



United Nations  
Economic Commission for Europe

Ms Fiona Marshall  
Secretary to the Aarhus Convention Compliance Committee  
Palais des Nations, Room 429-4  
CH-1211 Geneva 10  
Switzerland

22<sup>nd</sup> October 2019

**Your Ref: ACCC/C/2014/112**

**Re: Communication to the Aarhus Convention Compliance Committee concerning  
ACCC/C/2014/112**

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Dear Ms Marshall,

We refer to the above communication submitted by Pat Swords, David Malone and Neil Van Dokkum (*'the Communicants'*) which was heard before the Aarhus Convention Compliance Committee (*'the Committee'*) on 24 June 2016. At the conclusion of the hearing, it was indicated by the Chairperson that the Committee would circulate any additional questions that arose for response to the Communicants and the Party Concerned. To date the Party Concerned has not received any requests for further information and/or clarification from the Committee. The Party Concerned remains happy to deal with any specific questions the Committee may have arising from our response submitted on 30<sup>th</sup> November 2015 or from the Hearing itself.

We have noted that since the Hearing the Communicants have submitted certain additional information to the Committee. In particular, the Communicants have sent the following to the Committee:

- Email of 8<sup>th</sup> December 2016 in relation to the proceedings entitled *Pat Swords v Minister for Communications, Energy and Natural Resources, Ireland and the Attorney General* and enclosing a copy of the Judgment of the High Court (Keane J, 12<sup>th</sup> August 2016) in those proceedings.



- Email of 18<sup>th</sup> August 2016 in relation to referrals to the Court of Justice of the European Union in proceedings entitled *North East Pressure Campaign Limited and Another v. An Bord Pleanála* and *Klohn v. An Bord Pleanála*.
- Email of 27<sup>th</sup> February 2017 in relation to the publication of updated Wind Energy Guidelines.
- Email of 3<sup>rd</sup> September 2017 in relation to proposed new Wind Energy Guidelines, settlement of proceedings entitled *John Campbell v. Minister for Environment Community and Local Government and Donegal County Council*.
- Email of 13<sup>th</sup> December 2017 in relation to judgment given in proceedings entitled *Val Martin v. An Bord Pleanála* and enclosing a copy of the judgment of the High Court (Barrett J, 11<sup>th</sup> January 2018) in that case.

The Party Concerned considers it necessary to inform the Committee of certain matters relating to issues identified in the correspondence from the Communicants. The Party Concerned does not propose to deal with all the issues and/or specific matters raised by the communicant in the correspondence outlined above. The Party Concerned is happy to answer any specific queries that the Committee may have in relation to the matters identified in the correspondence.

#### *Proceedings entitled Pat Swords v. Minister for Communications, Energy and Natural Resources*

It is noted that the communicant has provided the Committee with a copy of the decision of the High Court (Keane J) in the proceedings entitled *Pat Swords v. Minister for Communications, Energy and Natural Resources*, delivered on the 12<sup>th</sup> August 2016. The Committee will recall that matters relating to these proceedings formed part of the complaint lodged by the Communicants. The Party Concerned notes the contents of the email of 8<sup>th</sup> December 2016 and repeats its objections to the Communicants raising complaints about the defence of the proceedings by the State defendants in that case. The Party Concerned denies that Mr Swords was treated either unfairly or inappropriately during the course of those proceedings. It is inappropriate for the Communicants to raise complaint of matters of that nature before the Committee and it is respectfully submitted that it is not open to the Committee to seek to review (either in substance or procedurally) a decision of the Irish High Court.

#### *Legal Costs*

The Party Concerned notes that some of the correspondence submitted by the Communicants relates to the question of legal costs in the Irish legal system. This is



not an issue that formed part of the Communication submitted by the Communicants. In the circumstances it is respectfully submitted that this constitutes an attempt by the Communicants to widen the terms of the communication after the Hearing of the matter. In the circumstances it is respectfully suggested that the Committee do not consider these issues.

#### *Wind Energy Development Guidelines 2006*

The Committee will recall that the Communicants made a complaint in relation to the manner in which a review of the Wind Energy Development Guidelines 2006 (*'the 2006 Guidelines'*) has been undertaken and allege a failure to comply with Article 8 of the Convention. The response of the Party Concerned to this issue is set out at Section 10 of the response submitted on 30 November 2015. The response outlines the manner in which the review of the 2006 Guidelines has been carried out, including the public consultation undertaken.

By way of update, the Party Concerned can confirm that it has been determined that it is necessary to carry out a Strategic Environmental Assessment of the review of the 2006 Guidelines. The Strategic Environmental Assessment process commenced in December 2017 and it is intended that a public consultation will commence as part of this process in the course of 2019. The Communicants, along with other members of the public, will be entitled to take part in this public consultation. When the Strategic Environmental Assessment process is complete the revised Wind Energy Guidelines will issue to Planning Authorities under Section 28 of the Planning and Development Act 2000 as amended.

#### *North South Interconnector Project – Val Martin v. An Bord Pleanála*

The email of the 13<sup>th</sup> December 2017 from the communicants deals with the judgement of the High Court in proceedings entitled *Val Martin v. An Bord Pleanála* (High Court Record Number 2017/104JR). It is respectfully submitted that this email seeks to raise new issues relating to a specific project that did not form part of the Communication submitted by the Communicants and were not considered in the course of the Hearing before the Committee. In the circumstances the Party Concerned suggests that it may not be appropriate for the Committee to consider the issues raised in the email of the 13<sup>th</sup> December 2018.

Without prejudice to this objection, the Party Concerned believes that it may be useful for the Committee to have an understanding of the nature of the project that is known



as the North-South Interconnector and the manner in which it has been granted approval.

The North South Interconnector is a joint proposal by EirGrid, the state-owned company that has responsibility for the management and operation of the transmission grid in Ireland, and its counterpart in Northern Ireland, System Operator Northern Ireland. It is proposed to construct a new high capacity electricity interconnector between the transmission networks in Ireland and Northern Ireland. There currently exists only one such high capacity interconnector between the two networks. The proposed interconnector is a 400 kV overhead line linking the 400kV substation in Woodland, County Meath with a substation in Turleenan, County Tyrone. It will be a 138km transmission connection with a power capacity of 1,500MW.

The operation, maintenance and development of the electricity transmission network in Ireland is a matter that falls within the responsibility of EirGrid. As such, the development of a particular project including the identification of appropriate sites, routes and technology is a matter for EirGrid and is not a responsibility of the Minister for Communications, Climate Action and Environment.

The North South Interconnector was designated a Project of Common Interest (PCI) by the European Commission in 2013, again in 2015 and again in 2017 and, in that regard, is considered to be a project of strategic, cross-border importance. The North South Interconnector is critical to ensuring a safe, secure supply of electricity throughout the island of Ireland. It also supports the core objectives of European and national energy policy – namely sustainability, security of supply and competitiveness.

The North-South 400kV Interconnector is a key project in delivering the objectives of national energy policy and is specifically supported by Government policy – most notably in the Energy White Paper – an official Government policy paper published for the purposes of public consultation. One of the key needs identified by the Energy White Paper (and in EU Energy Policy) is the need for appropriate energy infrastructure, including energy networks and interconnection with other countries' energy systems.

Since its inception, the proposal to construct the North South Interconnector has been the subject of extensive public participation and consultation, which have been carried



out by EirGrid in accordance with its duties as operator and developer of the national transmission grid.

EirGrid has opened local offices and appointed Community and Agricultural Liaison Officers who are all involved in outreach to the local communities along the intended route of the North-South Transmission Line project.

There has been extensive public consultation on the North-South Transmission Line project including statutory consultation as required under Regulation (EU) No. 347/2013 on guidelines for trans-European energy infrastructure and Section 182A of the Planning and Development Act, 2000, as amended.

The following is an itemisation of those public consultations on the North South Interconnector:

- Oct 2007 – May 2008: public consultation on route corridors
- June 2008-Mar 2009: public consultation on evaluation of these corridors
- Apr 2009 – Sep 2010: public consultation on line route within the preferred corridor
- May 2011 – May 2013: public consultation on a re-evaluation of the project:
  - o Landowner engagement commences with Phase 1 contacts;
  - o The Minister for Communications, Energy and Natural Resources establishes an International Expert Commission to review costs and technologies.
- July 2013 – December 2013:
  - o Public consultation on the preferred project solution report. It then continues on the proposed line route;
  - o Landowner engagement continues to Phases 2 and 3.
- January 2014 – to June 2015:
  - o Government sets up a new Independent Expert Panel. They are asked to review the methodologies of the Grid Link and Grid West projects.



- o Proposed Line Design is updated. Some pylons are repositioned along the line route and further public engagement takes place;
  - o EirGrid appears before the Joint Oireachtas Committee in April 2015.
  - o Full planning application submitted to An Bord Pleanála in June 2015.
- August 2017 – September 2018
  - o The Minister for Communications, Climate Action and Environment commissioned a study to investigate the cost and technical feasibility of undergrounding the North South interconnector. The report was conducted by an International Expert Commission and found that from a techno-economic point of view, an AC overhead line is the most beneficial way of meeting the need for enhanced power transfer capability between the Republic of Ireland and Northern Ireland.

On 9th June 2015, EirGrid made an application for planning permission for the North South Interconnector to An Bord Pleanála. As part of the consideration of that planning application, which includes a further round of public consultation, an oral hearing (open to the public) was held by the Inspector appointed by An Bord Pleanála to examine the project. That oral hearing was held over an 11 week period in May 2016. The Hearing considered submissions and witness testimony on a range of concerns including impacts on people, health, archaeology, flora, water, soils, land use, traffic and much more.

Following the oral hearing, the inspector prepared a report that was submitted to An Bord Pleanála for consideration. That report is over 600 pages long. The inspector's report itemises the public consultation elements of the process in comprehensive detail. The inspector concluded that the "applicant's approach to consultation is adequate to meet statutory requirements".

In assessing EirGrid's public consultation, the inspector stated the following:

*"The key issue raised in respect of public consultation relates to the methodology for, and adequacy of, the applicant's public consultation exercise. Having regard to:*

- *The extensive period during which the project has been in the public domain,*



- *The extensive public consultation exercise undertaken by the applicant, which has included at an early stage different technical solutions in respect of the development and the proposed methodology for constructing it, including the use of temporary access routes and an indication of likely routes,*
- *The resultant public interest in (and opposition to) the project,*
- *The wide range of matters raised during the course of the oral hearing, and*
- *The presentation of these now before the Board,*

*I consider that the applicant's approach to consultation is adequate to meet statutory requirements, including those of Article 6(4) of the EIA Directive."*

On the 19th December 2016, An Bord Pleanála granted planning permission for the project, subject to 9 conditions. On 23rd January 2018, full planning permission was granted for the section of the line that lies in Northern Ireland but this decision was subsequently appealed on the basis that the decision was made in the absence of a Minister. On 8 February 2019, the Department for Infrastructure asked the High Court to quash the planning permission given so the planning application can be re-determined under new legislation introduced by the Secretary of State for Northern Ireland in November 2018. The new legislation makes provision for the exercise of governmental functions in, or in relation to, Northern Ireland in the absence of Northern Ireland Ministers.

The decision of An Bord Pleanála has been the subject of a number of challenges by way of judicial review before the High Court of Ireland.

In 2016, the North East Pylon Pressure Campaign Limited sought to challenge the designation of An Bord Pleanála as the competent authority for the purposes of Regulation 347/2013 and to prevent it considering the application for planning permission lodged by EirGrid. Leave to seek Judicial Review was refused by the High Court. In the subsequent costs hearing in relation to the leave application, the High Court (Humphries J) determined that it was necessary to refer certain questions to the Court of Justice of the European Union ('CJEU'). Judgment was given by the CJEU on 15th March 2018.



Secondly, the decision of An Bord Pleanála to grant permission for the project was challenged before the High Court by North East Pylon Pressure Campaign Limited in proceedings entitled North East Pylon Pressure Campaign Limited v. An Bord Pleanála [2017] IEHC 338. By judgment of 22nd August 2017, the High Court (Barrett J) refused to grant the reliefs sought by the applicant. In addition, on 11th January 2018 the High Court refused to grant the applicant a certificate for leave to appeal to the Court of Appeal in accordance with section 50A(7) of the Planning and Development Act, 2000 as amended. This decision was subsequently appealed to the Supreme Court and a two day hearing took place on 15-16 October 2018. The Court's determination was delivered on 19th February 2019 when it dismissed the appeal.

Finally, in the proceedings entitled Val Martin v An Bord Pleanála, the applicant in that case also sought to challenge the decision of An Bord Pleanála. That application was refused by judgment of the High Court (Barrett J) on 11th January 2018.

The Communicants purport to argue that the grant of planning permission in respect of the North South Interconnector by An Bord Pleanála is another example of the manner in which there has been a failure to comply with Article 6 and 7 of the Convention. It is respectfully submitted that this contention, whether made in respect of the North South Interconnector or otherwise, is without foundation and not supported by evidence. In that regard the party concerned specifically denies that An Bord Pleanála "*rubber stamped*" any decision in respect of the North South Interconnector or that the sole function of the High Court was to be a "*rubber stamp*" for An Bord Pleanála. The North South interconnector project was the subject of a lengthy and comprehensive assessment by An Bord Pleanála and subsequent review by the High Court (a detailed synopsis can be furnished upon request). In reality, the complaint now made by the Communicants relates to the merits of the decision to grant permission for the project and the merits of the decisions reached by the High Court to reject the challenges brought to the decision of An Bord Pleanála. That is not an appropriate matter to raise before the Committee, particularly by way of additional information furnished a significant time after the hearing of the communication.

### *Conclusion*

The party concerned repeats that it is happy to address any specific queries that arise from the Committee in respect of the matters raised at the Hearing or the matters that arise from the additional correspondence. The party concerned repeats that it is of the view that the transposition of the Convention into Irish law has been undertaken in





a robust manner that allows for significant public consultation in the course of decision making processes. In the circumstances nothing in the communication or the additional correspondence submitted by the communicants provides any basis for a finding of non-compliance with the Convention.

Yours sincerely,

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