanala, referred to above.

And an overview of the Shannon Pipeline, Mr Chairman: The Shannon Pipeline will connect the LNG terminal to the National Gas Grid, west of Foynes, as shown in Figure One. The Pipeline will have a total length of approximately 26 kilometres. My colleague, Sami Ibrahim, will describe the Pipeline design in his statement. There are 72 landowners on the route of the Pipeline. There was no objection from any landowner, and Shannon LNG required waylay consent from 71 landowners. An Bord Pleanala granted a compulsory acquisition order in the remaining case, and in a number of cases where there were imperfections in title. The land for the above-ground installation at Foynes, to connect the Shannon Pipeline and the Natural Gas Grid has been acquired by Shannon LNG.”

**MB:** “The benefits to Ireland from the Shannon Pipeline:

1. The Pipeline can provide Ireland with direct access to multiple and diverse sources of gas from around the world, and will confirm significant security and diversity of supply benefits to consumers on the island of Ireland. The Pipeline will provide a new supply point to Bord Gais’ transmission network. The Pipeline will connect the Natural Gas Grid to Co. Kerry for the first time, thereby improving the prospect of supplying gas to towns and customers in Kerry. And finally the Pipeline construction will generate approximately 200 jobs for the most of a year. In conclusion, Chairman, I would say that we are pleased to be afforded the opportunity by the CER to provide an overview of our consent application, and my colleague, Sami Ibrahim will demonstrate to you in his statement that Shannon LNG has met the CER’s criteria for consent to construct the Shannon Pipeline. Thank you Mr Chairman.”

**Sami Ibrahim:** “Good morning Mr Chairman, members of the Commission, ladies and gentlemen. My name is Sami Ibrahim and I am Vice President of business development for Hes LNG and the project manager for Shannon LNG. The CER has invited the interest of parties, including Shannon LNG as a developer, to make known to the CER any views on the Section 39A application on the considerations that should be taken into account and on conditions that should apply. Shannon LNG has made its views known to the CER in the documentation submitted and I will summarize those views in the following statement:

*“Shannon LNG’s submission to the CER are in accordance with the statutory criteria for Section 39A application. The purpose of my statement is to assist the hearing, while providing an outline of the proposed development on the Section 39A application which Shannon LNG has completed in accordance with the CER’s requirements. Should further queries arise that require a technical or other review, we suggest that the query be clarified and we will reply in writing to the CER.”*

**The Project Overview:**

The Shannon Pipeline will extend the Irish National Gas Grid west from Foynes to Rellihane in Co. Kerry, refer to Figure One and some of these posters. The Pipeline will be 750 millimetres nominal diameter and have a total length of about 26 kilometres. The design capacity of the Pipeline is approximately 1 billion cubic feet per day. The location of the Shannon Pipeline in relation to the National Gas Grid is shown above in Figure One and in more detail in Figure Two below. An Above Ground Installation (AGI) will be built at each end of the Shannon Pipeline. The AGI in Foynes is located where the proposed Pipeline will connect to the National Gas Network which is owned by Bord Gais Eireann. A photograph of the location of the proposed Foynes AGI is shown below in Figure Three. The Foynes AGI is designed to accommodate the two-way flow of natural gas. That is, it will be possible to pipe natural gas from North Kerry into the National Gas Grid and it will be possible for natural gas to flow from the National Gas Grid into North Kerry. The EGI at Rellihane is located at the site of the permitted LNG terminal and it is designed to accommodate the flow of natural gas from the Shannon LNG terminal. The Shannon Pipeline is designed and will be installed in accordance with the Irish standard known as IS328. The Commission for Energy Regulation (CER) is responsible for the regulation of the safety of natural gas pipelines under the Energy Miscellaneous Provisions Act 2006. The CER has put in place a comprehensive framework covering the safety of the design construction and operational phases of gas pipelines. Shannon LNG will comply fully with the aspects of the CER's safety requirements. Shannon LNG commissioned environmental resource management ERM to prepare a safety risk assessment on the proposed Pipeline, to ensure the safe design of the Pipeline. This risk assessment was submitted to the Commission for Energy Regulation as part of the Section 39A approval process.

The Shannon pipeline Section 39A application:

The CER has published consultation on the guidelines for the construction of gas

pipelines in Ireland, August 2002. In consultation with the CER, Shannon LNG has followed these guidelines. Pursue onto Section 26, 1A of the Gas Act, 1976, as inserted by Section 23 of the Gas Interim Regulation Act 2002, Shannon LNG Ltd submitted an application to the CER in January 2007 to demonstrate its bonafides intentions to construct the Shannon Pipeline. The CER certified on 23rd February 2007 that Shannon LNG had demonstrated a bonafide intention to apply for consent to construct the Shannon Pipeline. Shannon LNG Ltd submitted an application under 39A of the Gas Act 1976 as amended for consent to construct the Shannon Pipeline on September 5th 2008.

The application included the following documentation:

- Cover Letter
- Notification of application to Commission for Energy Regulation for consent under Section 39A of the Gas Act 1976 as amended.
- Application plans and drawings
- Schedule for application
- Consultations, including public
- Bonafides certificates from Commission for Energy Regulation
- Project Programme
- The Shannon Pipeline design report
- The Shannon Pipeline Environmental Impact Statement

Copies of the Section 39A application were issued to the following prescribed bodies on the 12th and the 15th of September 2008:

- Minister for Communications, Energy and Natural Resources
- Minister for the Environment, Heritage and Local Government
- Development Applications Unit of the Department of the Environment and Heritage
- Minister for Community, Rural and Gaeltacht
- Limerick County Council
- An Bord Pleanala
- Shannon Regional Fisheries Bord
- An Comhairle Ealain
- The Heritage Council
- An Taisce
- National Road Authority
- Health and Safety Authority
- Commissioner for Public Works

During the relevant period, the application documentation was available for inspection of purchase at the offices of Commission for Energy Regulations, the CER, An Bord Pleanala, Shannon LNG Listowel office, Limerick County Council, Kerry County Council and was available for inspection at Listowel Garda Station and Askeaton Garda Station.

Newspaper notices were published in the following newspapers:

- Irish Examiner – 17th September 2008
- Kerryman – 17th September 2008
- Kerry's Eye – 18th September 2008
- Limerick Leader – 17th September 2008

In addition Shannon LNG submitted an independent quantitative risk assessment QRA4 of the proposed Shannon Pipeline on 25th November 2008.

Criteria for determining Section 39A consent:

41 – The criteria for issuing Section 39A consents are set out in the Gas Interim Regulation Act 2002 and Criteria for Determination of Consents Regulation 2002.

The criteria and details of how Shannon LNG has achieved this criteria are as follows:

- A. If it grants consent, no activity carried out under it will adversely effect the safety and security of the National Gas System. Shannon LNG is committed to ensuring the safety and security of the National Gas System by ensuring the safety of the Shannon Pipeline infrastructure and ensuring the security of supply of gas to the gas system. The proposed Shannon Pipeline is similar to all other gas transformation pipelines which have been built in Ireland. From a technical point of view, there will be no significant difference between the Shannon Pipeline and other transformation pipelines which have been built, and all of which operate safely all over Ireland. The Shannon Pipeline will be designed, constructed, tested, commissioned, and operated in accordance with exactly the same code of practice. The Irish standards IS328 2003 code of practice for gas transformation pipelines and pipeline installations which is applicable to the National Gas Grid. In connecting to the Bord Gais System at Foynes, Shannon LNG will comply with their code of operations requirements in that respect. The commissioning maintenance and operations of the Pipeline will be subject to oversight by the Commission for Energy Regulation. In accordance with the CER's detailed requirements, which again is consistent with the position applicable to the Irish Gas Transformation Network. In addition, the Shannon Pipeline project will significantly increase Ireland's security of energy supply, meaning both security of gas supply and security of electricity generation. Natural gas entering the Pipeline from the LNG terminal will be able to be secured from a diverse world-wide range of countries and suppliers. The proposed Pipeline will enhance security of supply and ensure a diversity of energy supply to compete with oil or coal in a sustainable manner. Natural gas entering the Shannon Pipeline from the LNG terminal will provide increased security and diversity of supply to Ireland, both from potential short-term interruptions such as failure of the UK to supply Ireland or a longer term shortage of supplies due to, for example, an interruption of Russian gas supplies to Europe.

- B. The applicant will comply with any code of operations in so far as it is

applicable to the applicant and at the relevant times will have the capability of doing so. As stated above, the Shannon Pipeline will be designed, constructed, tested, commissioned and operated in accordance with the Irish standard IS328,2003 code of practice for gas transformation pipelines and pipeline installations which is applicable on the National Gas Network. Also, as stated above, Shannon LNG will comply with the Code of Operations Requirements in connecting to the Bord Gais system at Foynes. The commissioning, maintenance and operation of the Pipeline will be subject to oversight by the Commission for Energy Regulation in accordance with the CER's detailed requirements, which again is consistent with the position applicable to the National Gas Network. Shannon LNG will comply with the applicable specification for Natural Gas entering the gas network in Ireland as published in the Code of Operations.

- C. The applicant has complied with the requirements of Section 40A as amended by Section 12 1C of the Gas Interim Regulation Act, 2001 of the Gas Act 1976 in relation to the proposed construction of the Pipeline to which the applicant relates. Section 40A as amended by Section 12 1C of the Gas Interim Regulation Act 2001 of the Gas Act 1976 requires an environmental impact statement of the proposed development to be submitted as part of the Section 39A application. Shannon LNG has prepared an EIS for the Shannon Pipeline which was submitted to the CER on the 5th of September 2008 and which complies with the requirements for an EIS under Irish and European law. The EIS was also submitted as part of the direct planning application to An Bord Pleanala in respect of the strategic infrastructure development under Section 182C 1 of the Planning and Development act 2000 as amended. The application was made to An Bord Pleanala on August 14th 2008 and following an oral hearing in Listowel in December 2008, the Bord granted approval for the project on February 17th 2009.
- D. The Pipeline to which the application relates will be constructed and commissioned within a period which the commission shall specify in relation to the application. With a Pipeline of this diameter and size, the normal timescale to complete the construction of the majority of the Pipeline is one Pipeline season, i.e. March to November. Depending on the weather conditions during the construction stage, some reinstatement of lands may be carried out in the following year. Shannon LNG have received a planning approval from An Bord Pleanala which allows the Pipeline to be constructed within a 10 year period from receipt of the planning application on February 17th 2009. Shannon LNG will comply with the planning permission and will also comply with the period for construction and commissioning that is specified by the CER.
- E. The Pipeline to which the application relates will be capable of inter-operating in a secure, safe and efficient manner with the National Gas System. The Shannon Pipeline will connect to the existing National Gas System and as stated above, will be designed to the same code as the existing network, i.e. the

IS328 2003, designing the Pipeline and the associated above ground installations to this code and being subject to oversight by the Commission for Energy Regulation in accordance with the CER's detailed requirements will ensure that the system is capable and will inter-operate in a secure, safe and efficient manner. In connecting to the Bord Gais system at Foynes, Shannon LNG will comply with the Code of Operations requirements in that respect.

- F. The applicant is a fit and proper person to be granted a consent and has the financial capacity and technical skills to carry out the activities to which the application relates and to comply with the consent if granted. In accordance with Section 39A requirements, Shannon LNG applied to the CER for a certificate of bonafides to apply for consent to construct the Shannon Pipeline. This application included details of Shannon LNG's financial capacity and technical ability to carry out the activities to construct the Shannon Pipeline. The CER examined the application and certified that Shannon LNG had demonstrated a bonafide intention to apply for consent to construct the Shannon Pipeline. The certificate of bonafides was issued to Shannon LNG on the 23rd of February 2007. Copies of the H.E.S. Corporation annual reports for 2006, 2007 and 2008 are available to the hearing as well as are copies of the audited report and financial statements for Shannon LNG for the financial year 2007.
  
- G. The applicant will be capable of paying any levy charged by the Commission. Shannon LNG confirms that it is capable of paying any reasonable levy charged by the Commission.

### **Item 5 - Design:**

#### **5.1 – General criteria and background**

**5.1.1** – The Shannon Pipeline is being designed in accordance with the Irish Standard IS328 2003 Code of Practice for Gas Transformation Pipelines and Pipeline Installation.

**5.1.2** – The Pipeline will be composed of high-strength carbon steel pipe with an external corrosion protection coating and a cathodic protection system. The pipe will be 750 millimetres nominal diameter with wall thicknesses of either 12 and a

half millimetres or 19.1 millimetres. The total length of the proposed Pipeline will be approximately 26 kilometres. The Pipeline between the 2 EGI's will be buried underground for its entire length to a minimum depth of cover of 1.2 metres. The depth of cover will be increased to a minimum of 1.6 metres where the Pipeline will require additional protection such as at road and river crossings. The design pressure of the Pipeline is 98 per gram. This design pressure is adequate to allow the transportation of the full expected volume of gas to the BGE Network at Foynes and the pressure required, considering any future pressure increases on the BGE sector.

## **5.2 – Above-ground installations/AGI's:**

**5.2.1** – At either end of the Shannon Pipeline an above-ground installation (AGI) will be constructed at the origin the AGI will be located at the proposed LNG import terminal. It will consist of facilities for the authorisation of the gas and pick launching and receiving facilities for the Pipeline.

**5.2.2** – At the terminus at Foynes the AGI will include facilities for the measurement of the volume and composition of gas transported as well as other data points and big launching and receiving facilities. Data from the AGI will be transmitted automatically back to the control centre where it will be monitored on a 24 hour basis. The Foynes AGI will be part of a complex that will also include BGE facilities. BGE's facilities will be designed by BGE and include all the functions that BGE require to accept the gas volumes into their system and to deliver as required, gas into the Shannon Pipeline.

**5.3 – Pipeline Capacity Sizing:** The diameter of the Shannon Pipeline 750 millimetre nominal diameter has been selected to allow the delivery of up to 1,180,025 standard cubic metres per hour which is equal to 28.3 million cubic metres per day. This is the maximum expected volume of gas that will be delivered to BGE at Foynes.

## **5.4 – Area Classification:**

The IS328 2003 code provides for the classification of pipeline locations as R (Rural), S (Intermediate) and T (Town Centres). Based on the population density, all of the Shannon pipeline is located in an 'R' area.

## **5.5 – Corrosion Prevention:**

**5.5.1** – Corrosion prevention will be achieved using the principals set out in IS328 2003. The principal method of corrosion prevention of underground natural gas pipelines incorporates the use of a high performance coating system and the installation of cathodic protection (CP) system. The coating system specified for the pipe is a mill applied 3 part polyethelane system. The field joins where the pipe



sections are welded together will be coated in the field with a system that is compatible with the mill applied coating. An internal coating system, Tupec Hypoxy is also being provided to minimize potential for internal corrosion.

**5.5.2** – To protect the piping against any potential defects in the external coating system a cathodic protection (CP) system will be used. A preliminary CP design has been completed and will include an impressed current cathodic protection system. The design is robust and will provide cathodic protection in accordance with the requirements set out in IS328 2003. The operation of the cathodic protection system will be monitored to ensure proper operation and effectiveness over the length of the pipeline.

### **5.6 – Road and Water Course Crossings:**

The code specifies the design of the Pipeline at points where it crosses roads and water courses. There are special requirements for additional depth of cover, wall thickness, weight coating of the pipe to prevent floating and additional protection as required. The Shannon Pipeline crosses 20 roads and 3 named rivers. In each case, the design complies with all the crossing requirements of IS328 2003.

Drawings of these crossings are presented in the Shannon Pipeline Section 39A application.

## **6 – Operations and Maintenance:**

### **6.1 – Organisation.**

**6.1.1** – Operations, maintenance and support staff will be recruited locally to the extent possible prior to or during construction. Staff will be given extensive training which will include in-house training or experience on a similar operating pipeline. The maintenance operation personnel will be trained in the properties of natural gas, proper operation and maintenance of all equipment, environmental stewardship, work place safety and incident response. After the start of operations, the personnel employed for the operation and maintenance of the Pipeline will be provided ongoing safety operating and maintenance training.

### **6.2 – Procedures:**

The Shannon Pipeline and AGIs will be operated and maintained to meet or exceed all applicable European Union and Irish regulations. A comprehensive set of operations, maintenance, environmental safety and emergency response manuals will be prepared and maintained to reflect best industry practice and applicable legislation. All operations and maintenance personnel will be trained in accordance with the procedures in these manuals.

### **6.3 – Pipeline Operations and Maintenance:**

**6.3.1** – The IS328 2003 standard set out engineering operations and maintenance requirements for the safe design, construction, operation and maintenance of pipelines. Its requirements are in line with current best international practice

relating to integrity management of pipelines and it states that the Pipeline is to be regarded as safe if all reasonable steps are taken to protect members of the public and the personnel of the Pipeline constructor and operator from possible hazard.

These steps include:

- Pipeline operation, inspection, surveillance and maintenance.
- Liason with owner/occupiers/tenants/local authorities.
- Surveillance, aerial and ground surveys, marker post maintenance, public awareness programme, pyramid to work operational procedures, monitoring of third party activities, corrosion pipe to soil potentials and transformer rectifier output checks, close internal potential surveys (CIPS), in line inspection (ILI), monitoring for ground movement.

Shannon LNG will comply with all the above requirements.

#### **6.4 – Emergency Procedures and Emergency Response:**

In the requirement of IS328, the Shannon Pipeline will prepare an emergency plan detailing the measures and actions to be taken in the event of an incident. This plan will include details of the immediate response to investigate reports of potential damage to the Pipeline and instructions to take appropriate and corrective measures in response to an incident including notification to local officials.

### **7 – Health and Safety:**

**7.1.1** – Shannon Pipeline acknowledges and accepts its responsibility for ensuring the health, safety and welfare of its employees, contractors, visitors and members of the public who may be affected by its activities. It is committed to compliance with all applicable Irish health safety and environmental laws and regulations. The main sources of legislation dealing with health and safety in construction work are The Safety, Health and Welfare at Work Act 2005, and the Safety, Health and Welfare at Work Construction Regulations 2006 and the Safety, Health and Welfare at Work General Application Regulation 2007. The Health and Safety Authority (HSA) is the governmental agency responsible for implementation of health and safety regulations in Ireland.

**7.1.2** – Shannon Pipeline will implement a health and safety management system, which includes the setting of objectives and targets, measuring progress and reporting results. It will provide appropriate health, safety and environmental training to its employees and contractors, to enable them to meet the required standards of the performance. Audits will be employed to ensure its controls are effective.

#### **7.2 – Pipeline risk assessment:**

At the CER's request, Shannon LNG commissioned a quantitative risk assessment

(QRA) on the proposed Pipeline. A QRA prepared by ERM was submitted to the CER for their review and use in evaluating the project. As a result of the conformance to the IS328 2003 standard and the application of road and design routing material selection, the QRA shows that risks to individuals along the Pipeline are within the levels that are broadly acceptable as insignificant.

**Conclusion:**

In summary, the Shannon Pipeline is designed and will be constructed, operated and maintained in accordance with IS328 2003 and applicable Irish and European Union regulations. I believe that Shannon LNG Ltd in its application to the CER for consent to construct the Shannon Pipeline pursuant to Section 39A has demonstrated that it meets the criteria for issuing a Section 39A consent. We thank the Commission for Energy Regulation for the opportunity to summarise our views on the consent application submitted by Shannon LNG Ltd under Section 39A of the Gas Act 1976.

This ends my statement, Thank you.”

**Chairman:** “Thank you, Mr. Ibrahim. Have you any further submissions on your side to make to the hearing?”

**SI:** “No, Mr. Chairman.”

**Chairman:** “I want to invite Mr. MacElligott, any questions from either of these gentlemen?”

**Caitriona Griffin:** “A question for Michael Biggana. Shannon LNG is a wholly owned Irish subsidiary of H.E.S. LNG Ltd, as you mentioned on page 3 of 5. I just wanted to clarify, at the moment my understanding is that the shares in Shannon LNG that were previously owned by Paddy Power and his family have been wholly transferred over to H.E.S., is that right?”

**Michael Biggana:** “The statement that Shannon LNG is a wholly owned subsidiary of H.E.S. LNG is correct, beyond that I can’t comment at this juncture.”

**CG:** “It says wholly owned Irish subsidiary.”

**MB:** “Yes it is registered in Ireland.”

**CG:** “But there are actually no Irish shareholders at the moment, are there? H.E.S. LNG, according to your latest accounts are the only shareholder and they are actually registered in the Camen Islands.”

**MB:** “That may be correct, but it is an Irish registered company.”

**CG:** “Ok, second question. On page 3, point 2.2, copies of the H.E.S. Corporation Annual report 2008, 2007 and 2006 are available at hes.com, what about the first quarter of 2009?”

**MB:** “The information for 2009 is certainly in the public domain, H.E.S. has published the first quarter accounts.”

**CG:** “It’s on the website, yes? Is it true to say that H.E.S. have recorded a loss of 59 million dollars in the first quarter of 2009?”

**MB:** “I can’t give you detail on that, Caitriona, even if it is relevant that could certainly be the case. It’s freely available on the record.”

**CG:** “Well on the accounts here, it says “First quarter highlights – Loss of 59 million dollars compared with net income of 759 million in first quarter of 2008”. That is what’s on the hes.com website. Do you actually have the money to fulfill or go ahead with the project?”

**MB:** “The company in its statement has already said that it is in a position and it has submitted the necessary evidence to the CER to demonstrate that it is in a position to go ahead with this project.”

**CG:** “Well at the moment, Shannon LNG looks like an insolvent company. It’s got a lot of liabilities, no assets to speak of so I assume the money in question is coming from H.E.S. LNG which is in the Cayman Islands?”

**MB:** “Of course Shannon LNG is not in operation and it is being fully funded by H.E.S. LNG.”

**CG:** “By alone or by equity?”

**Nicola Dunleavy (Legal Representative for Shannon LNG):** “The way in which the funding has not been determined as of yet.”

**CG:** “So we don’t know for definite, that’s the bottom line? Point 4.2, the 72 landowners on the route of the pipeline, the CPO’s etc – It is my understanding that in order for the project to go ahead the local road is going to be upgraded as well. Is that right, first?”

**MB:** “I believe that was a matter in the approval by An Bord Pleanála. It spoke of the local road being upgraded. But that is only related to the terminal, that’s not nothing to do with the pipeline.”

**CG:** “Well the reason I am just asking that now is because I know that Kerry County Council have posted letters to residents, myself being one, about a CPO to complete the road before the project goes ahead, and that is actually crossing over the pipeline.”

**MB:** “That is a matter for Kerry County Council, I could not comment on that.”

**CG:** “Just one question for Mr. Ibrahim: Page 4, Mr Ibrahim, point 2.4, about the above ground installations, are a design to accomodate the two-way flow of natural gas. That is, it will be possible to pipe natural gas from North Kerry into the National Gas Grid, and that it will be possible for natural gas to flow from the National Gas Grid into North Kerry. Is it true to say that before North Kerry could benfit from natural gas, that there would have to be another pipeline?”

**SI:** “The statement as listed here in my statement, is correct, so it tells that the Foynes AGI is designed to accomodate the two-way flow of natural gas and it will be possible to pipe natural gas from North Kerry into the National Gas Grid and it will be possible for natural gas to flow from the National Gas Grid into North Kerry.”

**CG:** “Yes, but in order for the gas to flow back into North Kerry, would an extra pipeline be needed?”

**SI:** “The pipe installed will do exactly what is written in 2.4 and that portion is not part of this application.”

**CG:** “Right, so the question of putting ‘spurt connections’ off that pipeline is not possible in other words?”

**SI:** “This application is for the Shannon Pipeline as is stated in the document that I read, and specified additional pipelines is outside of the scope of this application.”

**CG:** “So no in other words. One more question, page 11, 5.4 – Area Classification, the IS code provides for the classification of pipeline locations as R (rural), S (intermediate) and T (town centres), based on population density, all of the Shannon Pipeline is located in an R area. Why do you think that is? Why is there different classifications for the pipeline?”

**SI:** “These are the IS328 classifications and we stated what the code states here.”

**CG:** “But in your capacity as an LNG expert, why do you think there are different classifications?”

**SI:** “This question is outside of this application, and what I have provided, so that question is related to IS328 and its as it is.”

**CG:** “Ok and I’ve just spotted one more thing, on page 13, point 6.3.1, under the pipelines operations and maintenance section, you’ve got Public Awareness Program. What exactly is that?”

**SI:** “It is exactly as it says – Public Awareness Program – It will be a program developed within this range of steps and it will be done unknown, when we

develop it with the public.”

**CG:** “When you say ‘the public’ do you mean the people whose land the Pipeline is on or do you mean the public that live in the area?”

**SI:** “It includes the public and everyone comes under the public definition.”

**CG:** “Ok, that’s it, thank you.”

**Johnny MacElligott:** “Questions first of all for Michael Biggana. Michael there is currently an investigation by the Office of the Director of Corporate Enforcement concerning the accounts submitted by Shannon LNG. Could you explain at what stage we are with that?”

**Nicola Dunleavy:** “Can we just have a minute on that, please?”

**ND:** “Mr. Chairman, we are struggling to see the relevance of this question to the Pipeline application.”

**JME:** “Mr. Chairman, it is actually of every relevance because one of the criteria for determining the licence, which is from the Gas Interim Regulation Act 2002, Criteria for Determination of Consents, Regulations, 2002 – It has to be proved under Article 2F – The applicant must be a fit and proper person to be granted a consent and has the financial capacity and technical skills to carry out the activities to which the application relates, and to comply with the consent, if granted. And Section G, one of the other criteria, is that the applicant will be capable of paying any levy charged by the commission. Now currently it is our contention, and we have had these accounts expertly assessed, and the Office of the Director of Corporate Enforcement has still an open case with Shannon LNG, regarding their accounts and how it became a single member company in which all the shares were transferred to an offshore company called H.E.S. LNG Ltd, and it has to be proved that you have the financial ability to do it, so I am asking you – At what stage is the complaint to the Office of the Director of Corporate Enforcement concerning your accounts, because this is very important.”

**ND:** “Can I ask for clarification. Mr. McElligott’s group made a written submission to the CER.....”

**JME:** “No, not to the CER, to the Office of the Director of Corporate Enforcement, and I can read you out the section concerning. By letter dated 12th of May 2009, the Office of the Director of Corporate Enforcement confirmed to us..... I will just read out the relevant section..... “This office is assessing the process by which the reorganisation of this company into a single-member company took place.” See our assessment is that recently - I think many people were aware of it - just to bring it into an Irish context, the National Aquatics Centre in Dublin raised a pretty interesting question, and the question was..... I will just read an article I have downloaded from the internet..... “The National

Aquatics Centre, at a cost of 70 million euros – It has not had a smooth history, the pool leaked, part of the roof blew off, there was a prolonged legal battle over ownership, now the State has to run it. The financial arrangements that surrounded the project, it was bizarre and curious in that the writer found it amazing that a company registered offshore in the British Virgin Islands, with only nominal share capital, could get its hands on such an important public asset. Now I put it to you, if, as our assessment has it at the moment, is that Shannon LNG is insolvent, H.E.S. LNG, which is a company in the Camen Islands, in an offshore tax haven, where all the drug barons and people with dubious reputations store their money, if H.E.S. LNG has only given a loan to Shannon LNG, they have not taken an equity interest. I think, by memory, they only own one thousand euros worth of shares. So they have invested one thousand euros in a project and you don't find that it is going to be like the toll-bridge on the M50, you are building it for free but you are going to control it, and it is going to be controlled by an offshore company in the Camen Islands, so I put it to you.... At what stage is the Office of Director of Corporate Enforcement dealing with this? Do you really have the money?"

**MB:** "Mr. Chairman, we can't answer for the stage that a statutory body may be at in any investigation. We understand that this issue involved a late filing of a particular form, that's the totality of it, but we can't comment on terms of what stage that is, that's really a matter for the statutory body involved. We do not believe it is relevant to this application. The CER has to make sound decisions in respect of the capability of the applicant."

**JME:** "Mr. Chairman, these people have legal advice and they say they have spent 15 million euros on the project so far. We don't have any funding, we are looking at this on our own time. They got plenty warning that this oral hearing was taking place. The criteria were extremely specific in 2 pages of the regulations of 2002. They know that it has to deal with both the safety aspects, the strategic aspects and the financial aspects. Now American Newswires in December 2007/2008, reported that H.E.S. Corporation is not going ahead with a project, that they are pulling out, I'm reading that from memory. The information that we are getting back from various sources, is that this project is not going ahead. They need to prove that they have the money to do it. And if H.E.S. Corporation (they have shown their accounts for 2008) but the first quarter of 2009 they made a 59 million dollar loss, and the same company which is trying once other place in the world to build an LNG terminal, in Weaver's Cove, Fall River, USA, they are being refused, they're not going to build it. So we are asking the question really, does H.E.S. Corporation have the money to build it? And that has to be dealt with here in this hearing because this is the only public forum."

**ND:** "Mr. Chairman, if I may, we would like to strongly refute, and there is no basis for any allegation that Shannon LNG is insolvent. Ernst and Young, the auditors of the company, have audited the most recent reports and financial statements, which are on the table for the hearing, and which of course are publicly available through the companies registration office. Also available, here, are the

H.E.S. Corporation annual reports and we have demonstrated the financial capacity of this applicant to build the pipeline.”

**JME:** “Mr. Chairman, I would like to ask the lady, who from Ernst and Young signed the audit report?”

**ND:** “I don’t have that information.”

**JME:** “You said the accounts are there in front of you. Who signed it? What signature is on it?”

**ND:** “I’m sorry, we could probably get them from the table Mr. Chairman. I don’t see the relevance of the signature on the accounts.”

**JME:** “The relevance is extremely important because the auditors never signed or dated the first submission, and only from investigations by the Office of Director of Corporate Enforcement, did they actually send in a signed document, dated Septemeber 12th 2008. However, the statements made by the auditors reflect the same situation of the company of the date September 12th 2008, as it did when those accounts were submitted, when they were not signed.”

**ND:** “Mr. Martin Regan will take both of those questions.”

**MR:** “Mr. Chairman, my name is Martin Regan, and I am Commercial Manager of Shannon LNG.”

**MR:** “Mr. Chairman, I think the question was, the directors report is signed by directors Patrick Power and Gordon Sheer, but it is not dated. The approval date of the financial statements in Point 15 is not entered either. These accounts cannot therefore be reviewed properly, as there is information material to the understanding of the account submitted. Mr. Chairman, I am reading from part of the submission made by the Safety before LNG and Kilcolgan Residents Association to the CER on the 17th October 2008. I am now responding to that question. Ernst and Young, auditors to Shannon LNG Ltd, confirm that they have ordered the companies financial accounts statements for the year ended 31st December 2007 and that they signed and dated their audit report on 18th September 2008, after the Directors of the company signed and dated the financial statements on 10th September 2008. A further question goes on to say: “The auditors report is neither signed nor dated. These accounts cannot therefore be reviewed properly.” Our answer to that is – Please see answer to question 1 above that I have just read into the record. The Companies Amendment Act, 1986, requires that the copies of the accounts and reports which are sectioned to a companies annual return, be certified by the Director and Secretary to be a true copy. The company complied with this requirement. That is our answer to those 2 questions.”

**JME:** “Ok, I just noticed from looking at your accounts, so, is that there has been



no mention of any foreign currency exposure, and in looking at the accounts from 2006, compared to 2007, you have mentioned in the accounts that you have a loan agreement with H.E.S. LNG. In 2006, that loan agreement said it was 10 million euros, and for the end of 2007 it said it was 30 million euros. Was there a new loan agreement or was it the same loan agreement? Because from my understanding of the accounts it's the same loan agreement."

**MR:** "Mr. Chairman, again, I think that question was in the submission that Kilcolgan Residents Association made to the Commission for Energy Regulation. The question reads " The accounts state in the notes that the continuation as a going concern, is dependant on, among other factors, obtaining funding from H.E.S. LNG. However no mention has been made of any foreign currency exposure, and the fact that the value of the same loan agreement is 10 million euro for year ended 31 December 2006, where there's 30 million euros the following year. This is a material loan in the context of the accounts. Is this the same loan agreement?" Mr. Chairman, our response to that question is: "The companies Management and Directors considered these issues in preparing and finalising the accounts. In our view, the notes of the accounts adequately deal with this matter, in accordance with the applicable standards. As you have noted, the auditors report, which is unqualified, includes a paragraph of emphasis with respect to the ability of the company to continue as a going concern." That's our answer Mr. Chairman."

**JME:** "Does that mean that the auditor had concerns about the solvency of the company, in other words? In plain English?"

**MR:** "We have no further comment on that question, Mr. Chairman."

**JME:** "It's a direct question. Do you think that the auditor had concerns about the solvency of the company or not?"

**MR:** "We answered that question."

**JME:** "Well, I think they do. Right, to move on..... If the accounts are supposed to give true and fair view of the state of the company, and it is important to know, does the company have the money to pay for this or not. First of all we are asking, that there is an option to purchase agreement, and knowing from the Shannon Foynes Port Company navigation assesment, it stated that the company had an option to purchase agreement, conditional on getting planning permission within 2 years and that the option was open for 4 years. Now, up to 2006, you would pay roughly 493,000 euros as part of this option to purchase agreement. You have not yet purchased the land. Up to the 31st of December 2007, you had paid 1.2 million euros to Shannon Development for the land, which incidentally had not yet even got planning permission. And when half a million euros was paid over, up to the end of 2006, the land had not even been re-zoned by Shannon Development, or by Kerry County Council. So my question to you is, there was no mention made of the 740,000 euros creditors in the accounts in 2006, even though they were the

definite known creditor at the time. Now, the accounts up to the end of 2007, they still do not put in how much more you have to pay on the 'Option to Purchase' agreement before you even actually buy the land. So why is this significant sum of money, that you will have to pay for the next 2 years, just to keep the option open to purchase the land. Why is that not mentioned in the accounts because it is a significant amount of money?"

**Martin Regan:** "Mr. Chairman, can we just clarify that the land in question refers to the LNG terminal which is not part of our Section 39A consent. In addition to that, I would repeat that the company's Management and Directors consider these issues in preparing and finalising the accounts. In our view, the notes to the accounts adequately deal with this matter in accordance with the applicable standards. As you have noted, the auditors report, which is unqualified, includes a paragraph of emphasis with respect to the ability of the company to continue is a going concern. That's our response, Mr. Chairman."

**JME:** "Right, so could you tell me, just so that the hearing would know if you are financially able to do this project, how much more you will have to pay, I'm not saying the purchase price of the ground for the project, because you can't build the Pipeline without the terminal. So it is relevant to the proceedings, and anyway the regulations already prove that for the criteria for determining the license, how much do you have to pay to keep the option open to purchase the land? And you cannot say it is commercially sensitive, because it is needed to know how much you have to pay and whether you are financially able to do this or not."

**MB:** "Mr. Chairman, we don't believe that is relevant. We are here today on the question of the Pipeline application. The terminal was a separate project."

**Chairman:** "So be it."

**JME:** "They don't believe it is relevant. Ok, so they are refusing information. I'm just pointing out to the CER how can you assess the financial capacity of the company to do the project if they don't even know how much they are going to have to put forward in known costs to date. Ok, I move on."

**JME:** "It is our view that the 281 acres that you are going to purchase, are worth between €100,000 to €300,000 an acre, because it is now zoned 'Industrial'. Giving the site of value, in our opinion, of somewhere between 28.1 million and 84.3 million euros, this would mean that 30 million Euro alone would not even cover the purchase price of the land. And this information is also material to the accounts, which was not mentioned anywhere. So we are asking you, how much are you going to pay for the land? Will the loan that you are getting from H.E.S. LNG, in your current loan agreement up to 30 million, will that even cover the purchase price of the land?"

**Chairman:** "Mr. Regan?"

**MR:** “Just one minute.... Mr. Chairman, we do not believe this question is relevant to the Natural Gas Pipeline, but having said that, the company’s Management and Directors considered these issues in preparing and finalising the accounts. In our view, the notes to the accounts adequately deal with this matter, in accordance with the applicable standards. As you have noted, the auditor’s report, which is unqualified, includes a paragraph of emphasis with respect to the ability of the company to continue as a going concern. Thank you Mr. Chairman.”

**JME:** “Ok, could you tell me which Directors signed the accounts? What was the name of the person from the company of Ernst and Young, the auditors that signed the account? That gave this, unqualified? You have the accounts in front of you, who signed them?”

**ND:** “We don’t believe that is relevant, and we don’t have a precise name.”

**JME:** “So you are basing your submission to get a pipeline, which is in the strategic national interest, a private company, registered in an offshore tax haven, or owned by H.E.S. LNG, who are in an offshore tax haven, and you won’t even tell me who signed the Irish part of the accounts. Which auditor signed off on it?”

**ND:** “They were signed by Ernst and Young”

**JME:** “Alright, who is Ernst and Young? Do you know him? It is very relevant actually, Mr. Chairman, because it is signed ‘Ernst and Young’, I mean who signed it? Which auditor?”

**Chairman:** “Is there a problem about disclosing the signature? Or you don’t have it, is that it?”

**ND:** “We don’t have the copy of the signed, as Mr. Regan mentioned, they were signed on the 18th of September.”

**JME:** “He has the accounts in front of him, Chairman.”

**Chairman:** “Oh well, that’s a different story, if they don’t have a copy.”

**JME:** “They do, because they just said that they had the accounts, and it is written in the accounts.”

**ND:** “Oh we have the audited councillor available from the company’s registration office here.”

**JME:** “Yes, and who signed that, on those accounts? Whose signature is on it?”

**ND:** “We have already answered that question.”

**JME:** “There is no signature, it’s only a dud signature, as far as I’m concerned. It just says ‘Ernst and Young’. Ernst and Young is not a person.”

**Chairman:** “Is that the wrong question to ask, then? You are saying that there isn’t a signature on the document, is that it?”

**JME:** “I am questioning why the auditors would refuse to sign off on the accounts initially.”

**Chairman:** “But you are suggesting that it wasn’t signed.”

**JME:** “I am suggesting, I don’t know who signed it because I don’t know anybody called ‘Ernst and Young’. Or ‘Ernst Young’.”

**Chairman:** “You know who Ernst and Young are, surely?”

**JME:** “But no person has taken responsibility for those accounts. It has a signature on it, called ‘Ernst and Young’. And if somebody is to sign off on the accounts, they should put down a name, e.g. ‘PP Ernst and Young’. So, going back to the initial question, do you think that without giving me the money, because you don’t want to give that out, I understand that. Do you think the current 30 million Euro loan that you have from the offshore company, H.E.S. LNG, will actually pay for the purchase price of the land?”

**ND:** “Mr. Chairman, we have answered this question 3 times already, we don’t propose to answer it again.”

**JME:** “So I will just point out to the CER..... How can the criteria that are used to pay, to determine whether a private company should get permission to build a pipeline when they won’t even prove in a public oral hearing, or state how much their actually putting forward for the pipeline, and whether they can have the funds to do it. This is the whole basis of this. They have spent 15 million, they are a big company, so they say, and they don’t have the ability to say that. You can force them to say that, you can get that information if you want it.”

**JME:** “I have a question for Sami Ibrahim, which is..... The QRA for the Pipeline, was done by ERM, is that correct?”

**SI:** “Mr. Chairman, that is correct.”

**JME:** “Ok, is Shannon LNG presenting ERM as experts on gas pipelines and pipelines connecting to LNG terminals, and Above Ground Installations?”

**SI:** “Mr. Chairman, ERM is a reputable company in the QRA and we present the report as we have submitted to the CER in November of 2008, as I have stated in my statement.”

**JME:** “Is it not true that ERM is mainly and environmental consultancy, not dealing with risk assessments for gas systems?”

**SI:** “Mr. Chairman, ERM is a specialist company in performing and a specialist unit of ERM has developed and produced that report as stated in our submittal to the CER, in November of 2008.”

**JME:** “Ok, just to point out to the CER, it is our position that we do not believe that ERM is a relevant expert for this QRA. We have professionals who are also not convinced that they (ERM) are experts. We will look at their submission detail from this Board of Hearing, including whether the experts put forward by the developer, are actually experts. I just want to point out, to both Shannon LNG and to the CER, that if a court thinks that a decision has been made incorrectly, it can be overturned. If the court considers that the CER has not assessed the application properly, then the applicant will not get the benefit of the doubt it is assuming here. Let’s be very clear, Mr. Chairman, the Shannon LNG have put forward a QRA, and the CER already admitted at the oral hearing in Listowel, that it did not have the relevant LNG expertise. So we are both questioning the experts put forward by Shannon LNG, and the ability of the CER to assess this application adequately.”

**JME:** “Right, I must move on to another question..... Going through the criteria, the criteria state..... ‘In Section 2C of the criteria, which are the regulations under the Gas Regulation Act 2002, criteria for determination of consents.’ And 2C says that ‘It must be ensured that the applicant has complied with the requirements of Section 40A, as amended by Section 12 1C of the Gas Interim Regulation Act 2001 of the Gas Act 1976, in relation to the proposed construction of the Pipeline, to which the application relates.’ Now when you go into Article 41C, this states actually, it’s not stated in those regulations, but it states in 41C exactly, that ‘An environmental impact statement shall contain the information for the time being, specified under Article 25 of the European Community’s Environmental Impact Assessment Regulations, 1989, or under any provision amending or replacing the said Article 25.’ So then we move down to Article 25, and Article 25 states that an EIS for the purpose of these regulations or any enactment as amended or as adapted by these regulations, shall contain the information specified in Paragraph 2 of the second schedule. We move down to the second schedule, Article 2. It says that the specified information the EIS (Environmental Impact Statement) must contain, in 2C it says ‘A description of the likely significant events, the significant effects, direct and indirect, on the environment of the development, explained by reference to its possible impact on water, among other things.

Mr. Ibrahim, for this project has there been any marine risk assessment undertaken, as part of the EIS?”

**MR:** “Mr. Chairman, Shannon LNG response to that question is:  
‘The Environmental Impact Statement submitted with the Section 39A application for the Shannon Pipeline complies fully with the requirements of Section 40A of the Gas Act, as amended, and of the European Communities Environmental Impact

Assessment Regulations, 1989. The issues mentioned in the above submission by the Safety Before LNG regarding a marine QRA, the LNG Terminal and a Strategic Environmental Assessment are not relevant considerations in the EIS for the Pipeline. The Commission for Energy Regulation is a competent authority for the regulation of the safety of natural gas pipelines, under the Energy Miscellaneous Provisions Act 2006. The Health and Safety Authority is not the competent authority. By way of information it should be noted that the QRA for the LNG terminal, which was assessed by the HSA, included risks associated with the Shannon Pipeline. The Pipeline corridor, and the location of the AGI, within the terminal site, were known at the time of preparation of the terminal QRA. This pipeline corridor was used in the LNG terminal QRA. The final location of the Shannon Pipeline is within the corridor used in the QRA for the terminal. That's our response, Mr. Chairman."

**JME:** "There are several points that the speaker arose there. First of all, these EIS regulations are based on the EIA Directive, and the EIA Directive specifically prohibits project splitting. To have a pipeline, you need an LNG terminal, and to have a pipeline connecting to an LNG terminal, you need an LNG terminal. So this is part of the one project, that's the first point, under the EIA Directive. The second point is that on the oral hearing into the Pipeline, the developer referenced continuously both the QRA for the Pipeline and for the terminal, which means he can't cherry-pick and choose which parts of the QRA for the terminal he could use if he can then turn around to me and say I can't mention the QRA for the terminal when you are talking about the Pipeline because the Pipeline and Above Ground Installation were also referenced in the QRA for the LNG terminal. Thirdly, the criteria for determining whether the commission will give a licence is also based on whether or not a correct EIS was prepared. And we have continuously, since November 2007, asked for a marine LNG risk assessment and an assessment of the consequences of an LNG spill on water, which will have a direct impact on the environment and safety as well. So, I only asked a specific question, I didn't ask them for their opinion, did they or did they not do a marine risk assessment and an assessment of an LNG spill on water, that's a yes or no answer."

**ND:** "If I may answer that one..... The preparation of a marine risk assessment of an LNG spill on water is not relevant to the Shannon Pipeline Section 39A application, because this application is for a cross-country, natural gas pipeline between Ralipane and Foynes. Mr Mac Elligott refers to the fact that he has raised this before, and indeed the issue of a marine QRA was raised in 2 sets of judicial review proceedings of the planning application of the terminal, namely 'O'Mahony v An Bord Pleanala 2008 – 598' and 'Friends of the Irish Environment v An Bord Pleanala 2008 – 597'. The judicial review cases were withdrawn by Mr. O'Mahony, and the Friends of the Irish Environment on the 17<sup>th</sup> of October 2008. In the High Court, Mr. Justice MacMennamen dismissed the claims which included the marine risk assessment claim as, and I am quoting.....'Misconceived from the beginning. I do not think that the facts which were stated to give rise to the action were fully portrayed. These cases are therefore at an end and the planning permission for the terminal remains valid and the issues which arose with those judicial reviews are now ruled out."

**JME:** "The High Court action was very specific on whether the HSA gave advice to

An Bord Pleanála. The High Court action was dealing with the idea that a one-page statement saying that they did not advise against, was adequate information, or actual advice. So Miss Dunleavy made a mis-statement there when she said the judge commenting on the marine risk assessment was not about the marine risk assessment, it was about whether the HSA gave any advice at all. That's the first point.

Now the second point is..... It has never yet been challenged – the marine risk assessment – in the High Court, and the fact that as a safety issue it has not yet been undertaken and this has not yet been challenged in the High Court.

The third point is that a recent policy document by the CER on the 21<sup>st</sup> of May, it was dealing with the recent 2006 Energy Act, and it was putting the Energy Act into a policy statement, the CER, and the CER reference is CER 09/082. The CER was trying to..... I will just read one of the statements when the Commission for Energy Regulation was dealing with LPG – Liquefied Petroleum Gas. The commission has stated that it seeks to ensure that its interface with other enforcement agencies, notably the Health and Safety Authority (HSA), is robust, and that there is a clear demarcation of the areas of safety responsibility of these parties, wherever possible. Therefore, the commencement of the 2006 Act should avoid overlapping enforcement responsibilities, and should simply seek to address any enforcement gaps which are not currently provided for in legislation. Now this document is very interesting, because it is an admission by the CER that there is an enforcement gap, a regulatory gap, between 'Where does the responsibility of the HSA stop, and where does the responsibility of the Commission for Energy Regulation begin?' We have consistently said that nobody was looking at certain aspects of this project. It was falling between the gaps. We are also saying that we are willing to challenge this in the future, in the court, but what we are saying for the Liquefied Natural Gas Terminal, that nobody has yet assessed the full safety aspects of this project. The CER has admitted that it does not have any head energy expertise, and on that policy document, it deals with the shipping of LPG – Liquefied Petroleum Gas – into companies like Calor Gas in the Cork Harbour. It says the authority that deals with the maritime safety, are the Gardai. However, there is nobody assessing at a planning stage, who deals with the safety assessment of that project. So we are asking the CER, and also saying to Shannon LNG, nobody has assessed the full safety aspects of this project. You can decide that an LNG terminal is not relevant, or a maritime safety assessment is not relevant to this submission. However, I put it to you very simply, if there is no energy terminal, there is no energy pipeline.

Another question for Sami Ibrahim –”

**Chairman** – “Miss Dunleavy, do you or your party want to respond to those comments?”

**MB:** “Just on a minor point of clarification, if I may Mr. Chairman, there is no LNG Pipeline, it's a Natural Gas Pipeline. Just in clarification, but on the questions of the Jurisdiction of various Bodies and so on, that is not a matter for us.”

**JME:** “I'll just say one thing, the developments – some of the local associations keep saying ‘Oh there's thousands of kilometres of Natural Gas Pipelines in Ireland, this is the first Natural Gas Pipeline connecting to an LNG Terminal, and included in this

application for the pipeline there is an Above Ground Installation that connects to an LNG terminal. So it is slightly different to a typical Natural Gas Pipeline.”

**JME:** “Just a question either to Michael Biggana and Sami Ibrahim – ‘Does the LNG terminal and LNG pipeline have full development consent?’”

**MB:** “Could you clarify the question please Mr. MacElligott, because there is no LNG Pipeline?”

**JME:** “The Pipeline associated with the LNG terminal.”

**SI:** “Just say the question again.”

**JME:** “Ok, under the EIA Directive, relevant consent is broken into 2 parts. The first part is planning permission from An Bord Pleanala and the second part is the whole pollution aspect of the whole project, of both the Pipeline and the LNG Terminal, has to be determined by the Environmental Protection Agency. Now the European Courts have actually accepted that in Ireland, planning permission can be assessed by 2 different agencies for the same project. Responsibilities can be divided up between the EPA and An Bord Pleanala, but you have got planning permission, the part of it from An Bord Pleanala, but development consent, as defined by the EIA Directive, you do not have it completely because you have not yet obtained any pollution assessments whatsoever from the EPA, is that correct?”

**ND:** “Mr. Chairman, this is not relevant to the Section 39A application.”

**JME:** “Mr. Chairman it is very relevant because they have stated that they have full planning permission, but in actual fact they do not have full planning permission, there is a whole series of an EPA oral hearing yet to go ahead. They brought it up first that they have full planning permission. They do not have full development consent, I just wanted to point out to the CER that Shannon LNG does not have full development consent yet and they are already applying for a licence and they expect the CER to get them a licence, for which the project has not yet even been assessed completely. Is that not correct?”

**Chairman:** “You obviously have different views about that and that is where it remains.”

**JME:** “The Safety Aspects of the Project of the Pipeline – In May 2009, there was an Energy Conference in Tarbert and the CEO Carlos Tembori of Endessa, said that the pipeline that he proposes, from the Tarbert Power Station, to Foynes, will pass by the exact same route as the LNG Pipeline. Now I ask you, have you assessed the interaction between your Pipeline and Endessa’s Pipeline?”

**MB:** “Chairman, we are not aware of any specific proposal but I think it is important to appreciate that in our statement we recognise that, in line with Irish and European Legislation, Shannon LNG will offer third party access to potential users of the



Shannon Pipeline. The framework for third party access and connection to the Pipeline will be approved by the CER, the organisation approved under statute for that purpose”

**JME:** “The compulsory acquisition orders that Shannon LNG have had signed by the landowners, that gives you full rights over that land, so you basically control all that land for 50 metres either side, generally, of that Pipeline, so you, a Private Company, own full rights of that land, is that correct?”

**MB:** “The agreement with the landowners involves a waylay, which is for the Gas Pipeline. It’s a defined distance, it’s a defined width.”

**JME:** “Ok, because Endessa want to build a Pipeline at the Energy Conference a few weeks ago in Tarbet, they said they will build their Pipeline from their Power Station, on the same route. I just want you to confirm, you have had no discussions whatsoever with Endessa about this Pipeline route, is that correct?”

**MB:** “Chairman, I don’t believe this is relevant. We have a waylays with the landowners for our Pipeline, that is what has been approved and that is what we are seeking CER approval for here today.”

**JME:** “I am asking, have you had any communication with Endessa, on their possible Pipeline route, it’s a yes or no answer.”

**MB:** “We have had no discussion with them on their Pipeline route.”

**Chairman:** “Mr. MacElligott, can I just ask you about the pipeline you are referring to – The Endessa one, is that to serve as.....?”

**JME:** “Well Mr. Chairman, I have to bring up another point to you.....”

**Chairman:** “I just want to understand what you are talking about..... What kind of Pipeline are we talking about?”

**JME:** “The Pipeline is that..... Tarbert Island is currently a heavy Fuel/Oil Power Station, 600 Megawatts. It was sold by the ESB to Endessa and Endessa have said – That’s a Spanish utility joint – They said they would convert that to gas. But to convert it to gas, they need a Pipeline route. Now, we have consistently asked – until we were blue in the face – ‘Why don’t you do a Strategic Environmental Assessment, if you are going to create an energy hub on the Shannon Estuary’, before planning permission was ever given. There are different developers trying to do an energy project and there is nobody looking at the overall picture, there is no joined-up thinking, so Endessa want to build a Pipeline route from Tarbert Island to Foynes. After the Energy Conference I was talking to Carlos Tembori and I said to him ‘Where do you plan to put this route?’ and he said ‘We’ll put it in exactly the same place as the Shannon LNG Pipeline.’”

**Chairman:** “Is the source of their gas to be parted from the National Grid, is that it?”

At Foynes?”

**JME:** “Yes, from the National Grid – A separate Pipeline.”

**Chairman:** “Out to Tarbert, to replace the heavy oil burning station?”

**JME:** “But the problem is, I said to Carlos Tembora that Shannon LNG own that land now, and they have full rights on it, and he said ‘Well it’s a question of timing.’ So first of all, it’s a first come, first served Pipeline route. That’s no problem either, ok? But Shannon LNG for the Pipeline application in Listowel, they consistently said that they could get spurts off this Pipeline. But the safety question I am asking Sami Ibrahim is – ‘Can Endessa build another Pipeline immediately adjacent to your Pipeline?’”

**MB:** “Chairman I don’t believe this is relevant to us. We have said that our Pipeline is an open-access pipeline. We are delighted for people to come to talk to us in relation to that. Just to clarify, we do not own the land, we have a right of way for the Pipeline, we have a waylay agreement with the landowners.”

**JME:** “Ok Mr. Chairman, this is very relevant once again to the application because our professional advice has been that you cannot build another Pipeline next to the existing Pipeline because that has safety implications and could damage the existing Pipeline.”

**Chairman:** “So be it”

**JME:** “If the CER is supposed to take in..... They have obligations as well on the environment and the safety and protection of people and if they are not taking any joined-up thinking approach to this, and if it is only a ‘first come, first served’ free-for-all developer-led projects, so be it, if that is what you want. But we are just pushing the point that they have not assessed that project.

I have another question for Sami Ibrahim –

In May 2006, Shannon LNG published a brochure, and in the brochure they said – this was given to the public and submitted with their planning applications for the terminals – ‘In the unlikely event that there is a release from a tanker, the LNG will evaporate, that means the liquid will warm up and change back into a gas. This gas would quickly dissipate because it is lighter than air.’

I just want to ask Sami Ibrahim – Is it correct that the gas will dissipate quickly? Or will it go laterally for up to seven and a half miles on the ground? Now which is it?”

**MB:** “Chairman, if I may respond..... Our view is that those kind of subjects were dealt with at the application for the planning permission for the terminal. We are here today in respect of the application for a Pipeline.”

**JME:** “Mr. Chairman if you just bear with me, I want to get Sami Ibrahim’s answer to that first, just to know – Is it correct that the gas will dissipate quickly, or will it go laterally for up to seven and a half miles, and then dissipate?”

**MB:** “Mr. Chairman it is not relevant and we do not intend to go back into the items who are the subject of the newer hearing at other forums”

**JME:** “Ok, I’ll put it another way..... Under the criteria..... ‘The applicant must be a fit and proper person to be granted a consent and has the financial capacity and technical skills to carry out the activities to which the application relates (Reference - 2F). Now the question I am asking, is based on the idea that if a developer gives a misleading statement, which was contradicted openly on the Primetime Investigate Reports of November 16<sup>th</sup> 2007, which Professor Cox said was a myth, that he said that an LNG spill will not evaporate rapidly, it will move laterally – which means along the ground – because it’s heavier than air, and it’s minus 160 degrees. It’s 50 per cent heavier than air, it will move laterally along the ground for up to seven and a half miles. Beyond that distance, it has too much oxygen, and will no longer be flammable. So he said in the Primetime Investigate Report that this was a myth. Now our contention is that if the CER has no LNG expertise, and they are not employing any independent experts to assess what the applicant is saying, we have proved that the Shannon LNG have misrepresented or told an untruth, or in plain English – a lie – about what can happen at an LNG spill. Now the odds that a developer who has lied once, if they lie once, that means it is likely they might tell more untruths or give more misleading information. So we are pointing out to the CER that you are not protecting the general public, if you give them the benefit of the doubt because tell a lie once and you will tell it again. So we also question whether they are actual experts that they put forward for the QRA, and we are now convinced that their only expert here – Sami Ibrahim – He would not answer the question because he said it is not relevant. But it is very relevant, we have questioned the financial ability, and now we are questioning what they actually put forward. So that’s what the relevance of that question was.”

**Chairman:** “Mr Biggana do you want to respond to that?”

**MB:** “Chairman, only simply to say that we absolutely refute the suggestion that there was ever any untruth told, and we are not going to go in a re-run of the debate that went on the time of the oral hearing for the LNG Terminal. We will suffice to say that there were experts brought by both sides, and there were various topics that can be debated in relation to anything, however we are satisfied with the statements we made. They might be interesting, but they are not relevant to these proceedings.”

**Chairman:** “It’s coming up to one o clock so we are going to adjourn for lunch. I am going to invite you to be back here promptly at 2 o clock please.”

### **Conference Adjourns for Lunch**

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**Conference Re-commences**

Public Hearing for Shannon LNG Pipeline Connection.

**Chairman:** “Could everyone please turn off their mobile phones.... And we will continue with the questions. I will invite Mr. MacElligott to continue with his questions.”

**Chairman:** “Is there anybody else who wants to ask questions of either of these gentlemen?”

**Elizabeth Muldowney (Energy Officer with An Taisce):** “I have a question for whoever wants to answer it..... What part does global gas price play in your development?”

**MB:** “Chairman, could I ask for the question to be repeated please?”

**EM:** “What part does global gas price play in the development?”

**MB:** “Chairman, we don’t see the relevance of that. It is an interesting topic but what is the relevance?”

**EM:** “The relevance to my mind, Michael, would be that if the gas price is low, which it is, it’s very low at the moment, that it is not really worth your while going ahead with the development. But as the gas price increases, of course it’s going to be worth your while to go ahead. Also then, you will make profits from this, because the gas prices will be high. So I am just wondering, is that of relevance to the development?”

**MB:** “I think, Chairman, all these developments are long-term in nature, and they are not influenced by prices at any particular moment in time. They are long-term investment decisions. The topic again today, before us is the Pipeline, Chairman.”

**EM:** “Ok, could you determine what is short, medium and long term for me?”

**MB:** “No I couldn’t. You are going into the question mark there of what our investment decisions are based on, etc. All companies have their criteria in terms of investment criteria. I just don’t see the relevance of the question, Chairman, for our Pipeline application, see 39A consent to the CER.”

**EM:** “Chairman, do you have anything to say on this?”

**Chairman:** “Well, I am not here adjudicating what goes on. You have the opportunity to ask questions and it is a matter for them to respond or not. And people cannot veer from that.”

**EM:** “That’s alright, thank you”

**Chairman:** “I just keep things going. I am the referee, that’s all. Anybody else from your group wish to speak, Mr. MacElligott? This is a question and

answer session.”

**Thomas O’Donovan:** “I would like to just ask if there is any technical experts over there? What is the percentage of the proposed LNG Pipeline, we have established that there is a higher pressure going through it than the National Grid, so I would like a somewhat rather than insignificant or marginal answer. I would like something more specific. What is the pressure going through this proposed Pipeline?”

**MB:** “Chairman, Mr. Ibrahim will answer that. Again for clarity, it is a Natural Gas Pipeline, not an LNG Pipeline.”

**SI:** “Mr. Chairman, the pressure or the design pressure of the Pipeline is 98 bar gauge, as stated in Item Number 5.1.3 of my statement.”

**TO’D:** “I would just like to ask, is that significantly more than the existing gas pressure that is going through the existing National Grid?”

**SI:** “I can re-read that statement to you again, and it has the answer to your question..... The Pipeline will be composed of high strength carbon steel pipe and with an external corrosion protection coating and a cathodic protection.....Sorry that is wrong, it’s 5.1.3..... The total length of the proposed Pipeline will be approximately 26 kilometres. The Pipeline between the 2 AGI’s will be buried underground for its entire length, to a minimum depth of cover of 1.2 metres. The depth of cover will be increased to a minimum of 1.6 metres where the Pipeline will be required additional protection, such as at road and river crossings. The design pressure of the Pipeline is 98 bar gauge. This design pressure is adequate to allow the transportation of the full expected volume of gas to the BGE network at Foynes and the pressure required, considering any future pressure, increases on the BGE.”

**Chairman:** “I think, Mr. Ibrahim, the question may have been what the pressure of the National Gas Grid is, the operating pressure. Is that the case?”

**SI:** “The operating pressure of the National Gas Grid is what.....”

**Chairman:** “I think that’s what this gentleman was asking, I may not be right?”

**ND:** “That’s covered in our EIS application, which forms part of the Section 39A application.”

**Chairman:** “It’s just, if it were readily available, it would shorten matters.”

**ND:** “It’s 1.2 of the EIS, and it states that ‘The Pipeline design pressure will be 98 bar gauge, which is the pressure required to deliver gas into the National Gas Network, which has a design pressure of 85.’”

**TO'D:** "85 as opposed to 98? Ok, could some of the panel over there, just on a general question..... There has been proposed that 40 per cent of our electricity supply would be sourced from renewable sources. That is probably coming on line as a national priority, basically. So how does that equate with building such a huge terminal to supply probably 20 per cent of our energy needs with LNG? How does that equate?"

**MB:** "Mr. Chairman, if I may..... I think the issue is that we are all in favour of green energy of course, but the need for the Pipeline and the need for the terminal has already been established and confirmed through the Bord Pleanala approvals. Ultimately, if the green energy can solve all problems, then there won't be that need, but in our projections we don't see that need lessening in the foreseeable future."

**TO'D:** "Yes, and on that..... Part of the planning permission was that after 40 years, if the LNG terminal was no longer required, that it would be dismantled. So, if sources of energy could take the place of this gas terminal, well we could be stuck with a monstrosity there for 30 or 40 years. This is..... That seems too long under the planning process, in my estimation."

**MB:** "Chairman, if I may, in Section 2.2.5 of our EIS submission, there is a paragraph there that says the Irish Government has set a target that 33 per cent of electricity will be produced by renewable energy by 2020, due to the environmental consequences of coal and oil, natural gas will be used to fuel the majority of the remaining power requirements in Ireland up to 2020 and well beyond. The majority of the 33 per cent renewable energy target will be met by electricity produced by wind generators. So we believe that the case is made for the requirement for Natural Gas."

**TO'D:** "At such a high capacity, it just seems to me that it's superfluous and surplus to requirements in Ireland, this proposed influx of massive LNG terminals, ships coming up the Channel."

**Chairman:** "We have to confine ourselves today to the actual Pipeline and the AGIs, that's outside the remit of that."

**TO'D:** "Ok, Mr. Chairman, I appreciate that. In my locality, we are supplied with almost pure drinking water, and in Ireland it's nearly a crying shame that the sources of water are now polluted. And as this Pipeline would be running, practically adjacent to the reservoir in Foynes, it seems to me that it would upset the water table tremendously, and especially..... Now I don't want to get into it too much..... But especially if there was another Pipeline built adjacent to supply the Endessa Power Station in Tarbert."

**Chairman:** "Have you got any comments on that, Michael?"

**MB:** "Yes, Mr. Chairman, and Thomas, we are just looking for the appropriate reference there in our EIS that addresses that concern."

**TO'D:** "And on the topic of the EIS, it was totally funded by Shannon LNG, or

H.E.S. LNG, there seems to be very little input from our own statutory bodies, either the HSA or the Environmental Protection Agency..... It seems to be all sourced by..... We are not questioning the integrity of these people that brought in this, but I am surprised that our own Government did not kick in with some sort of an environmental statement or inspection.....”

**MB:** “Thank you, Thomas, I am glad that you are not questioning our integrity, I think that as a matter of error, that it is up to the applicant to actually produce his statement and it is for the Government bodies to actually vet that statement, I think that is the way the system works.”

**TO’D:** “So in other words, they are waiting for to rubber stamp what comes in, rather than taking it on themselves, which they are obliged to do, under our own constitution, to protect the life and limb of Ireland’s citizens.”

**MB:** “I would believe that they do a very thorough and competent job. If I might go back to your ground water question, it is covered in the EIS under Section 12.5 and it says..... ‘Operational Natural Gas Pipelines do not constitute a pollution risk for ground water, but do they pose a threat to ground water from the point of view of quantity or availability of supply. Pipelines can be easily routed around or away from individual supply features..... wells, springs, etc, so there is no question of these features being lost or damaged.”

**TO’D:** “Well it was my concern that it would be running close to the water tables feeding a reservoir.”

**MB:** “Thomas, if we may..... In the planning approval from An Bord Pleanala, that is also referred to, the question of the water courses.”

**ND:** “Yes, the planning permission for the Pipeline requires a detailed construction management plan, prior to the commencement of development. And the plan must make provision for inclusion of all relevant mitigation measures proposed in the Environmental Impact Statement and shall ensure that it’s scope extends to the following parameters:

- Surface water management during construction to prevent run-off from the site onto the public roads, unnatural flooding, and/or the occurrence of any deleterious material in the rivers Glencorbally, White and Glashen Gark, and the tributaries and water courses of their catchments or other waters, including ground water, in accordance with CIRIA technical guidance control of water pollution from linear construction projects, so it has been covered by An Bord Pleanala planning permission.”

**TO’D:** “That has been covered in theory, yes.”

**Chairman:** “Just for the record, that’s condition number 11, of the schedule.”



**TO'D:** "As I said, sometimes theory can sound very convincing but in actual practice then it can be a little different, as Mr. Chairman would be well aware. I'll just put one final question to find out what kind of insurance is covered from any leaks, any pollution of the grounds, or the water, in case of a leak or whatever. And if there is any indemnity clause in there?"

**MB:** "Mr. Chairman, in answer to Thomas' question I think the paragraph in Mr. Ibrahim's statement when he talks about health and safety..... States that the Shannon Pipeline acknowledges and accepts its responsibilities for ensuring that the health, safety and welfare of all employees contracted, visitors and members of the public who may be affected by its activities. It is committed to compliance with all applicable Irish Health, Safety and Environmental laws and regulations."

**TO'D:** "Ok thank you, that probably concludes my questioning for the time being."

**Chairman:** "Thanks very much. Well then, anybody else? Mr. O'Mahony, is it?"

**Raymond O'Mahony:** "Basically what I would like to know is, the gas from the terminal to Tarbert, could that be used for domestic use?"

**MB:** "Can I just clarify, gas from the terminal to....."

**RO'M:** "To Tarbert, or Foynes, whatever you like. We'll say from the terminal to Tarbert, can that gas be used for domestic use?"

**MB:** "The same gas can be used for domestic use, but the provision of domestic gas is the responsibility of Bord Gais, and you know, their decisions or otherwise to extend the network, but it's the same gas."

**RO'M:** "But what I am saying is..... Can that gas be used for domestic use?"

**MB:** "It could be, yes."

**RO'M:** "Will it be used for domestic use?"

**MB:** "That entirely depends on how Bord Gais decides to extend its network, it's not a question that we can answer."

**RO'M:** "In Tarbert, will it be used for domestic use?"

**MB:** "That's not part of our plan, it may be part of somebody else's plan."

**RO'M:** "So basically, what you are saying is..... I live about 30 feet away from probably one of the biggest gas terminals in the world, and I won't be able to use your gas?"

**MB:** “Hopefully someday you will, Raymond.”

**RO’M:** “But as it stands, no?”

**MB:** “That is not part of our plan. Supplying to domestic consumers is not part of our plan.”

**RO’M:** “So basically, Shannon LNG will not be supplying gas to North Kerry towns either?”

**MB:** “No, there are no plans for that. The sale of domestic gas in Ireland is through Bord Gais.”

**RO’M:** “So basically, ye won’t be supplying gas to any North Kerry towns, including Ballylongford, Tarbert, Moyvane, Listowel and Tralee?”

**MB:** “Not unless it’s coming through Bord Gais’ networks.”

**RO’M:** “But from LNG’s point of view, no?”

**MB:** “No.”

**RO’M:** “Thank you.”

**Chairman:** “Anything further? No? Well now I am going to invite yourselves, on that side of the house, to make your case, if you so wish? And thereafter, I’ll invite those who indicated support for the project to make their contribution, that is if Shannon LNG have no questions from yourselves. So, Mr. Mac Elligott, would you like to start the ball rolling?”

**JME:** “Thank you, Mr. Inspector. Mr. Chairman, sorry. I already made a detailed written submission to the CER so you already have a lot of those points that I have already made. So I will not go over those again. This is really an information gathering exercise. And as you said before, you leave it to your discretion to interpret it, either the fact that they answer the questions or that.....”

**Chairman:** “So you are relying on your previous submissions to the CER, is that what you are saying? In particular I think there is a document..... dated the 17<sup>th</sup> of October 2008, is that the one?”

**JME:** “Yes, and I think there was an updated one as well, on.....”

**Chairman:** “So the CER can rely on that as your contribution to this hearing?”

**JME:** “Yes, and all the joined appendixes as well. So there is no point in going over

the same ground again. So I just want to touch on some of the issues that I want to bring to your attention here, since the written submission, so people in the public will probably not..... There will be some issues that I won't cover, because they are covered in the written.....”

**Chairman:** “So you are going to refer to one or two points in your submission?”

**JME:** “Yes..... Just the main points were the financial issues were pretty important, because as far as we are concerned, Shannon LNG is currently insolvent. I did already point out that H.E.S. LNG is a company that is registered in the Cayman Islands, and it has only invested about a thousand euros in Shannon LNG's share capital. So we think that it's inconceivable that instead of giving loans, or instead of taking an equity share, it actually just gave loans and it is inconceivable that the CER is going to get access to the gas Pipeline, and to the electricity grid through..... They are also proposing to build a gas-powered electricity..... A gas-fired power station adjacent to the LNG terminal. And they have created a company called Ballylongford Electricity Company Ltd. And Mr. Biggana just said there a few moments ago, that they don't plan to supply to the domestic customers, so it will be to industrial use. So we find it inconceivable that they is going to be a lot of capital investment programmes around this LNG terminal, which will only be fed by the gas from the LNG terminal, all to a company which is basically insolvent. And if there is any accident, they can walk away in the morning and lose nothing. And I think the question on insurance was pretty pertinent because it's great to say ‘Our intentions are to do this and that’ ..... But when the accident happens, there is no assurance from our point of view. If this was in the strategic national interest, and if it was a Government project, there is always some comeback, so we are really asking if H.E.S. Corporation itself, would actually underwrite..... This was the whole point about the questions on the financials.....They provide the financial reports of H.E.S. Corporation, but we would like to see the CER creating some kind of water-tight legal financial solution to make it an air-tight financial obligation. And that's up to you, whether you want to do that. We also think the ‘Option to Purchase’ agreement should be..... If it won't be made available to the public, that the CER should actually get the details of the ‘Option to Purchase’ agreement, because they say it is commercially sensitive, which I agree it is commercially sensitive, but maybe the CER..... To get a better picture of the financials, should also look at what really has been agreed with Shannon Development, which is a commercial state company who own the land. Now, as I also said, H.E.S. made losses at the end of the first quarter of 2009, of 59 million. So, we really think that you need some financial experts to look into this issue in greater detail and to communicate also with the office of the Director of Corporate Enforcement, to understand why the shares were transferred from Irish residents to an offshore company. Ok, now I know that the criteria for giving the licence are published in the regulations but we also wish to bring it to the attention of..... As you well know, the CER..... It does have certain obligations under the Electricity Regulation Act, 1999. The Gas Interim Regulation Act 2002, both of which amended the Gas Act of 1976 and it does actually say that in the Gas Interim Regulation Act 2002..... It says the duty of the Minister and the Commission..... That's the Commission for Energy

Regulation..... To carry out their functions..... It shall be their duty to carry out their functions, and exercise the powers confirmed from them under this act in a manner, which, in relation to gas..... This is Article..... Section 9, 3B, ..... ‘In relation to gas, that it does not discriminate unfairly between holders of licences, consents and Bord Gais Eireann, or between applicants for consents or licences.’ Also, in sub-section 4A, ‘It must promote the competition in the generation and supply of electricity, in the supply of Natural Gas, and in the supply of Natural Gas in accordance with this Act.’ It is also an obligation under Section 9, to promote competition in the generation and supply of electricity. So what we are saying is that..... In assessing this licence application, the CER, even though the criteria are very specific in the regulations, there are over-riding obligations as well on the CER to look at the bigger picture. Basically to promote competition, that is not to allow a monopoly to be created, which we believe is being created here. And, under Section 5A, it is supposed to take account of protection of the environment. And, under the Energy Miscellaneous Provisions Act, 2006, which further amended the 1976 Act, other duties of the Commission for Energy Regulation, is to promote..... That’s in Section EB..... To promote the safety of Natural Gas customers, and the public generally as respect to the supply, storage, transmission, distribution and use of Natural Gas. Ok, so we just want to point out that, when you are assessing this licence application, you have other obligations as well, which also are under the Obligations, under Article 40 of the Constitution. Now, the other point – we are not legal experts but this is what we are reading – from a legal point of view, is..... The Gas Interim Regulation Act 2002..... In 12.3 it sets out that certain criteria can be set down for assessing the licence application, but equally, in Article 12.4, it does have an over-riding criteria as well, which must be respected, and that reads ‘Where from the appointed day, the Commission determines that the capacity of existing opposed distribution or transmission pipelines in a particular geographical area, as specified by the Commission, represents adequate provision for reasonable expectation of demand, it may refuse to give its consent under Section 39A1 of the Gas Act, 1976, to the construction of any new distribution or transmission pipeline in that particular area. Now, for us, this article is very important, because it places an obligation on the CER, not only to look at the criteria that are specified in the Regulations of 2002, but equally to look at the overall picture. And so, the CER is obliged, once more, to have a strategic viewpoint on where we are going with this gas pipeline. Now, previously in our submissions, we submitted..... In the oral hearing submissions of the Pipeline..... Which I think I have already forwarded to the CER as well, the transcripts, from the stenographer. We had submissions from Stephen Goldthorpe, an Energy Analyst, who proved that all Ireland’s electricity generation requirements in gas, would have been fulfilled by 38 shiploads of LNG. Now, Shannon LNG want to bring 125 shiploads of LNG each year, into the terminal, which means that some of this LNG sourced Natural Gas is for eventual export. And the second point is..... Having a strategic viewpoint as well, the Endessa problem comes into play, that..... As you know, there is a big problem in the CER with grid connection, and if Shannon LNG want to build a power station, that would be a gas-fired power station, that they would be using the gas from the LNG terminal. It has never been explained how they are going to get that power out onto the main grid, because it is about 3 miles from Tarbert. At the Energy

Conference in Tarbert a couple of weeks ago, the C.E.O. of Endessa, said that they are dropping from 600 megawatts of heavy fuel oil power generation, to 300 megawatts, with gas-fired power. And I have heard rumours that they already have an agreement with the CER, that they are going to get a dedicated grid connection. I can't prove it, but that's what I was told. So, we are asking, is this gas line needed in this geographical area, because if Endessa are already going to use all the grid connection, why have the LNG terminal in this area, if it's not where it's needed? Now, there was a question asked recently, I think in a written reply by Minister Eamon Ryan, on the 10<sup>th</sup> of February of this year, on a written reply to Michael D Higgins' question 120, and he said that the existing commercial storage facility at Kinsale, has the capacity to hold 198 million cubic metres, licensed for use by Bord Gais Eireann. And he said that this would supply around 50 per cent of residential and SME gas needs for up to 50 days, in the event of a disruption to our gas imports. So, strategically, if this whole project is based on having security of supply, if we already have security of supply at the moment, then they lose their strategic argument, and we also would like the – I think I have submitted it but I'm not too sure – The Government published a policy document, jointly commissioned with the Department of Communications, Energy and Natural Resources, and the Department of Enterprise, Trade and Investment in Northern Ireland, in November 2007. When they were giving planning permission, at the oral hearing, we asked would the Government please give this strategy document, which was the first all-island strategy policy document, would they give that document to An Bord Pleanála, in helping them assess the strategic need for gas, and our answer from the Department of Energy, Communication and Natural Resources, was in the national interest and national security, they could not release that document. But even An Bord Pleanála did not get that document, and the only time they got the document was when it was released to the public, 3 days after planning permission was given, and this is a very important document because, up to that, it was the developers saying 'I said, he said etc' and that document stated very clearly that Great Britain will soon have significantly more surplus supply capacity above expected level of demand from when it was dependant on only North Sea production. It says 'The island of Ireland has a small import requirement in absolute volume terms, compared with Great Britain, and benefits from Britain's increased supply diversity. Because now we have LNG – If they are talking about another supply of gas, apart from the Russian Pipeline, we now, in the last few months, have LNG sourced gas coming in through Millfordhaven LNG terminals, and we are already accessing this LNG sourced natural gas, through the inter-connector. So, what we are saying to the CER, is that, even from the time of when planning permission was given, if you are going to look strategically at this project, really, and assess the real needs for it, and if it is in the strategic national interest, the conditions have already changed. Also, this document did identify other high-potential storage areas, which included the Larne Basin, offshore Celtic Sea, and in the Irish Sea, where there is currently a Norwegian company developing, or in the final stages of getting the final permissions to develop an off-shore Gas LNG sourced storage facility in the Irish Sea, 100 miles from Dublin. So that is already new information as well. So the whole idea is that if they are bringing in gas in the form of LNG – The island of Ireland and Britain – We are already one strategic market. The only problem, really, is that I have to admit, the pipeline – the inter-connector – Does come from the UK, and if that inter-connector gets cut, then there is a problem, if we

don't have other sources. But this policy document also put forward the idea that the Corrib Gas Reserves – Shell want to develop them to get all the gas out in 5 years – but this Government policy document was suggesting that we should flatten the Corrib Gas production, because at the moment we are getting gas. And if the need arises, we can increase the pressure and increase the output rapidly. That would be in the national interest. So we already do have sources of LNG sourced gas, and maybe Elizabeth Muldowney will speak in greater detail, because she is the Energy expert with An Taisce. What we would like you to do also is take this document on board, because of Article 12.4 of the Gas Interim Regulation Act 2002, you have an obligation to look at this strategic viewpoints. Now, there is another idea as well, which we have consistently highlighted. It is, the lack of a strategic environmental assessment. I know I have gone on about this slightly before, but the idea is that we are all trying to get a picture of what the joined-up thinking should be, so if the CER..... They could oblige a strategic environmental assessment to say what are the real energy needs or if we want to create an energy hub on the Shannon Estuary, 'Is this what we really should be doing?', and look at the alternatives. So they said they're under no obligation to do that, and that is currently before the European Parliament Petitions Committee. And the European Commission is currently assessing those things. But once again we are saying, we can't force you to do it, we are just asking..... If you really have the country's interest at heart, you must have some more joined-up thinking and not be afraid to take on a multi-national or an offshore company, or whatever they are. Finally, there is another problem, in North Kerry, people are constantly bringing the debate of the LNG terminal in local terms, now as Raymond found out there, the gas is not for the local area, it's not a local issue, it's a national issue. So we have to look at the Pipeline, in national terms, and I think that the CER cannot make a decision on this Pipeline without looking at what Endessa are planning in Tarbert Island. I have already outlined about the Pipeline problems, when Carlos Temboli said that it is a question of timing, those were the exact words he said. But should the development of Ireland's Energy needs be determined by whichever developer gets there first..... The projects are so big, and to bring it back to just ordinary man's terms..... In America, President Obama is talking about the new 'Green Deal', where he realises that the issues of National Energy are so importantly strategic, that they are talking about the new 'Green Deal'. In Ireland, even with 2 Green Ministers in Government, we are still not looking at a new deal for energy, we are expecting developers – And I don't blame them in any way in the least – But their underlying aim is to maximise their own share value, on their bottom line. But the country's national interests, might not necessarily be determined by developer's profit interest. Now, as for the safety issues, we really think that the CER needs LNG expertise. I know they have gas expertise but they need LNG expertise to independently assess the safety issues. We don't think that they should accept the Shannon LNG's risk assessment as ok, without independently corroborating with its own complete risk assessments. Now people constantly say as well – I know I have said it before – But they constantly say that this is just another gas pipeline. But it is a different pipeline, because it is connecting to an above-ground installation, which is connected to an LNG terminal. I know you probably wanted me to give an update at the end, but really we are just thinking – And I'll say it now – We think that the CER should apply some sort of 'Use it or lose it' condition. We do not want the terminal to

become like the M50 Toll-bridge, where they basically have a monopoly, that's the last thing the CER wants. We also think that the CER should not give a licence until the Endessa Pipeline plans are strategically assessed, parallel to the LNG terminal, to the Ballylongford Power Station that they want to build adjacent to the LNG terminal. The Endessa Pipeline..... Carlos Temboli said it will follow the same route as the pipeline for the LNG terminal, but there were 3 different alternative routes, proposed by Shannon LNG for the pipeline, and they picked the pipeline route that was furthest away from the Power Station. So there is nothing stopping the CER from saying: 'Hold on, if you really want to build a Pipeline, why don't you build it closest to the Power Station?' Just because they got planning permission for it, doesn't mean that you can say you accept that. The investment decision must also be made and declared by H.E.S. Corporation, and we do want an air-tight legal guarantee that H.E.S. Corporation must be liable or Potem and Partners, there must be some sort of air-tight guarantee there."

## Abbreviations Key

**ND** – Nicola Dunleavy

**MB** – Michael Biggana

**JME** – Johnny MacElligott

**SI** – Sami Ibrahim

**MR** – Martin Regan

**EM** – Elizabeth Muldowney

**TO'D** – Thomas O'Donovan

**JME:** "We are worried that the CER is rubber-stamping the licensing process, and we would hope that would not be the case. Now, we also figure that it is unacceptable to

be given false or misleading information, and my question earlier, about the Pipeline was that false information has already been given, so the CER should make what they want of that. The CER can also require a marine transport risk assessment, an LNG marine risk assessment. The CER can ask for whatever conditions to impose or not, they could also always say ‘We don’t want to impose, or give you a licence until a marine risk assessment is assessed’ because, on the High Court, the HSA said that they gave advice, but what also came out of that case was that the HSA’s remit stops at the shoreline, they have no remit on the water. That was actually very important to us. We also want to highlight that there is no legal time limit on reviewing decisions made by the CER in this case, and that we will not hesitate to attack them in court if incorrect decisions have been made, and we will decide that at our convenience, because we need time to assess what the CER..... What has been said here today by Shannon LNG. Now, Peter North, one of our experts..... At the oral hearing in Listowel, found that the risk on the LNG Pipeline was up to one thousand times higher, from his calculations, from what was stated by Shannon LNG, but we were not allowed to question him at that oral hearing on those issues, because they said it was a matter for the CER. Now, as noted from the many Tribunals of Enquiry held in Dublin over the years, the odds that Shannon LNG is not telling the truth is higher than the odds that they are telling the whole truth.”

**Chairman:** “I don’t think you need make allegations of that sort at the hearing, really.”

**JME:** “Yes I know, but our point was..... When they said that LNG gas would dissipate quickly, this was the whole basis for our submission to An Bord Pleanala..... Was that when they gave out public advertisements, saying that it would dissipate quickly, when in actual fact it would go laterally for up to 7 and a half miles, that was the problem. If they tell a lie once, they tell it again. We also would like the CER to assess Ahinnish Island once more. There were rumours that they were going to move the LNG terminal over there. Now, Ahinnish Island has not seriously been considered either. It’s an industrial site with large amounts of waste pollution. Once more, we say that the strategic argument for LNG being needed in Ireland is rubbish, because we think that we are in Europe, that’s it, and that the LNG here is mainly for export. We also think that the global warming and that climate change arguments against the project are also very strong. There is less damage done with CO2 emissions, if LNG is landed in continental Europe, piped throughout the continent, rather than piping from the periphery view in Ireland. We think that building the Endessa Pipeline after the LNG Pipeline is going to cause a problem, that it will be too dangerous to go back and dig a second pipeline, too close to the Shannon LNG Pipeline. If they are going to dig it further away from the Shannon LNG Pipeline Route, then we want the CER to look at what are the legal implications of ownership of land, from that respect. And finally, we just think that the CER needs to sit down and discuss the project properly, do all the studies properly, and ensure that all that’s necessary is done, that is the best way of doing it, otherwise we will audit your work and prove that you are wrong. We also think that the CER needs to examine alternatives properly. Even preliminary safety studies would have examined alternatives in order to mitigate risk. For example, the LNG sourced gas is now



already being pumped from Millfordhaven in the UK, and the biggest criteria for the CER is to examine whether the project is actually safe, and is absolutely necessary. As I have said, the situation has changed again, and that needs to be dealt with from a strategic viewpoint. That ends my submission.”

**Chairman:** “Fair enough, yes. What about your colleagues? Do they have anything to submit to the hearing?”

**JME:** “Maybe Elizabeth Muldowney will speak about the strategic aspects.”

**EM:** “I will be speaking on behalf of An Taisce. I wonder if I could ask your indulgence, I need to take a break for five minutes please.”

### Five minute adjournment

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### Conference re-commences

**Chairman:** “May I ask who wants to speak? Tim O’Mahony do you want to speak.....(Chairman asks others if they would like to speak). You may all speak and when this contribution is finished, I will invite Shannon LNG Natural Gas to respond to those.”

**EM:** “My name is Elizabeth Muldowney, I am An Taisce’s National Energy Officer. I have a Masters in Economic Policy, specific to Energy. My responsibilities in An Taisce are:

A: Communications – With the utilities and all Energy stakeholders.

B: The promotion of Energy courses within the humanities at university level.

C: Research into LNG.

I would just like to say thank you to The Commission for Energy Regulation, to Shannon LNG, to the locals both for and against, for this opportunity to speak. I would like to address mostly the economic side of things, and the situation regarding security of supply and need for the project. From a point of view of need, at a local area, it would be wonderful to have gas for Kerry, since it’s one of the very few counties left in Ireland that doesn’t have Natural Gas. And from a person that lives in another county in Ireland that doesn’t have Natural Gas, believe me, I understand the situation. I am from Dublin, and I’ve had Natural Gas for most of my life, but having moved recently to Leitrim, I do miss that and I respect very much the idea that the locals would have Natural Gas. I also respect the County Council, Shannon Development etc because they all have very good arguments for having this project go ahead. Shannon Development investment, knock-on effects from that, absolutely there would be knock-on effects and they would be very beneficial to the area. The County Council will have other benefits from this particular project as well. However, I believe that it’s not just a local issue, Mr. Chairman, it is a national issue as well, from

the point of view of the National Energy Strategy. I think that's what we really have to address. Health and environmental issues, training, safety..... They have already been addressed and I have absolutely no doubt whatsoever that Shannon LNG and H.E.S. will adhere, strictly, to these because they need to protect their assets. There is no way that they are going to let an accident happen, because they don't want to see their assets go up in smoke. However, from a point of view of gas – Natural Gas – At a global level, I have a lot of reservations. There is a lot of volatility, both in price and in geo-political stabilities in the countries in which the LNG will be sourced. We know that at the moment, gas prices are extremely low, but we also know that gas prices track oil prices, typically. And at the moment, oil prices are increasing. Now, this is the latest graph in the Financial Times, for oil prices from this morning. So that is a months oil pricing, and as you can see, the trend is definitely up. From a point of view of the Middle East, today at twenty-five past five this morning, in fact, there was an article printed in the Financial Times, and it was talking about the Middle East, and the critical gas shortage in the Middle East. The countries of the region, particularly the wealthy Arab Gulf States, have one of the fastest growing rates of energy demand, as populations swell, and the accumulation of 'petrol dollars' during the recent 'oil boom' has driven rapid economic expansion. But they are finding to their costs, that after years of focusing on oil production, too little attention was paid to gas, which is now needed for power generation. My point there is, that really, we have failed as a nation to look at the strategic elements of this, and the impacts of supply and demand from a global level. If demand rises elsewhere in the world, where does little old Ireland stand? I understand that H.E.S. is a big corporation, and that you are involved in the Liquefied Natural Gas market. However, I am looking at it from a point of view of public interest at a national level. Basically we have 70 years of global Natural Gas supply left..... 70 years. That's not just for Ireland, that's for the whole world. Experts agree that Japan, being the largest importer of Liquefied Natural Gas, are building storage terminals at the moment, and that 70 years of Natural Gas will be halved down to 35 years..... 35 years for the rest of the world, excluding Japan. America are now looking at – and this has been produced in the Energy Information booklet in 2008, from the Department of Energy in the United States – America are looking at replacing oil with gas – they are another huge importer of Liquefied Natural Gas. The price of gas is low at the moment, as I have already stated, the price of gas is going to increase. We had one of the heads of the Arab Nations stating that the price of oil, within the next 3 years, could reach \$150 a barrel again. And as I said before, gas prices track oil. I firmly believe that we have to look seriously at our responsibilities, from a point of view of the CER and also a point of view of a nation, and this needs to be done on a strategic level, and not just on a project by project basis. We have a situation, globally, where we have absolutely no knowledge whatsoever of how these prices are going to increase, we have no knowledge whatsoever of geo-political issues, with certainty, and it is this uncertainty Mr. Chairman, that is of great concern, and should be of great concern to us as a nation. We are placing ourselves, by being dependant on gas, and by increasing that dependency on gas, by building Shannon LNG, and from a point of view of electricity supply, more gas-fired terminals. And we are in a very, very precarious position. And from a point of view of uncertainty, I wonder if this is not a very risky place to be putting the nation. Bord Gais Eireann have been mentioned a couple of times here

today. I would like to make a note that they are entering into the renewable energy market, on quite a large scale. I think, given that they are the most experienced people in the gas market in Ireland, that's really saying something. They are obviously trying to make sure that in the future they have a sustainable business. And sustainability is what this is all about. We have to look to the future, and we have to ensure that we have sustainable energy. Now I'll just move back to gas price once more, and this time with relevance to the end-user of the gas. If gas prices are high, as I mentioned earlier on in my question, it really is worthwhile of Shannon LNG to do this project, because they'll make their money back, and fair play to them, you're dead right. If I was in their shoes, I would be trying to get a terminal up and running, and I would be trying to make a profit, too. Actually, maybe at this point I should refer back to the relevance of the price on the Pipeline – The Pipeline is connected to the import terminal, which will take in gas from the global market, and therefore, by association, the price of Natural Gas is very relevant to this Pipeline. The gas that will come through the Pipeline, from Shannon LNG terminal, through the Pipeline and into the National Pipeline, will go to end-users. There are 3 strands of those end-users:

1. Electricity Generators
2. Industry
3. Domestic

The price of the gas, from a global level, will impact on the price of the gas to the end-user. And the CER has an obligation to that end-user, as stated in the CER mission statement. And basically, that mission statement says that the CER are acting in the interests of consumers, to ensure that prices charged are fair and reasonable. All of us here have electricity, we all use it, whatever about gas, we all use electricity, and up to 66 per cent of our electricity is generated from gas. I ask a question generally here, do you think that if the price of gas goes up, and that we are dependant on gas from either Pipeline or imported at Shannon LNG, that we will not pay for that in our electricity bills? Ladies and gentlemen, I am not going to answer that question, you are all intelligent people, I'll leave that up to yourselves. We already have extremely high prices of electricity, and I think that this will put that into a little bit more of a precarious situation, and it's not just gas that we need to be looking at, we need to be looking at our electricity situation as well. I think that we also need to look at the pros and cons of this project, and as I stated at the beginning, there are many. During construction, there will be employment, but that employment is not sustainable, that employment is only for a short period of time during the construction of this project. There will be jobs when the plant is in operation, I'm not too sure how many, but there will be jobs, but there certainly will not be a great number of jobs. I'm open to correction on that. I think that we also have to look at the environment, and we are trying to reduce our carbon emissions, and yes, from a point of view of fossil fuels, gas is the cleanest, but it is still a fossil fuel. And it is still emitting carbon CO<sub>2</sub> into the atmosphere. And at a time when Ireland are incredibly over our emissions targets, is this really the time to introduce more fossil fuel into our market, and our environment?"

**Chairman:** "Pardon my interrupting you there, perhaps you could focus a little more

on the particular issue we are trying to deal with, which has got to do with the Pipeline, and the AGI's?"

**EM:** "Ok"

**Chairman:** "That is a national policy, that issue."

**EM:** "It is, but do you not think, Mr. Inspector, that the Pipeline is a matter of policy as well, by association?"

**Chairman:** "It would be better if we could focus a bit more on the gas pipeline."

**EM:** "Ok, on one hand, as I said, employment during construction. On the other hand, it's short-term employment. On one hand, we have employment in operation – on the other hand we have low levels of ongoing employment. I think that this project, and this Pipeline, is being put forward as contributing to security of electricity supply. However, as I've pointed out already, this security is very, very precarious, if we are put in a position to rely on gas from this Pipeline. And that's all I have to say, today. Thank you very much."

**Chairman:** "Thank you for that, now I am going to invite those who indicated support for the project, I am going to invite Tim Mahony, please, come up and sit at the microphone."

**TM:** "Good afternoon, my name is Tim Mahony, I was the Chairman of the Kilcolgan Residents Association, until it was hijacked. And it was hijacked by Mr MacElligott, and I informed him on several occasions that he was not to use Kilcolgan Residents Association, but he still used it, and he still used it today. And this is very upsetting for some people in my area, because now they want jobs. Unfortunately, because there's not abundant employment in the area at the moment, and now most people in Kilcolgan welcome this project. Now, for the first oral hearing, he had a mandate, to carry out that. But when the oral hearing didn't agree with what he wanted, he went on another. Now I have listened to him in Listowel, and I've listened to him today, and a lot of things he has said, is an absolute waste of time. A waste of money, that really could be spent wisely, but the amount of people that are here today, it's a shame that we have to have this other oral hearing, because of him. He also took a High Court action against the oral hearing position. I had to inform him, that if anything went wrong, that he was not to use the KRA, because I could be responsible for the costing of that. So if there's anymore court cases, the KRA is not supposed to be used, unless there's a JAGA meeting, and somebody else throws me out, at the moment I still am Chairperson of the KRA. I welcome the movement now, because of the situation we are in, in this country. The girl here on my left said about gas being cheap. Yesterday I went out and bought a bottle of gas. And what is the price of a bottle of gas? A small bottle of gas?"

**EM:** "Sir I don't know but that's different gas, that's not Natural Gas."

**TM:** “Well it’s the same thing, it’s €39 for a small bottle of gas.”

**EM:** “Sir it’s different gas.”

**TM:** “I appreciate that but gas is gas, right, so that is all I’ve got to say. Thank you very much.”

**Chairman:** “Thanks for that, Mr. Mahony. Mr. Lynch, are you going to speak?”

**Noel Lynch:** “On behalf of the Ballylongford Enterprise Association, we support this project. We believe that it would be good for our area. Unlike previous speakers, we believe that, even though the amount of jobs might be small starting off, we believe that it will lead to more industry and more employment coming to our area. This is strictly for the Pipeline, and we believe that the Pipeline – there is a pipeline already running for thousands of kilometres around the country, through the cities of Dublin and Cork, and there are no issues with it. The other thing I would like to raise is that this morning we were listening to Shannon LNG being questioned as to their finances, their legality, their transparency. I would now like to ask where does Johnny MacElligott come from or who does he represent as the Chairman of the Kilcolgan Residents Association? The KRA has stated that they are not involved in this and they are not party to any objection to this project. I would like to know if Johnny MacElligott can be as transparent as Shannon LNG in stating who his legal advice is – If he could state who that is – who his accountancy advice is, so that we would know that what he is saying comes from a reputable authority. We know who the legal and audit experts are for LNG now, so we’d like to know the same from Mr. Mac Elligott. Finally, I would like to concur with Tim Mahony, in saying that the whole area of North Kerry and West Limerick are looking forward to this project coming. In an economy and in a location where you have no jobs, one job is very, very welcome. Thank you Mr.Chairman.”

**Chairman:** “Now, who else would like to come up? Miss Murphy would you like to come up? Thank you.”

**Joan Murphy:** “Thank you Mr. Chairman. I am Chairperson of Tarbert Development Association. For the past 50 years, Tarbert Development Association have been actively working to promote the Shannon Estuary as an industrial area. And, in spite of many fall stones, this has been the first tangible project that has been proposed for the area. Because the terminal was given planning permission by An Bord Pleanala, which specified that the gas can only be sent from the plant by pipeline, the planning permission for the Pipeline was sought and got. This hearing, I believe, was in relation to just the safety aspect, in spite of that fact, several other issues have been brought into this room here today. And I would have no apologies to Mr. Mac Elligott or anybody else, to say our main focus is in fact jobs for the area as other speakers have said. I know it’s a national issue as well, the cost of gas and the price of fuels, if they go up, if electricity will have to be produced, whether it’s by gas or oil, or falling water, or wind. I noticed in my last electricity bill, 11 per cent of the energy that I used, was in fact wind energy, so we’re a long way from the 40 per cent. We would

all look forward to the day when our energy is green energy, but for the time being, we have to use the energy sources that are available to us, and gas is one of those. Thank you very much Mr. Inspector.”

**EM:** “Inspector, am I allowed to ask questions of the people who are making statements?”

**Chairman:** “No not really, no.”

**EM:** “Oh, ok.”

**Chairman:** “Let me just finish. Mr. Fox please?”

**John Fox:** “John Fox, Mr. Inspector. I want to address a couple of things that were raised this morning. In particular a pipeline was raised, about it being a two-way flow and the capacity of the line. Now bear in mind, I am with Tarbert Development Association, and we support this. We have stood by this thing, from the word go. We had questions, we had issues, and they have been addressed, as far as we’re concerned. But in relation to the Pipeline, my understanding from what was said this morning, is that gas would be able to flow up from the National Grid and to the National Grid, from the LNG project. And there should be no ambiguity about that. The other point was that the capacity of the line is geared so as to take into account, changes that may take place, in demand for gas on the system, and it can handle that. As I understand it, I think the figures can handle 30 per cent of the national demand for gas at any moment in time. If that’s the case, there is no need, in my opinion, for a second pipeline, because a spur-off to Endessa or to Listowel, or to wherever it is required, can be met by the one pipeline. I think that was just muddying the waters by throwing in the issue of a second pipeline. I think that’s all that was happening, in that particular case there. I also heard this morning – and I stand to be corrected on this – that Shannon LNG said that they are subject to conditions that might be imposed by the CER. In relation to when the start date for building it, because the start date is critical, because at the moment it looks like Shannon LNG do not require the Pipeline until 2014. Whereas, as I understand it, Endessa will require a gas supply in 2011/2012. So I would like to clear that up as well, and that will be borne in mind by the CER. The other thing I would like to say is, there was great emphasis put this morning on questioning Ernst and Young, and the accounts, and who they were and what they were and who signed what. This Pipeline is vital for this development, not only the Gas Plant and Endessa, but it’s also vital for the development of North Kerry. And I’d like to see the KRA telling us who they are and who they represent. Because they have changed from being the ‘Kilcolgan Residents’, to ‘The Safety before LNG’, and now the latest thing they are, the ‘Safety before LNG Alliance’, Alliance of who? Malibu? New Zealand? Wales? What about local North Kerry and West Limerick? One thing I do agree with Mr. MacElligott on – and I will finish on this – he made reference this morning to somebody giving false information or misleading information, and I think in fact he used the word ‘lie’ and he referenced it this way; He said that if someone is capable of telling a lie once, they are capable of doing it a second time. I would suggest, respectful to Mr. MacElligott, that anybody who tells a lie about where

they live, where their place of residence is, is also capable of telling other lies. We need this, we urgently need this, there is huge unemployment in North Kerry, and the people out in North Kerry – The politicians of all shades and colour – be they national or local, and be they European with the exception of one, support this project, as do we. Thank you Mr. Chairman.”

**Chairman:** “Thank you for that. Now is there anybody else who wants to make a contribution? Mr. Finnuane?”

**Michael Finnuane:** “Michael Finnuane, Ballylongford Enterprise. I would like to welcome the LNG terminal and pipeline to North Kerry, on behalf of Ballylongford Enterprise as well, because land-back has been put together for the last 50 years, and we have had – In the 1970’s we had a smelter muted – a zinc smelter – then that went, and then we had an oil refinery, with John Lance and Greg Bilnare, (**Please note – unsure of accuracy of those two names – Speaker quite hard to understand.**) that were buying up more land to build this refinery, and we had big ships to be built there, pleasure ships and small ships, and all kinds. But the first company that came and put their money where their mouth is was Shannon LNG, with the help of Alcann Development, and they have not been in that place for the last 30 years. I find it’s very positive for the region and the Pipeline is a necessity to supply Tarbert Island with gas, and to keep the life-blood of North Kerry going. Tarbert Island was the first industry we ever saw there in 1968, and it kept a lot of people out of the emigrant ships. They all got jobs there and then that was followed by Alcann, and the whole industry boomed as it went along, Foynes Port, Moneypoint, and this is another step in the right direction. As our previous speaker said there, I would like to ask Mr. Mac Elligott, what has he done to bring any industry into the estuary? He has done nothing positive, only all negative, since he started this campaign, 2 and a half years ago. If he put the effort into drawing some industry into the estuary as he did to hunt it out of it, we might be a lot better off. If he looked at things from a local perspective, and being a citizen of the State of Ireland, and put the people first, and the job creation in the locality. He is talking about another High Court challenge now again to this, but I wonder would he put his name to this High Court challenge – which he didn’t do with the last one in November, to stop the terminal – so if he is going forward he can put down his name and have the courage of his convictions, when it comes to the corps. Thank you.”

**Chairman:** “Thank you. I am just going to ask Shannon LNG – do they wish to ask any questions of Mr MacElligott and his party, or would you like an opportunity just to sum up at the end?”

**MB:** “Mr. Chairman we would like the opportunity just to sum up, but we would like an adjournment for about 15 minutes, if we may, before making that summary.”

**Chairman:** “Yes we can, but before doing that I am going to ask Mr. MacElligott if wants to sum up? Or is he finished?”

**JME:** “I am finished.”

**Chairman:** “Alright, this would be an appropriate time then to.....”

**Michael Mac Elligott:** “My name is Michael Mac Elligott, and this hearing was very well advertised, and I believe it is about the safety of the Pipeline. There isn’t one person here from Foynes to Tarbert, that live along that Pipeline, objecting to it. So if safety was such a concern, why aren’t they here? Now I live in the parish of Glen, and the Pipeline passes right at the base of my house, just at the bottom of the property, and I’m satisfied – I have been at all the hearings that LNG have done everything to make sure that we’re getting a safe terminal and a safe pipeline. So I agree with John Fox, Joan and Noel Lynch and everyone that spoke. Jobs are desperately needed for North Kerry and West Limerick. I mean if you came to Tarbert or Ballylongford or Glen tomorrow morning, or tomorrow evening – Traffic has just stopped, there is no work there – this young lady here is saying that there will only be jobs for a certain amount of people at the end of it. But Noel Lynch is right, anybody would take your right arm off if you give them a job tomorrow morning, not a mind 200 jobs on the Pipeline, or 400 jobs during the construction for 4 years. And that is what we need in Tarbert – We need jobs, and Michael Finnucane is right – The objectors have brought no jobs, they have brought no ideas to the table, they have just brought criticism from day one, and to be honest, the people in Glen, in Tarbert, in Ballylongford, in Moyvane, in Asdee – are absolutely sick of it – we want the objections to stop, and we want to see the LNG Plant and construction going ahead. That’s all I have to say, thank you.”

**Chairman:** “Thank you Mr. Mac Elligott. Now I am going to have that 15 minute adjournment requested by Shannon LNG, and let’s get back here at a quarter to 4 please, for a closing statement from LNG.”

**Chairman:** “I am going to invite Mr. Gunn to sum up for his Shannon Gas company. This will complete the hearing on Mr. Gunn’s closing statement.”

**Michael Gunn:** “Thank you, Mr. Chairman. Chairman, Shannon LNG appreciates the opportunity to participate in this oral hearing today, with the CER. Shannon LNG has made its views known to the CER in the documentation submitted. And Shannon LNG’s submissions to the CER are in accordance with the statutory criteria for a Section 39A application. The key point is that the Shannon Pipeline is designed, will be installed in accordance with the Irish standard known as IS328. As stated earlier, the history of this application is that – pursue onto Section 26.1A of the Gas Act 1976, as inserted by Section 23 of the Gas Interim Regulations Act 2002 – Shannon LNG submitted an application to the CER in January 2007, to demonstrate this bonafide intention to apply for consent to construct the Shannon Pipeline. The CER certified on the 23<sup>rd</sup> of February 2007, that Shannon LNG had demonstrated the bonafide intention to apply for consent to construct the Shannon Pipeline. Shannon LNG submitted an application under Section 39A of the Gas Act, 1976, as amended, for consent to construct the Shannon Pipeline, on the 5<sup>th</sup> of September 2008. Shannon LNG submitted an independent quantitative risk analysis of the proposed Shannon Pipeline on the 28<sup>th</sup> of November. This risk assessment was undertaken by a competent,



qualified risk management company, ERL. The criteria for issuing Section 39A consents are set out in the Gas Interim Regulations Act, 2002 – Criteria for Determination of Consents/Regulations 2002. Shannon LNG believes that it has demonstrated that we have met these as outlined in the statement provided by Sami Ibrahim today. In response to some of the issues raised, as stated earlier, Ernst and Young – a world renowned accounting and auditing firm, and auditors to Shannon LNG Ltd – confirmed that they have audited the company’s financial statements for year ending 31<sup>st</sup> December 2007, and that they have signed and dated their audit record on the 18<sup>th</sup> of September, 2008, after the Directors of the company signed and dated the financial statement, on the 10<sup>th</sup> September, 2008. Shannon LNG’s Management and Directors considered the issues raised by the Safety before LNG, in preparing and finalising the accounts. In our view, the notes of the accounts adequately deal with the matters in accordance with the applicable standards. The auditor’s report, which is unqualified, includes a paragraph of emphasis with respect to the ability of the company to continue as a going concern. We must again refute any allegation of insolvency, which has no foundation. In reference to the proposed Endessa Power Station, our Managing Director, Paddy Power, stated in the planning oral hearing, that we would welcome the opportunity to connect Power Stations such as Tarbert to the Shannon Pipeline. If some time in the future, such an application is made to us, and approved by the CER, technically this can be facilitated by connection from the Shannon Pipeline. We consider that it is not appropriate to condition or delay the consent for the Pipeline upon future unknown pipeline proposals, as was suggested earlier. In the future we would hope that Bord Gais Eireann and the CER might assess the feasibility of distributing Natural Gas to towns in the region from the Shannon Pipeline, but it would be premature at this stage to speculate on where any connections might be located along the route of the Pipeline. In summary then, Chairman.....

The Shannon Pipeline has been designed, will be constructed, operated and maintained in accordance with IS328, 2003, and applicable Irish and European Union Regulations. I believe that Shannon LNG, in its application to the CER, for consent to construct the Shannon Pipeline, pursue onto Section 39A, has demonstrated that it meets the criteria for issuing a 39A consent. I should say Chairman, that we have been heartened by the expressions of support given here today. Now we thank the CER for the opportunity to summarise our views on the consent application submitted by Shannon LNG under Section 39A. This completes our closing statement Chairman, thank you.”

**Chairman:** “Thank you Mr. Gunn. Now I propose to close this hearing, and I am just doing so right now. Thank you very much for participating, and for your cooperation during the hearing.”

## Abbreviations Key:

*Please Note: MB – Michael Biggana – Name sounds different on other 2 discs – Possible name Michael Gunn? Initials may be ‘MG’ as opposed to ‘MB’?*

**JME** – Johnny MacElligott

**EM** – Elizabeth Muldowney

Tim Mahony

Noel Lynch

Joan Murphy

John Fox

Michael Finnucane

Michael MacElligott

Mr Johnny McElligott  
Safety Before LNG  
Island View  
Convent Street  
Listowel  
Co. Kerry

22<sup>nd</sup> May 2009

Ref: 38503

Dear Mr. McElligott,

## Public Hearing on Shannon LNG Connection Pipeline

I refer to previous correspondence on the above.

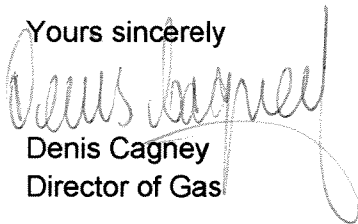
As you know, the Commission has agreed to hold a non statutory public hearing on the proposed pipeline at Brandon Hotel, Tralee on Tuesday next, 26<sup>th</sup> May. I am writing to advise you that the hearing will be chaired on behalf of the Commission by Mr Michael Ward. Mr Ward is an experienced planner and former board member of An Bord Pleanála.

Following a brief introduction, the Chairman will invite the developer to present on the pipeline project and the consent application. Interested parties will then be invited to make comments or put queries to the developer who will be allowed an opportunity to respond. The Chairman will then invite any interested parties to address the hearing and he will allow the developer, in turn, an opportunity to respond.

The hearing will commence at 11:00 a.m. and conclude 5:00 p.m. with a lunch break from 1:00 p.m. to 2:00 p.m. but may be extended to the next morning if the Chairman feels this appropriate.

I trust this is helpful and look forward to seeing you on Tuesday.

Yours sincerely



Denis Cagney  
Director of Gas

cc. Mr. Paddy Power – Shannon LNG

27<sup>th</sup> April 2009

Mr. Johnny McElligott,  
Safety Before LNG,  
Island View,  
Convent Street,  
Listowel,  
Co. Kerry.

Ref: 38407

Dear Mr. McElligott

## **Shannon LNG Connection Pipeline**

I refer to recent correspondence on the above.

I am writing to advise that the Commission has agreed to your request to hold a public hearing on the application by Shannon LNG (“the developer”) to the Commission for Energy Regulation for consent to construct a pipeline connecting the developer’s LNG regasification facility at Ralappane, County Kerry to the gas transmission system at Foynes, County Limerick.

The application was made pursuant to Section 39A of the Gas Act, 1976 as inserted by Section 12 of the Gas (Interim) (Regulation) Act, 2002. As you know, it has already been the subject of a public notice and consultation exercise by the Commission.

I am also writing to the developer to advise them of the Commission decision and to likewise invite them to the hearing.

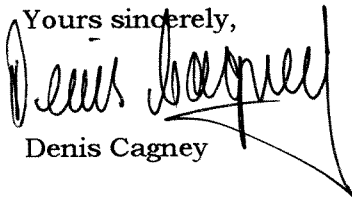
The hearing will be subject to the following conditions

- The hearing will take place at the **Brandon Hotel, Tralee on Tuesday 26 May** commencing at 11:00 a.m.
- An advertisement of the public hearing will be inserted in local newspapers within the next week
- The hearing will be chaired on behalf of the Commission by an independent person with experience in chairing such hearings. You will be advised of the identity of the chairperson shortly.
- The purpose of the hearing will be to provide a further opportunity to interested parties – including the developer – to make known to the Commission their views on the consent application and on those considerations which should be taken into account by the Commission in making its decision on whether or not to grant a consent and, if so, what conditions should apply.

- The scope of the hearing will be restricted to the subject matter of the consent application - i.e. the proposed gas pipeline itself – and the relevant statutory criteria as set out in S.I. No. 264 of 2002 (copy attached for convenience). The particular focus will be on those considerations within the remit of the Commission which were not considered by An Bord Pleanála at its public hearing of last December on the same project, notably the safety and security of the natural gas system and compliance with the gas code of operations.
- The role of the chairperson will be to chair the proceedings, which will be transcribed, and to provide a summary report of them to the Commission shortly afterwards. The Chairperson will not be invited to make recommendations to the Commission on the consent application, which is the exclusive responsibility of the Commission itself.
- The hearing will be attended by representatives of the Commission. The role of these representatives on the day will be, essentially, to listen and take account of the proceedings and, where possible and appropriate, to provide clarification on issues that may arise.
- An agenda for the public hearing will be circulated prior to the date.
- The hearing will be non statutory (i.e. it is not required by law) and any participating parties will have to bear their own costs in full.

I look forward to seeing you at the hearing on 26<sup>th</sup> May.

Yours sincerely,



Denis Cagney

C.c. Commissioners Tutty, Reeves, Nolan (CER)  
Dr. Paul McGowan, Ms. Keelin O'Brien, Mr. Eamonn Murtagh (CER)  
Mr. Paddy Power, Mr. Martin Regan (Shannon LNG)

# **S.I. No. 264/2002 — Gas (Interim)(Regulation) Act 2002 (Criteria For Determination of Consents) Regulations 2002**



STATUTORY INSTRUMENT No. 264 of 2002

## **REGULATIONS**

Gas (Interim)(Regulation) Act 2002 (Criteria for Determination  
of Consents) Regulations 2002

S.I. No. 264 of 2002

### **Gas (Interim)(Regulation) Act 2002 (Criteria for Determination of Consents) Regulations 2002**

I, Joe Jacob, Minister of State at the Department of Public Enterprise, in exercise of the powers conferred on me by section 12(3)(a) of the Gas (Interim)(Regulation) Act, 2002 (No. 10 of 2002) and the Public Enterprise (Delegation of Functions) (No. 2) Order 2002 hereby make the following regulations:

1. These regulations may be cited as the Gas (Interim)(Regulation) Act 2002 (Criteria for Determination of Consents) Regulations 2002.
2. The criteria in accordance with which an application for a consent given under section 39A(1) (inserted by section 12(1)(a) of the Gas (Interim)(Regulation) Act 2002) of the Gas Act 1976 may be determined by the Commission are that the Commission is satisfied that -
  - a) if it grants the consent, no activity carried out under it will adversely affect the safety and security of the natural gas systems,
  - b) the applicant will comply with any code of operations in so far as it is applicable to the applicant and, at the relevant times, will have the capability of doing so,
  - c) the applicant has complied with the requirements of section 40A (as amended by section 12(1)(c) of the Gas (Interim)(Regulation) Act 2001) of the Gas Act 1976 in relation to

the proposed construction of the pipeline to which the application relates,

- d) the pipeline to which the application relates will be constructed and commissioned within a period which the Commission shall specify in relation to the application.
- e) the pipeline to which the application relates will be capable of interoperating in a secure, safe and efficient manner with the natural gas system,
- f) the applicant is a fit and proper person to be granted a consent and has the financial capacity and technical skills to carry out the activities to which the application relates and to comply with the consent, if granted, and
- g) the applicant will be capable of paying any levy charged by the Commission.

L.S.

GIVEN under my hand,

4 June, 2002.

JOE JACOB, T.D.

Minister of State at the

Department of Public  
Enterprise

#### Explanatory Note

(This note is not a part of the Instrument and does not purpose to be a legal interpretation)

These regulations set out the criteria in accordance with an application for consent to construct or upgrade a pipeline may be determined by the Commission for Energy Regulation.

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Web: [www.safetybeforelng.com](http://www.safetybeforelng.com)

## **Safety before LNG**

*Protecting the Shannon Estuary and its people*

9 April 2009

Mr. Denis Cagney, Director Gas,  
The Commission for Energy Regulation  
The Exchange,  
Belgard Square North,  
Tallaght,  
Dublin 24.

c.c Dr. Paul McGowan, Director Safety, CER  
Ms. Keelin O'Brien, Operations Manager, CER

By Email only to: [dcagney@cer.ie](mailto:dcagney@cer.ie), [pmcgowan@cer.ie](mailto:pmcgowan@cer.ie), [kobrien@cer.ie](mailto:kobrien@cer.ie)

Re: Application by Shannon LNG for consent to construct a pipeline under Section 39A of the Gas Act, 1976, as amended.

Dear Mr. Cagney,

Thank you for your letter dated April 3<sup>rd</sup> 2009.

At the An Bord Pleanála Oral Hearing into the pipeline of December 1<sup>st</sup> 2008, from the stenographer transcripts, it is noted that you stated the following:

*“After all, to be fair to the objectors, we cannot say that we are not here today to discuss the substantive issues from the CER's perspective and then to say we are not going to say we have had a public hearing because we have had it already. So by all means I am not giving a guarantee that there will be a public hearing, but in the normal course if in doubt we would err on the side of having a public hearing. I can give a categoric assurance in that regard.”*



The QRA of the pipeline was not allowed to be analysed at the oral hearing by us because the An Bord Pleanála inspector was lead to believe it could be analysed by a CER public hearing - as you would “err on the side of having a public hearing”.

We are therefore requesting a public hearing by the CER on this pipeline and are strongly of the opinion that this would be the most appropriate means of assessing this licence application by Shannon LNG.

The pipeline was also the subject of objections by us to the compulsory acquisition order which was requested by Shannon LNG. We, therefore, are of the opinion that, for this reason too, a public hearing is merited.

It should be noted by the CER that the development-consent process has not been completed as the EPA has still to examine the pollution aspects of the project; therefore it is premature for the CER to be assessing this license application.

We have also had confirmation from a representative of the EU Commission that it is raising issues on contravention of, *inter alia*, the SEA, EIA and SEVESO Directives directly with the Irish Authorities and therefore we believe you should also await the outcome of these proceedings.

We are aware that the CER has considerable freedom to apply conditions to any licence it grants. Why not commence with a public hearing and an obligation for the production of an independent LNG Marine QRA?

We await your feedback on this request for a public hearing.

Yours sincerely,

Johnny McElligott

3<sup>rd</sup> April 2009

Mr. Johnny McElligot  
PRO Kilcolgan Residents Association  
c/o Island View  
Convent Street  
Listowel,  
Co. Kerry.

Dear Mr. McElligot

**Section 39A Consent Request to Construct Pipeline to Proposed Shannon LNG Regasification Facility.**

I refer to the submission made by your Association to the Commission on the above matter on 17 October 2008.

Since then the Commission has been carrying out its own examination of the consent application by reference to the applicable statutory criteria as set out in SI No. 264 of 2002 (copy attached for ease of reference) and in particular the safety, technical and environmental aspects of the proposed pipeline.

The legislation on pipeline consents provides for the possibility of public hearings being held by the Commission in the event of objections to compulsory acquisition orders arising (Second Schedule to Gas Act, 1976, as amended). As there is no question of compulsory acquisition orders being requested of the Commission in the present case, we are not proposing to hold a public hearing on the consent application.

The Commission would, however, be happy to meet with your Association to discuss in detail any and all of the issues raised in your submission as an input to a final Commission decision on the consent request. This meeting could take place either at our own offices here in Tallaght or, if you would prefer, at a more convenient location such as a hotel in Listowel. The meeting would be a bilateral one between the Association and the Commission or, if you would prefer and feel it would be more helpful, we could invite Shannon LNG to also attend the meeting which would, of course, be chaired by the Commission - akin to the procedure under a public hearing.

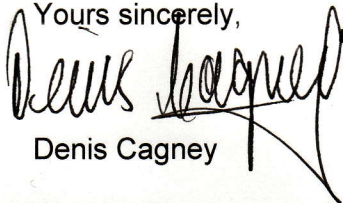
If your Association wishes to take up this invitation, I propose the following alternative dates:

- Friday 24 April
- Tuesday 28 April (p.m.)
- Tuesday 5 May (p.m.)

Should you wish to discuss any aspect of this invitation or any related issue, please do not hesitate to contact me by email ([dcagney@cer.ie](mailto:dcagney@cer.ie)) or telephone my colleague, Ms. Keelin O'Brien.

Meanwhile, I look forward to hearing from you.

Yours sincerely,



Denis Cagney

Director Gas  
Commission for Energy Regulation

c.c. Dr. Paul McGowan, Director Safety, CER.  
Ms. Keelin O'Brien, Operations Manager, CER.

# **S.I. No. 264/2002 — Gas (Interim)(Regulation) Act 2002 (Criteria For Determination of Consents) Regulations 2002**



STATUTORY INSTRUMENT No. 264 of 2002

## **REGULATIONS**

Gas (Interim)(Regulation) Act 2002 (Criteria for Determination  
of Consents) Regulations 2002

S.I. No. 264 of 2002

### **Gas (Interim)(Regulation) Act 2002 (Criteria for Determination of Consents) Regulations 2002**

I, Joe Jacob, Minister of State at the Department of Public Enterprise, in exercise of the powers conferred on me by section 12(3)(a) of the Gas (Interim)(Regulation) Act, 2002 (No. 10 of 2002) and the Public Enterprise (Delegation of Functions) (No. 2) Order 2002 hereby make the following regulations:

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2. The criteria in accordance with which an application for a consent given under section 39A(1) (inserted by section 12(1)(a) of the Gas (Interim)(Regulation) Act 2002) of the Gas Act 1976 may be determined by the Commission are that the Commission is satisfied that -
  - a) if it grants the consent, no activity carried out under it will adversely affect the safety and security of the natural gas systems,
  - b) the applicant will comply with any code of operations in so far as it is applicable to the applicant and, at the relevant times, will have the capability of doing so,
  - c) the applicant has complied with the requirements of section 40A (as amended by section 12(1)(c) of the Gas (Interim) (Regulation) Act 2001) of the Gas Act 1976 in relation to

- the proposed construction of the pipeline to which the application relates,
- d) the pipeline to which the application relates will be constructed and commissioned within a period which the Commission shall specify in relation to the application.
  - e) the pipeline to which the application relates will be capable of interoperating in a secure, safe and efficient manner with the natural gas system,
  - f) the applicant is a fit and proper person to be granted a consent and has the financial capacity and technical skills to carry out the activities to which the application relates and to comply with the consent, if granted, and
  - g) the applicant will be capable of paying any levy charged by the Commission.

L.S.

GIVEN under my hand,

4 June, 2002.

JOE JACOB, T.D.

Minister of State at the

Department of Public  
Enterprise

#### Explanatory Note

(This note is not a part of the Instrument and does not purpose to be a legal interpretation)

These regulations set out the criteria in accordance with an application for consent to construct or upgrade a pipeline may be determined by the Commission for Energy Regulation.

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***Kilcolgan Residents Association  
Safety before LNG***

*Protecting the Shannon Estuary and*

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Web: [www.safetybeforelng.com](http://www.safetybeforelng.com)

17 October 2008

**KILCOLGAN RESIDENTS ASSOCIATION**

**&**

**SAFETY BEFORE LNG**

**Submission on application by Shannon LNG for consent from the Commission for Energy Regulation to construct a natural gas pipeline under Section 39A of the Gas Act, 1976, as amended, from Kilcolgan, County Kerry to Foynes, County Limerick**

17 October 2008

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

By Email only to: info@cer.ie

Re: Application by Shannon LNG for consent to construct a pipeline under Section 39A of the Gas Act, 1976, as amended.

Dear Sir / Madam,

The Kicolgan Residents Association represents nearby residents of the proposed LNG regasification terminal and people with close family and economic ties to the area.

The 'Safety Before LNG' group represents people from both Kilcolgan and the wider community and is advocating responsible strategic siting of LNG terminals in areas which do not put people's health and safety in danger.

We are hereby formally objecting to any consent being given by the CER to Shannon LNG to construct a pipeline under Section 39A of the Gas Act, 1976, as amended, in its entirety, on health, safety, environmental and strategic planning grounds. We believe that the statutory bodies have dealt illegally and inadequately with the issues we have raised to date and believe that it would also, therefore, be inappropriate and illegal for the CER to accord any permits until our issues have been dealt with in an acceptable and adequate manner.

Please consider the following issues we are now raising:

1. Please consider all the issues we raised in our submission to An Bord Pleanála on October 7<sup>th</sup> 2008<sup>1</sup> against the Shannon LNG pipeline.
2. Doctor Mary Kelly, director of the Environmental Protection Agency, speaking at the launch of the agency's fourth report – "2008 Ireland's Environment" - in Dublin, on October 8<sup>th</sup>, 2008, stated  
*"In addition, Strategic Environmental Assessments (SEAs) would have to be imposed on all major projects, while the State must comply with EU environmental legislation".*<sup>2</sup>

We are now requesting that an SEA be therefore completed before any consents are even considered by the CER.

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<sup>1</sup> See CER Appendix 1: KRA and Safety Before LNG submission to An Bord Pleanála on Shannon LNG pipeline and compulsory acquisition order reference GA0003 and DA0003 – October 7<sup>th</sup> 2008

<sup>2</sup> See "Irish Times" Thursday October 9, 2008 page 7

3. Please consider the KRA submission on the Draft Heads of Petroleum Exploration and Extraction (safety) Bill, 2007<sup>3</sup>.
4. Please consider the Kilcolgan Resident Association's complaint to the Office of the Director of Corporate Enforcement on October 15, 2008 on a possible failure by the Auditor to comply with statutory obligations.<sup>4</sup> In summary, our complaint is that, in our opinion, the accounts of Shannon LNG Limited do not give a true and fair view of the state of affairs of the company.
5. We believe that the statutory criteria for the determination of consents under Section 39A of the Gas Act 1976, as amended<sup>5</sup> are not complied with:
  - a. Section 2(a) states:

*“if it grants the consent, no activity carried out under it will adversely affect the safety and security of the natural gas systems”.*

The developer is a foreign operator owned by a company registered in the Cayman Islands. We are of the opinion that the CER should impose a “use it or lose it” condition on any consent given. Furthermore, as highlighted by us in the case of “O’Mahony v. An Bord Pleanála and Ors 2008/598 JR”<sup>6</sup> and “Friends of the Irish Environment Limited v. An Bord Pleanála and Ors 2008/597 JR”, the Health and Safety Authority have not dealt with all the safety aspects of this project and no one statutory body has given an overall safety view of this project e.g. no Marine Risk Assessment of an LNG spill on water was completed before the HSA gave its advice to An Bord Pleanála that it did not advise against the project. In addition, no independent safety assessment has been carried out on the proposed pipeline. We believe that failure by the CER to address these concerns would amount to an illegal and inadequate consent being given by the CER.

- b. Section 2(b) states:

*“the applicant will comply with any code of operations in so far as it is applicable to the applicant and, at the relevant times, will have the capability of doing so”*

In our opinion, the developer does not seem willing to comply with all current codes of operations as can be seen in its submission to the CER Consultation on “A Natural

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<sup>3</sup> See CER Appendix 2: KRA submission on the Draft Heads of Petroleum Exploration and Extraction (Safety) Bill, 2007 – April 28<sup>th</sup>, 2008

<sup>4</sup> See CER Appendix 3: Kilcolgan Resident Association's complaint to the Office of the Director of Corporate Enforcement on October 15, 2008 on a possible failure by the Auditor to comply with statutory obligations

<sup>5</sup> See STATUTORY INSTRUMENT No. 264 of 2002 “**REGULATIONS Entitled** Gas (Interim)(Regulation) Act 2002 (Criteria for Determination of Consents) Regulations 2002”

<sup>6</sup> <http://highcourtsearch.courts.ie/hcslive/cslogin>



Gas Safety Regulatory Framework for Ireland – Proposed Vision” (Framework) on September 13, 2007.<sup>7</sup>

c. Section 2(c) states:

*“the applicant has complied with the requirements of section 40A (as amended by section 12(1)(c) of the Gas (Interim)(Regulation) Act 2001) of the Gas Act 1976 in relation to the proposed construction of the pipeline to which the application relates”*

We disagree strongly that this section is complied with. Article 40 (1)(c) states:

*“An environmental impact statement shall contain the information for the time being specified under Article 25 of the European Communities (Environmental Impact Assessment) Regulations, 1989, or under any provision amending or replacing the said Article 25”.*

Article 25 states:

*“An environmental impact statement for the purposes of these Regulations or of any enactment as amended or adapted by these Regulations shall contain the information specified in paragraph 2 of the Second Schedule and may also contain the information specified in paragraph 3 of that Schedule.”*

The second schedule states:

***“INFORMATION TO BE CONTAINED IN AN ENVIRONMENTAL IMPACT STATEMENT***

1. *An environmental impact statement shall contain the information specified in paragraph 2 (referred to in this Schedule as "the specified information").*
2. *The specified information is—*
  - a. *a description of the development proposed, comprising information about the site and the design and size or scale of the development;*
  - b. *the data necessary to identify and assess the main effects which that development is likely to have on the environment;*
  - c. *a description of the likely significant effects, direct and indirect, on the environment of the development, explained by reference to its possible impact on—*
    - human beings;*
    - flora;*
    - fauna;*
    - soil;*
    - water;*
    - air;*
    - climate;*

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<sup>7</sup> See CER Appendix 4 – Shannon LNG submission on “A Natural Gas Safety Regulatory Framework for Ireland – Proposed Vision” – September 13, 2007

- the landscape;*
  - the inter-action between any of the foregoing;*
  - material assets;*
  - the cultural heritage;*
  - d. *where significant adverse effects are identified with respect to any of the foregoing, a description of the measures envisaged in order to avoid, reduce or remedy those effects; and*
  - e. *a summary in non-technical language of the information specified above.*
3. *An environmental impact statement may include, by way of explanation or amplification of any specified information, further information on any of the following matters—*
- a. *the physical characteristics of the proposed development, and the land-use requirements during the construction and operational phases;*
  - b. *the main characteristics of the production processes proposed, including the nature and quantity of the materials to be used;*
  - c. *the estimated type and quantity of expected residues and emissions (including pollutants of surface water and groundwater, air, soil and substrata, noise, vibration, light, heat and radiation) resulting from the proposed development when in operation;*
  - d. *(in outline) the main alternatives (if any) studied by the applicant, appellant or authority and an indication of the main reasons for choosing the development proposed, taking into account the environmental effects;*
  - e. *the likely significant direct and indirect effects on the environment of the development proposed which may result from—*
    - i. *the use of natural resources;*
    - ii. *the emission of pollutants, the creation of nuisances, and the elimination of waste;*
  - f. *the forecasting methods used to assess any effects on the environment about which information is given under subparagraph (e); and*
  - g. *any difficulties, such as technical deficiencies or lack of knowledge, encountered in compiling any specified information.*
- In paragraph (e), "effects" includes secondary, cumulative, short, medium and long term, permanent, temporary, positive and negative effects."*

Second Schedule 2(d) is not complied with because the EIS did not consider any Marine QRA taking into account the risks and consequences of an LNG spill on water. The EIS of the pipeline cannot be considered in isolation from that of the LNG terminal. The HSA is not giving any technical advice to An Bord Pleanála on the part of the pipeline within the Seveso II establishment because it considers that it has already done this for the EIS of the LNG terminal. However, at that stage the pipeline route was not known. We also believe that it is illegal for the CER to accord consent

while no Strategic Environmental Assessment has been undertaken of the entire project as this is obliged by Second Schedule 2(b) and 2(c). A project-specific EIS cannot address the issues which are obliged of 2(b) and 2(c), which an SEA can.

d. Section 2(d) states:

*“the pipeline to which the application relates will be constructed and commissioned within a period which the Commission shall specify in relation to the application”*

The Pipeline, in our opinion, represents project splitting and an attempt to obtain implicit retention for planning permissions already obtained by the developer. Following the recent European Court of Justice ruling on July 3<sup>rd</sup>, 2008 in case C-215/06 (Commission of the European Communities v Ireland)<sup>8</sup>, we believe that a refusal by the CER to address the questions raised by this ECJ ruling would amount to an illegal and inadequate consent process by it.

e. Section 2(e) states:

*“the pipeline to which the application relates will be capable of interoperating in a secure, safe and efficient manner with the natural gas system”*

We are concerned about the different origins of the LNG that will enter the system and question if the varying composition of the LNG will have a safety impact. Also, as outlined in point (a) above, no single statutory body has given an overall view of the safety aspect of this project and no independent safety assessment has been carried out on the proposed pipeline.

f. Section 2(f) states:

*“the applicant is a fit and proper person to be granted a consent and has the financial capacity and technical skills to carry out the activities to which the application relates and to comply with the consent, if granted”*

We have submitted a complaint to the Office of the Director of Corporate Enforcement outlining our fears that the accounts of Shannon LNG Limited do not give a true and fair view of the state of affairs of the company<sup>9</sup> which could mean that the applicant may not have the financial capacity required of it by this section 2(f)

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<sup>8</sup> See [http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=EN&Submit=Rechercher\\$docrequire=alldocs&numaff=C-215/06&datefs=&datefe=&nomusuel=&domaine=&m](http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=EN&Submit=Rechercher$docrequire=alldocs&numaff=C-215/06&datefs=&datefe=&nomusuel=&domaine=&m) and See CER Appendix 1: KRA and Safety Before LNG submission to An Bord Pleanála on Shannon LNG pipeline and compulsory acquisition order reference GA0003 and DA0003 – October 7<sup>th</sup> 2008

<sup>9</sup> See CER Appendix 3: Kilcolgan Resident Association’s complaint to the Office of the Director of Corporate Enforcement on October 15, 2008 on a possible failure by the Auditor to comply with statutory obligations

g. Section 2(g) states:

*“the applicant will be capable of paying any levy charged by the Commission”*

We have submitted a complaint to the Office of the Director of Corporate Enforcement outlining our fears that the accounts of Shannon LNG Limited do not give a true and fair view of the state of affairs of the company<sup>10</sup> which could mean that the applicant may not have the financial capacity required of it by this section 2(g).

6. According to media reports, an internal CER memo has stated that gas prices will soar by about 15% if Corrib and Shannon LNG start production. The Sunday Independent reported it as follows on August 24<sup>th</sup>, 2008<sup>11</sup>:

### **That's gas -- bills up 15% after Corrib field opens**

**Less fuel imported but higher costs mean prices will soar again**

*By MAEVE SHEEHAN*

*Sunday August 24 2008*

*ONCE gas production comes on stream from the Corrib Gas fields off Belmullet, Co Mayo, next year the price of gas to Irish users is set to shoot up by 15 per cent.*

*Consumers are already facing a 20 per cent increase in gas bills from September. However, an internal memo from the energy regulator warns that the price will soar even higher once production starts at the Corrib gas fields next winter.*

*The memo attributes the rising cost of gas to the declining use of two inter-connectors linking the UK's gas supplies with Ireland.*

*At the moment, Ireland gets 90 per cent of its gas from the UK. Once production starts at Corrib and a second producer, Shannon LNG, starts distributing gas from 2012, less gas will be imported.*

*The inter-connectors, which must meet fixed costs, will consequently become more expensive. The energy regulator is currently considering whether the consumer should shoulder the burden of that extra cost -- which is estimated to represent a 15 per cent rise in the price of gas.*

*Consumers currently foot the bill for the inter-connectors, with the price built into the twice-monthly gas bills. Bord Gais invested in two inter-connectors in Scotland to import gas from the UK when Irish gas supplies started running out. The company passed the cost on to its customers.*

*A memo, circulated in July, sets out several options under consideration.*

*The first is a "do nothing" scenario, in which the price of gas would increase dramatically and consumers would shoulder the increased gas prices. A second option is for the*

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<sup>10</sup> See CER Appendix 3: Kilcolgan Resident Association's complaint to the Office of the Director of Corporate Enforcement on October 15, 2008 on a possible failure by the Auditor to comply with statutory obligations

<sup>11</sup> See Sunday Independent August 24<sup>th</sup> 2008 c.f. <http://www.independent.ie/national-news/thats-gas--bills-up-15-after-corrib-field-opens-1462172.html>

*Government to cover the additional cost to Bord Gais, thereby protecting the consumer from an immediate price rise.*

*Analysis and comment PAGES 20, 21, 23*

*A third is to allow the gas suppliers to share the extra cost between them. Gas suppliers are likely to resist this option, however.*

*Ireland is anxious to decrease dependence on UK gas supplies by generating its own supply. That means encouraging production in the Irish market. Charging gas suppliers for the cost of the inter-connector could be seen as a deterrent.*

*The supply of indigenous gas is unlikely to mean cheaper prices for consumers. Shell and Statoil are scheduled to begin producing gas from the Corrib field off the west coast in 2009. Shannon LNG is due to come on stream in 2012. That company will ship liquefied gas to Ireland and restore to its gaseous state for distribution on the Irish network.*

*According to the memo, Corrib and Shannon will not provide enough gas to supply the Irish market so gas will still be imported from the UK and priced at world market levels.*

*The indigenous gas producers are likely to set their prices at those market level, even though their costs may be lower.*

*Simon Coveney, the Fine Gael spokesman on energy, said the regulator's job is ultimately to protect the consumer and businesses by ensuring that gas is provided as cheaply as possible.*

*"The onus is on the regulator to ensure there is a pricing structure in place so that Ireland's consumers benefit from Ireland producing it's own gas and not having the extra costs associated with importing gas," he said.*

*"What is required is a new formula for regulating gas prices in Ireland that can differentiate between imported gas and gas produced off the coast of Ireland."*

We await your feedback.

Yours faithfully,

Johnny McElligott  
PRO Kilcolgan Residents Association.

**CER APPENDIX 1:**

**KRA and Safety Before LNG submission to An Bord Pleanála on Shannon LNG pipeline and compulsory acquisition order reference GA0003 and DA0003 – October 7<sup>th</sup> 2008**

Attached in a separate file.

**CER APPENDIX 2:**

**KRA submission on the Draft Heads of Petroleum Exploration and Extraction (Safety) Bill, 2007 – April 28<sup>th</sup>, 2008**

## **CER APPENDIX 3:**

### **KRA Complaint to the Office of the Director of Corporate Enforcement on possible failure by the Auditor to comply with statutory obligations.**



**Kilcolgan Residents  
Association  
Safety before LNG**

Kilcolgan Residents  
Association  
c/o Island View  
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Listowel  
County Kerry

Telephone: +353-87-2804474  
Email:  
safetybeforelng@hotmail.com  
Web: www.safetybeforelng.com

15 October 2008

Office of the Director of Corporate Enforcement,  
16 Parnell Square,  
Dublin 1.  
By Email only to: [info@odce.ie](mailto:info@odce.ie)

Re: Complaint on possible failure by Auditor to comply with statutory obligations.

Dear Sir /Madam

We are hereby formally complaining about the auditing of the accounts of Shannon LNG Limited, submitted to the Companies Registration Office on October 6<sup>th</sup> 2008 for year ended 31 December 2007.

The auditors are Ernst and Young, Chartered Accountants, Barrington House, Barrington Street, Limerick.

We ask you to examine the following points:

1. The Director's Report is signed by directors Patrick Power and Gordon Shearer, but it is not dated. The approval date of the financial statements in point 15 is not entered either. These accounts cannot therefore be reviewed properly as there is information material to the understanding of the accounts omitted.
2. The Auditor's Report is neither signed nor dated. These accounts cannot therefore be reviewed properly.

3. The accounts state in the notes<sup>12</sup> that the continuation as a going concern is dependent on, among other factors, obtaining funding from Hess LNG. However, no mention has been made of any foreign currency exposure and the fact that the value of the same loan agreement is 10 million Euros for year ended 31 December 2006, whereas it is 30 million Euros the following year. This is a material loan in the context of the accounts. Is this the same loan agreement?

4. No mention has been made anywhere in the accounts of the actual cost of the land that will accrue if the option to purchase is actually exercised. Our view is that these 281 acres are worth between 100,000 to 300,000 Euros an acre because it is now zoned Industrial – giving the site a value, in our opinion of between 28.1 million and 84.3 million Euros. This would mean that the 30 million Euros of a loan would not even cover the purchase price of the land and this information is material to the accounts but has not been mentioned anywhere. This is material to the understanding of the accounts.

5. Note 1 (c) states that the project site is in “Shannon” but our understanding is that it is in Tarbert, County Kerry. Is this a mistake?

6. The fact that Shannon LNG Limited became a single-member company on June 24, 2008, the owner being HESS LNG LIMITED, a company registered in the Cayman Islands is not mentioned in the accounts.

7. The standard note for contingencies reads the same for year ended 31 December 2007 as it did for the previous year ended 31 December 2006. However,

a. No reference is made to the rights and responsibilities attaching to the option agreement of April 19th, 2006 (to purchase 281 acres of land at Kilcolgan, Tarbert, County Kerry for the purpose of attempting to build an LNG terminal) of which the auditors at the time of preparing their report must have been aware; The Shannon Foynes Port Company described the development as follows: “*The development site is located immediately to west of Ardmore Point. It is on State (Shannon Airport Development Co) owned land and is designated for development with a four year option. Shannon LNG is the developer. The company is required to achieve planning permission within 2 years.*”<sup>13</sup> This four-year option and requirement to obtain planning within 2 years are material facts never mentioned in the accounts.

b. The accounts do not give a true and fair view of the contingencies that the company has and therefore of the state of the company’s affairs. The accounts do not state if there are any further payments payable under the option agreement. Up to 31 December 2006, the company had paid 493,000 euros under the term of the option agreement<sup>14</sup>. Up to 31 December 2007, the company had paid

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<sup>12</sup> Shannon LNG Limited, Directors Report and Financial Statements for year ended 31 December 2007 submitted to the CRO on 6 October 2008 page 9

<sup>13</sup> [http://www.sfpc.ie/LNG\\_01\\_Shannon-Issue%201.pdf](http://www.sfpc.ie/LNG_01_Shannon-Issue%201.pdf) Section 3.1 page 22

<sup>14</sup> Shannon LNG Limited, Directors Report and Financial Statements for year ended 31 December 2006 submitted to the CRO on 28 September 2007 page 3



1,233,000 euros under the term of the same option agreement<sup>15</sup>. No mention was made of this 740,000 euros creditor in the accounts of year ended 31 December 2006, even though they were a definitely-known creditor at that time.

c. The accounts mention that on 28 March, 2008 An Bord Pleanála granted the company planning permission to construct an LNG terminal in County Kerry<sup>16</sup>. However, they do not mention the equally important fact that less than 8 weeks later, this decision was being challenged in a highly-publicised judicial review to the High Court. This challenge will subject the company to not insignificant legal costs which have not been mentioned in the accounts either and which will have a definite material effect on whether the company will ever operate in the foreseeable future. We ask if the fact that the accounts are not dated is an attempt to hide information.

d. The planning permission has also been referred to the petitions committee of the European parliament and this fact has also not been mentioned in the accounts.

The Irish Times noted the following on June 17<sup>th</sup> 2008:<sup>17</sup>

### **“Tarbert challenge moves step closer**

*APPLICATIONS BY an environmental group and a local man for permission to bring proceedings challenging the proposed development of a €500 million gas terminal near Tarbert in Co Kerry will be heard at the Commercial Court later this year.*

*The proceedings were admitted to the Commercial Court list yesterday by Mr Justice Peter Kelly who directed that the applications for leave will be heard on October 14th. He said if leave was granted, the full trial of the actions would proceed immediately afterwards.*

*Proceedings have been brought by Friends of the Irish Environment Ltd (FIE) and by Raymond O'Mahony, a welder and member of the Kilcolgan Residents Association of Kilcolgan, Tarbert. Both are objecting to the proposed €500 million development by Shannon LNG Ltd of a liquid natural gas terminal at Kilcolgan, Tarbert.*

*Mr O'Mahony says he is extremely concerned about the safety of himself and his family and at how the Health and Safety Authority (HSA) has dealt with issues concerning the proposed terminal.*

*Both sets of proceedings were initiated in the High Court earlier this year and were admitted to the Commercial Court list, which fast-tracks commercial disputes, on the application of Shannon LNG.*

*Permission for the development was granted by An Bord Pleanála on March 31st.*

**Shannon LNG claims it had spent €15 million related to the proposed development by last April and that any delay in moving forward with the development will have significant commercial consequences. It is aiming to have the facility operational by 2012 or 2013.**

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<sup>15</sup> Shannon LNG Limited, Directors Report and Financial Statements for year ended 31 December 2007 submitted to the CRO on 6 October 2008 page 3

<sup>16</sup> Shannon LNG Limited, Directors Report and Financial Statements for year ended 31 December 2007 submitted to the CRO on 6 October 2008 page 3

<sup>17</sup> <http://www.ireland.com/newspaper/ireland/2008/0617/1213646602803.html>

*In its judicial review application, FIE claims the HSA failed to give proper technical advice on the control of major accident hazards relating to the proposed development as required by domestic and European law. It also claims the State failed to properly transpose four relevant EU directives. It claims the HSA decided that major accident regulations applied to the proposed development but that the HSA's consequent technical advice on the development was inadequate, amounting only to "a simple statement" that the HSE did not advise against the proposed development. FIE also claims there is no national land use policy governing the proposed development and that the Tarbert site is on a special area of conservation, beside a proposed national heritage area and special protection area and close to areas frequented by the public. Mr O'Mahony is seeking declarations that the HSA failed to give proper technical advice concerning the proposed development and failed to transpose properly a number of relevant EU directives. MARY CAROLAN © Irish Times 17.06.08”*

The question we ask now is: did Ernst and Young audit these accounts at all as this information was in the public media and they must have been aware of it?

Our fear is that the submission of these accounts was impacted by the deadline for public submissions on the planning application for a 26 kilometre pipeline from the proposed LNG terminal of October 7<sup>th</sup>, 2008, the date of the commencement of the high court challenge of October 14<sup>th</sup> 2008 and the deadline for a submission to the Commission for Energy Regulation for consent to construct a pipeline of October 17<sup>th</sup> 2008.

Our fear is also that the aim in these accounts has been to hide the purchase price of the site from public scrutiny.

If these accounts are relied upon by third parties it is clear that the omission of material information could present a view that may not be a true and fair view of the company's affairs.

In summary, our complaint is that the accounts do not give a true and fair view of the state of affairs of the company. Our complaint, if accepted as valid, conflicts entirely with the auditor's report which states: *“We planned and performed our audit so as to obtain all the information and explanations which we considered necessary in order to provide us with sufficient evidence to give reasonable assurance that the financial statements are free from material misstatement, whether caused by fraud or other irregularity or error. In forming our opinion we also evaluated the overall adequacy of the presentation of information in the financial statements”*.<sup>18</sup>

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<sup>18</sup> Shannon LNG Limited, Directors Report and Financial Statements for year ended 31 December 2007 submitted to the CRO on 6 October 2008 page 5

We await your feedback.

Yours sincerely,

Johnny McElligott.

P.R.O. Kilcolgan Residents Association.

**CER APPENDIX 4:**

**Shannon LNG submission on “A Natural Gas Safety Regulatory Framework for Ireland – Proposed Vision” – September 13, 2007**



Fitzwilliam Hall,  
25 – 26 Fitzwilliam Place,  
Dublin 2

13 September 2007

Tel: 01 6698557

Mr. Eamonn Murtagh,  
Gas and Electricity Safety Manager,  
Commission for Energy Regulation,  
The Exchange,  
Belgard Square North,  
Tallaght,  
Dublin 24

**Re: CER Consultation on “A Natural Gas Safety Regulatory Framework for Ireland – Proposed Vision” (Framework)**

Dear Eamonn,

On 27 July 2007, the CER published a Consultation Paper entitled “A Natural Gas Safety Regulatory Framework for Ireland – Proposed Vision” (Framework). Shannon LNG has reviewed the Framework and offers the following comments, along the lines proposed by the CER on page 40 of the Framework.

In general we welcome the approach proposed by the CER which places the responsibility for safe operations on the operators of natural gas and LNG facilities. The proposed approach also appears to offer a flexible, experience based approach to regulation, with safety being assured through license conditions rather than through prescriptive safety requirements.

Shannon LNG agrees that it is critical all gas transporters maintain high levels of gas safety and integrity (section 4.2). We also agree that new transporters should comply, where applicable, with existing codes and standards for the operation of transmission systems. However, we would like to seek clarification from the Commission that the commercial part of any Code of Operations developed by a new transporter would not necessarily have to be the same as the BGÉ Code?

The proposed approaches to “Gas Safety Promotion and Public Awareness” and “Gas Safety Reporting” seem reasonable as proposed.

In general, the proposed “Incident Reporting and Investigation Regime” appears reasonable for the most part as proposed. However, there is one area which may need further clarification:

- The interaction between the “Emergency Procedures” as implemented by the Network Emergency Manager (NEM) and the gas suppliers may need some amplification and clarification (page 29). In many instances, gas suppliers may have commercial agreements between themselves and their customers which address, for example, instances of *force majeure* resulting in an unexpected interruption in gas supply. In such circumstances the supplier may have the contractual right to interrupt deliveries to its customer(s) independent of the NEM. It will be important to ensure such arrangements are properly coordinated through the NEM to ensure that commercial arrangements are not disrupted by the actions of the NEM.

The proposed “Audits and Inspection Regime” also appears reasonable for the most part as proposed. However, there are two aspects which may need further clarification:

- It is unclear how ‘new’ or ‘changed’ safety risks (page 32) are to be identified. It appears that these perhaps should follow from major alterations or expansions of facilities, or other identifiable operational considerations (such as uprating pipeline operating pressures), and some clarity in this aspect would be helpful.
- The role of the Gas Safety Officer (page 33) is not clear. In Shannon LNG’s case it is not clear if the Gas Safety Officer could enter the LNG terminal premises and order the company to undertake certain operations which in the Gas Safety Operator’s view are necessary for safety. In this instance, what redress does the company have if it feels the Gas Safety Officer’s orders are inappropriate or even dangerous? If the company follows the erroneous prescriptions of the Gas Safety Officer, who will be held liable for any damages (physical and monetary) arising as a result of the Gas Safety Officer giving poor, or incorrect orders? It appears the intent of these provisions may be intended to be more directed towards the physical protection of small end consumers, but if this is the case the proposed regulations might benefit from some additional clarity in this regard.

As to the “Implementation Programme”, Shannon LNG notes that the implementation schedule does not presently refer specifically to LNG, but the question of when the safety case assessment process for LNG is to be completed appears unanswered. Perhaps the schedule could make specific reference to the expected timetable for the LNG project. In that respect, Shannon LNG also recognizes that the CER has drawn on experience in the UK and Victoria to compare safety approaches.

The other minor comments on the text are detailed below:

- Section 5.2 (page 19) describes the risk of explosion from a large scale loss of containment at either an LNG or storage facility. Shannon LNG does not believe that explosions are a credible event at either type of facility, since by definition, loss of containment will also leave no confined space where gas could build up to an explosive level. Absent confinement, there cannot be an explosion.
- Section 5.3 (page 19) addresses gas quality. From the discussion in 5.3 it is not clear to the reader that an acceptable Wobbe index is usually expressed as a range, generally plus or minus 4% around a mid-point value. As presently written it could be read that there is one single Wobbe index number which would be acceptable. Also, values of Wobbe index outside the range may not represent a *safety* risk, but rather a *quality* risk, such as the presence of excessive sooting, flame lift on burners, etc. which are not acceptable to customers, but do not *per se* represent safety risks.

- Section 6.5 (page 31) states that “As previously described in Section 2.2.2, Bord Gáis Networks is currently required to investigate natural gas-related incidents and report to the Commission on the outcomes of the investigation.” We would appreciate if the Commission could clarify whether Bord Gáis Networks will continue to investigate natural gas incidents, where the incident relates to infrastructure belonging to another natural gas undertaking.

Thank you for providing us with the opportunity to participate in this consultation and we look forward to meeting with you to discuss our response.

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Martin Regan (on behalf of Paddy Power),  
Managing Director,  
Shannon LNG Ltd.