

**Rory Kelleedy**

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**From:** Safety Before LNG SLNG <safetybeforelng@hotmail.com>  
**Sent:** Friday 4 August 2023 12:39  
**To:** Bord; Appeals2  
**Cc:** planning@limerick.ie; enforcement@Limerick.ie  
**Subject:** Re: ABP-317419-23 and EC33/23 - Section 5 Declaration on Shannon LNG Pipeline  
**Attachments:** Aug 4th 2023 ABP-317419-23 and EC33\_23 - Section 5 Declaration on Shannon LNG Pipeline - Final.pdf

**Follow Up Flag:** Follow up  
**Flag Status:** Completed

An Bord Pleanála  
64 Marlborough Street,  
Dublin 1  
bord@pleanala.ie and appeals@pleanala.ie

Cc. By Email to Limerick City & County Council, Planning and Environmental Services, City & County Council Offices, Dooradoyle Road, Limerick. planning@limerick.ie and enforcement@Limerick.ie  
Re: ABP-317419-23 and EC33/23 - Section 5 Declaration on Shannon LNG Pipeline.

Dear Sir/Madam,

The web links were missing in the generated pdf I sent you in the previous email.

Please find attached the updated document (Aug 4th 2023 ABP-317419-23 and EC33\_23 - Section 5 Declaration on Shannon LNG Pipeline - Final) with the links fixed for ease of reading in electronic format.

Yours faithfully,

John McElligott  
Safety Before LNG,  
Island View,  
Convent Street,  
Listowel,  
County Kerry V31 PW61.  
Tel: 087 2804474

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**From:** Safety Before LNG SLNG  
**Sent:** Friday 4 August 2023 10:56  
**To:** An Bord Pleanala <bord@pleanala.ie>; Appeals2 <appeals@pleanala.ie>  
**Cc:** planning@limerick.ie <planning@limerick.ie>; enforcement@Limerick.ie <enforcement@Limerick.ie>  
**Subject:** ABP-317419-23 and EC33/23 - Section 5 Declaration on Shannon LNG Pipeline

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Re: ABP-317419-23 and EC33/23 - Section 5 Declaration on Shannon LNG Pipeline.

Dear Sir/Madam,

Please find attached the requested response to the submission dated 19th July 2023 from McCann Fitzgerald LLP to An Bord Pleanála and Limerick City and County Council on behalf of New Fortress Energy and Shannon LNG.

A paper copy of this document has been posted to An Bord Pleanála by express post from County Kerry today.

Yours faithfully,

John McElligott  
Safety Before LNG,  
Island View,  
Convent Street,  
Listowel,  
County Kerry V31 PW61.  
Tel: 087 2804474



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*Protecting the Shannon Estuary and its people*

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4 August 2023.

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Re: [ABP-317419-23](#) and EC33/23 - Section 5 Declaration on Shannon LNG Pipeline.

Dear Sir / Madam,

Thank you for your July 20th request to me to make a submission, in the interest of justice, in relation to the [submission](#)<sup>1</sup> dated 19th July 2023 from McCann Fitzgerald LLP to An Bord Pleanála and Limerick City and County Council on behalf of New Fortress Energy and Shannon LNG.

Shannon LNG received planning permission for a 26-kilometre pipeline from Foynes, County Limerick to Tarbert, County Kerry in 2009. There was no condition of duration in the planning consent given. However, planning consent was given based on the planning application documents submitted by Shannon LNG in 2008 and in these documents - in the cover letter in fact - Shannon LNG stated that it was only "*seeking planning permission for this development for a period of 10 years*". In simple terms, Shannon LNG got what it applied for.

I initially submitted this section 5 application to Limerick City and County Council before referring it to An Bord Pleanála. The local authority informed me that "*the Planning Authority has written to An Bord Pleanála to clarify the length of permission*" of the Shannon LNG pipeline and that it was "*not in a position to make a decision on the above application until such time as written confirmation has been received from An Bord Pleanála*".

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Shannon LNG, through McCann Fitzgearld LLP, is claiming that “the Board’s jurisdiction under section 5 does not extend to determining whether a particular development is unauthorised or whether a particular permission is extant” and that it was “surprised” that Limerick City and County Council had written to An Bord Pleanála seeking clarification on the length of the pipeline approval in order to make a decision under section 5.

I submit the following in response to McCann Fitzgerald LLP’s letter to An Bord Pleanála.

**The duration of the pipeline approval**

1. Shannon LNG is relying on its claim that a 10-year planning application was referred to nowhere in the pipeline planning documents. This is blatantly false because Shannon LNG clearly confirmed in its 2008 [schedule](#)<sup>2</sup> of planning application documentation for the Shannon LNG pipeline that the Cover Letter itself is specifically included as one of the pipeline planning documents.

**Shannon Pipeline: Schedule of Planning Application Documentation under s.182C**

<b>Document</b>
Cover Letter
Schedule of Planning Application Documentation (this document)
Application Form
Details of Plans/Drawings submitted (as required under Item 6 of Application Form)
Letters from Landowners of AGI sites (as required under Item 7 of Application Form)
Public Newspaper Notices (as required under Item 17 of Application Form)
Site Notice (as required under Item 17 of Application Form)
Schedule of Other Pre-application Consultations (as required under Item 18 of Application Form)
Schedule of Prescribed Bodies to whom notification of the making of the application has been sent (as required under Item 18 of Application Form) plus Sample of Notice issued to Prescribed Bodies, and copy of cover letters and transmittal forms
Copy of letters to Garda Stations
Certificate from Commission for Energy Regulation (Bona Fides)
Pipeline Data Sheet
Application Fee
Planning Drawings (in separate volume)
Environmental Impact Statement (in separate volumes)

2. McCann Fitzgerald claims that *"there is no suggestion, anywhere, that the pipeline work would be completed before 2019"*. However, this is also entirely false because Shannon LNG clearly stated in the EIS Volume 1, non-technical summary, that *"the pipeline will be constructed over one summer season. It is currently intended that construction works will commence in March 2012, and be completed by November 2012"*. This completion date of November 2012 was repeated in Volume 2.
3. McCann Fitzgerald tries to argue that the request for a 10-year planning permission was general and not specific. This does not hold up to scrutiny because what was stated in the cover letter application document was very specific as it stated: **"Shannon LNG is seeking planning permission for this development for a period of 10 years"**. Shannon LNG got what it applied for. The Board did not have to put in a specific condition of duration because Shannon LNG had actually requested a specific duration. In other words, the 10-year permission request was both a specific request within one of the official planning document *"particulars"* and was a specific request to the planning authority of what duration of planning permission it was requesting.
4. McCann Fitzgerald relies heavily on Court rulings that *"there are circumstances in which the grant of a permanent authorisation may be appropriate"*. None of the cases quoted by McCann Fitzgerald, however, support an absolute right to an indefinite permission. The elephant in the room for this proposed development is that it was originally given planning permission in 2009, years before the Climate Action and Low Carbon Development Act was enacted in 2015 and before Ireland declared a Climate and Biodiversity Emergency in 2019.

#### The scope of Section 5

5. Brendan Slattery of McCann Fitzgerald LLP has omitted to consider that a section 5 referral not only requires the Board to assess if works are development and/or exempted development, but that **it also obliges the Board to determine if the development requires an environmental impact assessment.**
6. Subsection 7A of Section 5 of the Planning and Development Act, as amended, states:

*"A planning authority or the Board, as the case may be, shall, in respect of a development or proposed development specified in Part 2 of Schedule 5 to the Planning and Development Regulations 2001, specify in its declaration or decision, as the case may be, whether the development or proposed development identified in the request under subsection (1) or in the referral under subsection (3) or (4), as the case may be, would be likely to have significant effects on the environment by virtue, at the least, of the nature, size or location of such development and require an environmental impact assessment."*

The types of development which require the Board to determine if an environmental impact assessment (EIA) outlined in Part 2 of Schedule 5 to the [Planning and Development Regulations 2001](#)<sup>3</sup> include “**Industrial installations for carrying gas, steam and hot water with a potential heat output of 300 megawatts or more**” (3b) and “**Gas pipelines and associated installations not included in Part 1 of this Schedule, where the design pressure would exceed 16 bar and the length of new pipeline would exceed 40 kilometres**” (10i).

7. On April 5th, 2023, the State’s national grid operator EirGrid [published](#)<sup>4</sup> the provisional results of the latest capacity auction for the Single Electricity Market which indicated that Shannon LNG had won a provisional agreement for two gas-fired generators capable of generating 353 megawatts (MW) of electricity in total from EirGrid.
8. On June 8th, 2023, Mr. John Melvin, Director of Security of Supply and Wholesale Commission for Regulation of Utilities (CRU), [confirmed](#)<sup>5</sup> very controversially (letter attached) that “*The CRU had further engagement with the project developer in order to provide additional insight into the project and the deliverability of same. The CRU received confirmation from the project developer that **the generation project was not contingent on the delivery of any LNG import facility, and that the generation projects would proceed to be developed, should they be successful in the auction, in the absence of any future development of an LNG import facility. The project developer also addressed concerns relating to the processes associated gas pipeline. The Shannon LNG generation project was qualified to participate in the March T-4 auction, and was successful in that auction***”.
9. The proposed direction of the pipeline has now been changed by the developer without any public consultation on the matter but rather via private assurances given by Shannon LNG to the CRU. This would seem highly unorthodox. The original EIA for the Shannon LNG pipeline application in 2008 stated: “*The Shannon Pipeline is required to provide access to the Irish gas network for the Shannon LNG terminal. It will allow Shannon LNG to supply gas from additional diverse sources to the Irish market*”. From Director Melvin’s confirmation that the developer now intends to still proceed with a power station in Tarbert even if no LNG terminal is built then the only reasonable alternative way such a power station could be supplied with gas would be through the pipeline. This is a completely different project to the one proposed in 2008. As the 26-kilometre, 98 bar pipeline and associated works would be used, not to supply gas to

<sup>3</sup> <https://www.irishstatutebook.ie/eli/2001/si/600/made/en/print#sched5>

<sup>4</sup> <https://www.eirgridgroup.com/newsroom/eirgrid-group-publishes-t/index.xml>

<sup>5</sup> [https://drive.google.com/file/d/1oFc8myQcw10BgGEx79kWgiYvhOgEzmYq/view?usp=drive\\_link](https://drive.google.com/file/d/1oFc8myQcw10BgGEx79kWgiYvhOgEzmYq/view?usp=drive_link)

the Irish gas market, but to be exclusively used for carrying gas from the Irish gas market to a 353 Megawatt power station in Tarbert with a heat output greater than 300 Megawatts, then the development would qualify as one which the Board “shall” determine in its decision if an environmental impact assessment is required for this project.

10. In the context of the obligations in subsection 7A of section 5, it is now quite clear that it was highly reasonable for the local authority, Limerick City and County Council, to have asked the Board to specifically address the pipeline expiry question in order to be able to give its section 5 decision.
11. I have asked a valid question in my referral. How far the Board investigates this is not a matter for the developer to limit because section 5 obliges the Board to issue “*the main reasons and considerations on which its decision is based*”.
12. The Board requested my submission in the interest of justice. The principle of sincere cooperation of Article 4 of the Treaty on European Union now obliges An Bord Pleanála to ensure that the principle of effectiveness of European law must prevail over the equivalence of procedural autonomy. McCann Fitzgerald even acknowledges that “*the Board may reformulate the question asked*”.

#### **Other matters raised by McCann Fitzgerald**

13. McCann Fitzgerald refers in its response to a “*fresh application for permission*” by Shannon LNG for a floating storage and regasification unit (refer ABP-311233-21) which remains pending at An Bord Pleanála. However, [irregular payments](#)<sup>6</sup> of millions of euros paid by Shannon LNG to Kerry County Council raise very serious ethical questions surrounding this planning application. Kerry County Council requested and was paid over €2.4 million by Shannon LNG after its planning permission for an onshore LNG terminal [expired](#)<sup>7</sup> in 2018 and before it lodged a new planning application for a floating LNG terminal and 600 MW Power Station in Tarbert in 2021. We are extremely concerned about the implications and consequences of Shannon LNG paying millions of euros to Kerry County Council at a point in time when it was not obliged to do so and before it lodged a new planning application. Fine Gael Councillor Jim Finucane told the Irish Independent Newspaper that these payments were “[good faith](#)”<sup>8</sup> contributions made by a company that was committed to the area.

6

<http://safetybeforelng.ie/pressreleases/pressrelease20221122ControversialShannonLNGMillionsPaidToKerryCountyCouncil.html>

7 <https://archive.pleanala.ie/en-ie/case/PA0002>

8

<https://www.independent.ie/news/environment/shannon-lng-paid-kerry-county-council-41m-in-relation-to-controversial-gas-project-it-may-never-build-42005737.html>

## Request to initiate Part VIII enforcement against the Shannon LNG pipeline and associated works

### 14. Given -

- a. that numerous serious issues of concern have been raised by this section 5 application,
- b. that Shannon LNG has now vigorously expressed in its McCann Fitzgerald response a claim to an indefinite approval to develop a 26-kilometre pipeline beyond the 10-year planning permission it requested in 2008,
- c. that on March 31st, 2022, Wes Edens, the CEO of New Fortress Energy - the owners of Shannon LNG - in an [open letter](#)<sup>9</sup> to An Taoiseach Micheál Martin, claimed that the Shannon LNG project was “shovel ready” and that “*Planning approval for the 26km gas pipeline to connect to the GNI grid has been secured*”,
- d. that Shannon LNG then [claimed](#)<sup>10</sup> to the Single Electricity Committee (SEM) in November 2022 that it was “*the most advanced CCGT project in development in the country and by the time the auction is held in March 2023 we will have: - planning permission for the 600 MW CCGT - **planning permission for a 26km gas pipeline (as backup to the LNG terminal) with all wayleaves executed - an executed 220 kv connection agreement for 600 MW MEC***”,
- e. that Director John Melvin of the CRU has acknowledged in writing that Shannon LNG confirmed to the CRU that it would still develop a gas-fired power station in Tarbert even if an LNG import terminal is not developed should it be successful in the T4 gas auction. The only reasonable alternative source of gas to LNG in this case would be gas supplied exclusively via the 26-kilometre pipeline which would not be just a “*backup to the LNG terminal*”,
- f. that under Section 9 of the Criminal Justice (Corruption Offences) Act 2018, “*A person who, either directly or indirectly, by himself or herself or with another person, corruptly creates or uses a document, that the person knows or believes to contain a statement which is false or misleading in a material particular, with the intention of inducing another person to do an act in relation to his or her office, employment, position or business to the prejudice of the last-mentioned person or another person shall be guilty of an offence*”, and

<sup>9</sup> <https://drive.google.com/file/d/1epvlsi8Fog2QI-O3IzGY2MyMbqa-qL7n/view?usp=sharing>

<sup>10</sup>

<https://www.semcommittee.com/sites/semc/files/media-files/Shannon%20LNG%20Response%20to%20SEM-22-076.pdf>



g. that An Bord Pleanála was the planning authority of first instance for the Shannon LNG pipeline permission in 2009 located over the 2 different local authority areas of Limerick and Kerry -

I am hereby now making a direct representation in writing to An Bord Pleanála under section 152 of the Planning and Development Act 2000, as amended, that unauthorised development of a 26-kilometre gas pipeline may be carried out by Shannon LNG. I am formally requesting that the Part VIII enforcement process now be initiated by An Bord Pleanála in this matter in parallel to this section 5 referral.

Thank you for your time in dealing with this most urgent matter.

Yours faithfully,  
John McElligott



An Coimisiún  
um Rialáil Fóntas  
Commission for  
Regulation of Utilities

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[www.cru.ie](http://www.cru.ie)

08 June 2023

D/23/12609

Johnny McElligott  
Safety Before LNG  
Island View  
5 Convent Street  
Listowel  
Co. Kerry

Sent by email: [safetybeforelng@hotmail.com](mailto:safetybeforelng@hotmail.com)

**Re: Urgent complaint on the provisional T4-Capacity Auction awarded to Shannon LNG**

Dear Johnny,

Thank you for your email sent 19<sup>th</sup> April 2023 to John Melvin, Director of Security of Supply and Wholesale, Commission for Regulation of Utilities, Colin Broomfield, Director of Wholesale Markets, Utility Regulator, and Eamon Ryan T.D., Minister for the Environment, Climate and Communications and Minister for Transport, in which you lay out concerns relating to the qualification (and subsequent success) of Shannon LNG in the T-4 2026/27 Capacity Auction. You raise a number of specific points relevant to the project including the energy policy backdrop, and the planning and connection status of the project. I provide some insights into the general qualification process for the Capacity Auctions to explain how these factors are considered and provide some additional detail on the specifics of the T-4 2026/27 qualification and approvals process in particular, information which has also been recently provided to the Joint Oireachtas Committee on Environment and Climate Action.

In advance of each capacity auction, generation projects seeking to participate go through a formal application process in accordance with the provisions of the Capacity Market Code. In support of this application, they supply EirGrid and SONI (the Transmission System Operators or TSOs) with information relating to their proposed projects. The TSOs then review this information, in each and every case, in order to determine the eligibility and likely deliverability of the project in time for the target deliverability date assigned to the auction. For example, for the most recent T-4 Auction, held in March of this year, the target date for new generation units is for the projects to commence operation on the 1st of October 2026. On the basis of this review, the TSOs then recommend to the SEM Committee the inclusion or exclusion of the projects seeking to participate in each auction. In the normal course of events, the TSOs' recommendations regarding qualification are followed.

In advance of the T-4 Capacity Auction held in March of last year 2022 (targeting commencement of operation of new units on 1st October 2025) the TSOs recommended not qualifying the proposed Shannon LNG power generation units. The TSOs have noted to the SEM Committee that the rationale for this recommendation was based on, among other things, consideration of the Implementation Plans provided. Further, that even in the absence of the government policy with respect to LNG, the TSOs would not consider the plans to be achievable as proposed. The SEM Committee accepted this recommendation and, as a result, the Shannon LNG generation units were not qualified to participate in that Auction.



In the most recent T-4 Auction, held in March 2023, the TSOs recommended the qualification of the units. Given the previous recommendation to not qualify the units, the SEM Committee sought further clarification from the TSOs in support of this recommendation, including that the TSOs seek confirmation from the developer that the commercial case for the generation project is not contingent on the construction of the LNG terminal, and that the new capacity can be delivered in the absence of the terminal.

The TSOs responded, noting their view that the submitted project plan reflects a more reasonable timeframe for delivery, that the connection offer process has progressed for the project, and also confirming that the developer had stated that the new capacity would be capable of being delivered without the construction of the LNG terminal.

Notwithstanding the above, the SEM Committee were of the view that, on the basis of the range of statutory and other processes required to deliver the project in its totality (including processes that may be necessitated by the inclusion of any LNG import development and associated pipeline such as safety cases, unbundling requirements inter alia) that the project remained at risk of not being delivered in a timely fashion. On that basis the SEM Committee considered that the TSOs recommendation should not be accepted in this instance. However, it was an exceptional measure for the SEM Committee to seek to reject the TSO recommendation to qualify a generator and in this case, it was not possible to uphold this position given the clear, detailed and binding restrictions and timelines in the decision-making process (contained the Capacity Market Code).

The CRU had further engagement with the project developer in order to provide additional insight into the project and the deliverability of same. The CRU received confirmation from the project developer that the generation project was not contingent on the delivery of any LNG import facility, and that the generation projects would proceed to be developed, should they be successful in the auction, in the absence of any future development of an LNG import facility. The project developer also addressed concerns relating to the processes associated gas pipeline. The Shannon LNG generation project was qualified to participate in the March T-4 auction, and was successful in that auction.

Yours sincerely,

[Sent by email with no signature]

John Melvin  
Director of Security of Supply and Wholesale  
Commission for Regulation of Utilities

c.c. Colin Broomfield, Director of Wholesale Markets, Utility Regulator, and Eamon Ryan T.D., Minister for the Environment, Climate and Communications and Minister for Transport





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V31 PW61  
**AN BORD PLEANÁLA**  
LDG- \_\_\_\_\_  
ABP- \_\_\_\_\_ 4 August 2023.  
08 AUG 2023  
Fee: € \_\_\_\_\_ Type: \_\_\_\_\_  
Time: \_\_\_\_\_ By: *Reg 10057*

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Cc. By Email to Limerick City & County Council, Planning and Environmental Services, City & County Council Offices, Dooradoyle Road, Limerick. [planning@limerick.ie](mailto:planning@limerick.ie) and [enforcement@limerick.ie](mailto:enforcement@limerick.ie)

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Shannon LNG, through McCann Fitzgearld LLP, is claiming that “the Board’s jurisdiction under section 5 does not extend to determining whether a particular development is unauthorised or whether a particular permission is extant” and that it was “surprised” that Limerick City and County Council had written to An Bord Pleanála seeking clarification on the length of the pipeline approval in order to make a decision under section 5.

I submit the following in response to McCann Fitzgerald LLP’s letter to An Bord Pleanála.

**The duration of the pipeline approval**

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The types of development which require the Board to determine if an environmental impact assessment (EIA) outlined in Part 2 of Schedule 5 to the [Planning and Development Regulations 2001](#)<sup>3</sup> include "**Industrial installations for carrying gas, steam and hot water with a potential heat output of 300 megawatts or more**" (3b) and "**Gas pipelines and associated installations not included in Part 1 of this Schedule, where the design pressure would exceed 16 bar and the length of new pipeline would exceed 40 kilometres**" (10i).

7. On April 5th, 2023, the State's national grid operator EirGrid [published](#)<sup>4</sup> the provisional results of the latest capacity auction for the Single Electricity Market which indicated that Shannon LNG had won a provisional agreement for two gas-fired generators capable of generating 353 megawatts (MW) of electricity in total from EirGrid.
8. On June 8th, 2023, Mr. John Melvin, Director of Security of Supply and Wholesale Commission for Regulation of Utilities (CRU), [confirmed](#)<sup>5</sup> very controversially (letter attached) that "*The CRU had further engagement with the project developer in order to provide additional insight into the project and the deliverability of same. The CRU received confirmation from the project developer that the generation project was not contingent on the delivery of any LNG import facility, and that the generation projects would proceed to be developed, should they be successful in the auction, in the absence of any future development of an LNG import facility. The project developer also addressed concerns relating to the processes associated gas pipeline. The Shannon LNG generation project was qualified to participate in the March T-4 auction, and was successful in that auction*".
9. The proposed direction of the pipeline has now been changed by the developer without any public consultation on the matter but rather via private assurances given by Shannon LNG to the CRU. This would seem highly unorthodox. The original EIA for the Shannon LNG pipeline application in 2008 stated: "*The Shannon Pipeline is required to provide access to the Irish gas network for the Shannon LNG terminal. It will allow Shannon LNG to supply gas from additional diverse sources to the Irish market*". From Director Melvin's confirmation that the developer now intends to still proceed with a power station in Tarbert even if no LNG terminal is built then the only reasonable alternative way such a power station could be supplied with gas would be through the pipeline. This is a completely different project to the one proposed in 2008. As the 26-kilometre, 98 bar pipeline and associated works would be used, not to supply gas to

<sup>3</sup> <https://www.irishstatutebook.ie/eli/2001/si/600/made/en/print#sched5>

<sup>4</sup> <https://www.eirgridgroup.com/newsroom/eirgrid-group-publishes-t/index.xml>

<sup>5</sup> [https://drive.google.com/file/d/1oFc8myQcwl0BgGEx79kWgjYvhOgEzmYq/view?usp=drive\\_link](https://drive.google.com/file/d/1oFc8myQcwl0BgGEx79kWgjYvhOgEzmYq/view?usp=drive_link)



the Irish gas market, but to be exclusively used for carrying gas **from** the Irish gas market to a 353 Megawatt power station in Tarbert with a heat output greater than 300 Megawatts, then the development would qualify as one which the Board "*shall*" determine in its decision if an environmental impact assessment is required for this project.

10. In the context of the obligations in subsection 7A of section 5, it is now quite clear that it was highly reasonable for the local authority, Limerick City and County Council, to have asked the Board to specifically address the pipeline expiry question in order to be able to give its section 5 decision.
11. I have asked a valid question in my referral. How far the Board investigates this is not a matter for the developer to limit because section 5 obliges the Board to issue "*the main reasons and considerations on which its decision is based*".
12. The Board requested my submission in the interest of justice. The principle of sincere cooperation of Article 4 of the Treaty on European Union now obliges An Bord Pleanála to ensure that the principle of effectiveness of European law must prevail over the equivalence of procedural autonomy. McCann Fitzgerald even acknowledges that "*the Board may reformulate the question asked*".

#### **Other matters raised by McCann Fitzgerald**

13. McCann Fitzgerald refers in its response to a "*fresh application for permission*" by Shannon LNG for a floating storage and regasification unit (refer ABP-311233-21) which remains pending at An Bord Pleanála. However, [Irregular payments](#)<sup>6</sup> of millions of euros paid by Shannon LNG to Kerry County Council raise very serious ethical questions surrounding this planning application. Kerry County Council requested and was paid over €2.4 million by Shannon LNG after its planning permission for an onshore LNG terminal [expired](#)<sup>7</sup> in 2018 and before it lodged a new planning application for a floating LNG terminal and 600 MW Power Station in Tarbert in 2021. We are extremely concerned about the implications and consequences of Shannon LNG paying millions of euros to Kerry County Council at a point in time when it was not obliged to do so and before it lodged a new planning application. Fine Gael Councillor Jim Finucane told the Irish Independent Newspaper that these payments were "[good faith](#)"<sup>8</sup> contributions made by a company that was committed to the area.

6

<http://safetybeforelng.ie/pressreleases/pressrelease20221122ControversialShannonLNGMillionsPaidToKerryCountyCouncil.html>

7 <https://archive.pleanala.ie/en-ie/case/PA0002>

8

<https://www.independent.ie/news/environment/shannon-lng-paid-kerry-county-council-41m-in-relation-to-controversial-gas-project-it-may-never-build-42005737.html>



## Request to initiate Part VIII enforcement against the Shannon LNG pipeline and associated works

### 14. Given -

- a. that numerous serious issues of concern have been raised by this section 5 application,
- b. that Shannon LNG has now vigorously expressed in its McCann Fitzgerald response a claim to an indefinite approval to develop a 26-kilometre pipeline beyond the 10-year planning permission it requested in 2008,
- c. that on March 31st, 2022, Wes Edens, the CEO of New Fortress Energy - the owners of Shannon LNG - in an [open letter](#)<sup>9</sup> to An Taoiseach Micheál Martin, claimed that the Shannon LNG project was “shovel ready” and that “*Planning approval for the 26km gas pipeline to connect to the GNI grid has been secured*”,
- d. that Shannon LNG then [claimed](#)<sup>10</sup> to the Single Electricity Committee (SEM) in November 2022 that it was “*the most advanced CCGT project in development in the country and by the time the auction is held in March 2023 we will have: - planning permission for the 600 MW CCGT - **planning permission for a 26km gas pipeline (as backup to the LNG terminal) with all wayleaves executed** - an executed 220 kv connection agreement for 600 MW MEC*”,
- e. that Director John Melvin of the CRU has acknowledged in writing that Shannon LNG confirmed to the CRU that it would still develop a gas-fired power station in Tarbert even if an LNG import terminal is not developed should it be successful in the T4 gas auction. The only reasonable alternative source of gas to LNG in this case would be gas supplied exclusively via the 26-kilometre pipeline which would not be just a “*backup to the LNG terminal*”,
- f. that under Section 9 of the Criminal Justice (Corruption Offences) Act 2018, “*A person who, either directly or indirectly, by himself or herself or with another person, corruptly creates or uses a document, that the person knows or believes to contain a statement which is false or misleading in a material particular, with the intention of inducing another person to do an act in relation to his or her office, employment, position or business to the prejudice of the last-mentioned person or another person shall be guilty of an offence*”, and

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<sup>9</sup> <https://drive.google.com/file/d/1epvlsi8Fog2QI-O3lzGY2MyMbqa-ql7n/view?usp=sharing>

<sup>10</sup>

<https://www.semcommittee.com/sites/semc/files/media-files/Shannon%20LNG%20Response%20to%20SEM-22-076.pdf>





g. that An Bord Pleanála was the planning authority of first instance for the Shannon LNG pipeline permission in 2009 located over the 2 different local authority areas of Limerick and Kerry -

I am hereby now making a direct representation in writing to An Bord Pleanála under section 152 of the Planning and Development Act 2000, as amended, that unauthorised development of a 26-kilometre gas pipeline may be carried out by Shannon LNG. I am formally requesting that the Part VIII enforcement process now be initiated by An Bord Pleanála in this matter in parallel to this section 5 referral.

Thank you for your time in dealing with this most urgent matter.

Yours faithfully,  
John McElligott

A handwritten signature in blue ink that reads "John McElligott". The signature is written in a cursive style with a large initial 'J' and a decorative flourish at the end.





An Coimisiún  
um Rialáil Fóntas  
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08 June 2023

D/23/12609

Johnny McElligott  
Safety Before LNG  
Island View  
5 Convent Street  
Listowel  
Co. Kerry

Sent by email: [safetybeforelng@hotmail.com](mailto:safetybeforelng@hotmail.com)

**Re: Urgent complaint on the provisional T4-Capacity Auction awarded to Shannon LNG**

Dear Johnny,

Thank you for your email sent 19<sup>th</sup> April 2023 to John Melvin, Director of Security of Supply and Wholesale, Commission for Regulation of Utilities, Colin Broomfield, Director of Wholesale Markets, Utility Regulator, and Eamon Ryan T.D., Minister for the Environment, Climate and Communications and Minister for Transport, in which you lay out concerns relating to the qualification (and subsequent success) of Shannon LNG in the T-4 2026/27 Capacity Auction. You raise a number of specific points relevant to the project including the energy policy backdrop, and the planning and connection status of the project. I provide some insights into the general qualification process for the Capacity Auctions to explain how these factors are considered and provide some additional detail on the specifics of the T-4 2026/27 qualification and approvals process in particular, information which has also been recently provided to the Joint Oireachtas Committee on Environment and Climate Action.

In advance of each capacity auction, generation projects seeking to participate go through a formal application process in accordance with the provisions of the Capacity Market Code. In support of this application, they supply EirGrid and SONI (the Transmission System Operators or TSOs) with information relating to their proposed projects. The TSOs then review this information, in each and every case, in order to determine the eligibility and likely deliverability of the project in time for the target deliverability date assigned to the auction. For example, for the most recent T-4 Auction, held in March of this year, the target date for new generation units is for the projects to commence operation on the 1st of October 2026. On the basis of this review, the TSOs then recommend to the SEM Committee the inclusion or exclusion of the projects seeking to participate in each auction. In the normal course of events, the TSOs' recommendations regarding qualification are followed.

In advance of the T-4 Capacity Auction held in March of last year 2022 (targeting commencement of operation of new units on 1st October 2025) the TSOs recommended not qualifying the proposed Shannon LNG power generation units. The TSOs have noted to the SEM Committee that the rationale for this recommendation was based on, among other things, consideration of the Implementation Plans provided. Further, that even in the absence of the government policy with respect to LNG, the TSOs would not consider the plans to be achievable as proposed. The SEM Committee accepted this recommendation and, as a result, the Shannon LNG generation units were not qualified to participate in that Auction.





In the most recent T-4 Auction, held in March 2023, the TSOs recommended the qualification of the units. Given the previous recommendation to not qualify the units, the SEM Committee sought further clarification from the TSOs in support of this recommendation, including that the TSOs seek confirmation from the developer that the commercial case for the generation project is not contingent on the construction of the LNG terminal, and that the new capacity can be delivered in the absence of the terminal.

The TSOs responded, noting their view that the submitted project plan reflects a more reasonable timeframe for delivery, that the connection offer process has progressed for the project, and also confirming that the developer had stated that the new capacity would be capable of being delivered without the construction of the LNG terminal.

Notwithstanding the above, the SEM Committee were of the view that, on the basis of the range of statutory and other processes required to deliver the project in its totality (including processes that may be necessitated by the inclusion of any LNG import development and associated pipeline such as safety cases, unbundling requirements inter alia) that the project remained at risk of not being delivered in a timely fashion. On that basis the SEM Committee considered that the TSOs recommendation should not be accepted in this instance. However, it was an exceptional measure for the SEM Committee to seek to reject the TSO recommendation to qualify a generator and in this case, it was not possible to uphold this position given the clear, detailed and binding restrictions and timelines in the decision-making process (contained the Capacity Market Code).

The CRU had further engagement with the project developer in order to provide additional insight into the project and the deliverability of same. The CRU received confirmation from the project developer that the generation project was not contingent on the delivery of any LNG import facility, and that the generation projects would proceed to be developed, should they be successful in the auction, in the absence of any future development of an LNG import facility. The project developer also addressed concerns relating to the processes associated gas pipeline. The Shannon LNG generation project was qualified to participate in the March T-4 auction, and was successful in that auction.

Yours sincerely,

[Sent by email with no signature]

John Melvin  
Director of Security of Supply and Wholesale  
Commission for Regulation of Utilities

c.c. Colin Broomfield, Director of Wholesale Markets, Utility Regulator, and Eamon Ryan T.D., Minister for the Environment, Climate and Communications and Minister for Transport

