



**MEMORANDUM OF UNDERSTANDING BETWEEN THE
COMMISSION FOR ENERGY REGULATION
AND
AN BORD PLEANÁLA**

16th JANUARY 2013

1. Introduction

The objective of this Memorandum of Understanding (“MoU”) between the Commission for Energy Regulation (“CER”) and An Bord Pleanála (“the Board”) (together referred to in this MoU as “the Bodies”) is to facilitate co-operation between the Bodies in the discharge of their respective statutory responsibilities in order to enhance the actions of both regulators. The purpose of this MoU is to clearly identify the roles and responsibilities of each Body as they may relate to the other Body. The Bodies are committed to a policy of ongoing cooperation and interaction in this regard.

2. Legal Background

a) An Bord Pleanála

The Planning and Development Act 2000 as amended assigns various functions to the Board including deciding appeals against decisions of Planning Authorities on applications for planning permission and determining applications made directly to the Board for permission/approval for Strategic Infrastructure Development by private operators, Local and State Authorities and other statutory organisations.

b) CER

The CER was first set up in 1999 through the Electricity Regulation Act 1999 (the 1999 Act), as amended, and its role and functions have been expanded over time through amending legislation such as the Petroleum (Exploration and Extraction Safety) Act 2010. The CER has various safety and economic functions including the regulation of electricity and gas undertakings and ensuring the competitive, sustainable and reliable supply of electricity and natural gas at reasonable cost to Irish energy customers. The CER is also responsible for the safety regulation of petroleum activities and the safety regulation of gas supply, transmission, distribution, storage and use of gas and the registration of electrical contractors and gas installers.

3. Areas of Shared or Interfacing Responsibilities

Safety matters can be of significance in determining the land use planning implications and the potential environmental effects of some development. The interface between the CER and the Board is likely to arise particularly in cases where the CER has specific responsibility in relation to safety matters and the Board is determining an appeal or an application relating to such development. In acknowledging each Body's respective statutory responsibilities, functions and duties and recognising statutory constraints that apply, both the Board and the CER shall endeavour to liaise closely particularly in relation to the areas set out below.

The Bodies undertake to put procedures in place to ensure that communications and information as required are made available to the requesting Body in a timely manner in order to determine cases within reasonable timeframes.

a) Planning Applications including strategic infrastructure applications

It is a requirement of planning legislation that certain types of applications for development consent must be notified to the CER. This requirement may arise at local planning authority level or at the Board level. The types of development in question are those relating to electricity transmission and generation and generally relating to energy infrastructure or developments which may have an impact on energy infrastructure (see article 28(1)(u) and article 213(1)(v) of the Planning and Development Regulations 2001 as amended).

In all relevant cases where notice and details of applications will have to be submitted to CER in accordance with article 213 of the Planning and Development Regulations 2001, as amended, prospective applicants will be advised at pre-application consultation stage to consult with the CER so that the applicant is made aware of the information which will be required in order for CER to make meaningful observations on applications and reduce the need for further information requests. The Board may, if considered desirable, itself arrange a meeting/consultation with the CER in order to clarify any relevant issues arising in relation to the proposed development. CER will facilitate and engage with bona fide prospective applicants for planning permission/approval when consultations are requested.

In the event of relevant applications being made directly to the Board under any section of the Planning and Development Act 2000, as amended, the CER will submit any observations considered necessary within the prescribed timescale for observations i.e. minimum of 6 weeks generally set out in the legislation. In the event of any further information/observations being required by the Board from the CER a reasonable time period will be allowed (minimum 3 weeks) and the CER will respond within the specified period. All requests for submissions will be in writing.

Section 182C of the Planning and Development Act 2000 as inserted by the Planning and Development (Strategic Infrastructure Act 2006) and as amended by the Planning and Development (Amendment) Act 2010 contains specific provisions for consultations between the Board and the CER in the case of certain

strategic gas infrastructure development (as defined in the Planning and Development Act 2000 as amended) (see subsections (9) to (9E) of section 182C).

Under section 182C(9) the Board is required to request the CER to make observations on operational and safety matters, including any relevant safety advice or specific recommendations which the CER considers appropriate within a specified period which may not be less than 3 weeks. The Board is required under subsection (9A) to have particular regard to the observations of the CER. The Board is also obliged to consult further with the CER if it is considering not accepting the observations of the CER. In the event of the Board not following the observations of the CER in its decision it must give reasons for not so doing. Subsection (9E) of section 182C includes a list of matters which the CER may refer to in its observations. This list includes a safety case and safety permit as defined in the 1999 Electricity Regulation Act (as amended). This list is however without prejudice to the generality of the entitlement of the CER to make observations on any matters it considers relevant.

Subsection (10) of section 182C allows the Minister to make regulations to provide for matters of procedure in relation to requests by the Board for submissions and the making of observations by the CER. No such regulations have been made to date.

In the case of relevant applications under section 182C i.e. Strategic Gas Infrastructure Development the procedure set out in section 182C (9) to (9E) will be followed.

In seeking comments from the CER, the Board will, where possible, clarify the issue on which comments/observations are desirable and the CER will address its responses to the issues raised. In the event of the CER making recommendations in its responses every effort will be made to set out the recommendations in precise and unambiguous terms in order to allow the provisions in section 182C(9) to (9E) to be followed.

b) Planning Appeals

In situations where the Board is dealing with an appeal relating to an application for development decided by the Planning Authority and where the CER is involved or has been informed of the application by the Planning Authority, the Board may request observations or comments from the CER in situations where it is considered that adequate consultation was not carried out at Planning Authority level or relevant new issues are raised at appeal stage.

In consultations in relation to appeals similar provisions shall apply as for strategic infrastructure development i.e. a reasonable period of time (minimum 3 weeks) shall be allowed for response and the CER will respond within the specified period.

c) Oral Hearings of An Bord Pleanála

Requests for attendance at oral hearings will only be made through consultation between both Bodies to ensure that attendance by the CER is appropriate. The

CER will normally not be requested to attend any oral hearing relating to an application where it has no legislative remit.

4. General Consultation/Liaison Arrangements

The Bodies will consult with each other when either Body is engaged in producing guidelines or procedural documentation in relation to the implementation of the respective Bodies' statutory functions not related to specific development proposals in any situation where the guidelines or procedural documentation may be relevant to the interface between the Bodies. In developing safety frameworks which may interface with the planning regulatory regime efforts will be made through consultation to align the work of both Bodies to the greatest extent possible.

Where the two bodies engage in consultations, as referred to above, responses will be submitted, where possible within the scheduled time scale in order to allow for the timely production of the guidelines or procedural documentation in question.

The CER will keep the Board updated in relation to the Petroleum Safety Framework established under section 13I of the 1999 Act, including, Guidelines issued under section 13L, the designation of petroleum activities under 13D and the timescale of the requirements for safety cases and safety permits as referred to in the 1999 Act, as amended.

5. Communication

Communications between the Bodies on general issues shall be made through the Chief Officer of the Board and the Director of Safety in the CER.

Communication between the two bodies in relation to development applications will be made directly between nominated persons designated under this MoU. Contact names will be updated on any change in personnel. The following persons are the current nominated contacts.

For the CER

Eamonn Murtagh,
Petroleum Safety Framework Project Manager

For An Bord Pleanála

Diarmuid Collins, Senior Administrative Officer
(Strategic Infrastructure Cases)

Mary Holohan, Senior Administrative Officer
(Planning Appeal Cases)

6. Review of MoU

It is envisaged that the CER and the Board representatives will meet on a regular basis to review this MoU and monitor its relevance, effectiveness, operation, and in particular, the cooperative measures and consultation established in the areas of shared or overlapping responsibility. The first review will be carried out within an 18 month period of the adoption of the MoU.

7. **Status of MoU**

This MoU is effective from the date of signing by the CER and the Board. This MoU is not legally binding on the Bodies but rather is an expression of individual and collective commitment to work together in order to realise the shared objectives expressed herein.



Dr. Mary Kelly,
Chairperson,
An Bord Pleanála.



Dermot Nolan
Chairperson,
CER.



Garrett Blaney,
Commissioner,
CER.