

**Methodology and criteria for evaluating investments in electricity and gas infrastructure projects  
(article 13(6) of Regulation (EU) No 347/2013 of the European Parliament and the Council of 17 April 2013 on guidelines for trans-European energy infrastructure and repealing Decision No 1364/2006/EC and amending Regulations (EC) No 713/2009, (EC) No 714/2009 and (EC) No 715/2009)**

**Chapter One**

**GENERAL PROVISIONS**

**Art. 1. (1)** European Commission, following consultations with EU Member States, identified priority infrastructure corridors in Europe for electricity, natural gas and oil, which are necessary to achieve the EU energy policy main objectives of competitiveness, sustainability and security of supply.

(2) To facilitate the timely implementation of projects contributing to the objectives under par. 1, the European Community adopted Regulation (EC) No 347/2013 of the European Parliament and of the Council of 17 April 2013 on guidelines for trans-European energy infrastructure and repealing Decision No 1364/2006 / EC and amending Regulations (EC) No 713/2009, (EC) No 714/2009 and (EC) No 715/2009 (Regulation (EU) No 347/2013).

(3) Regulation (EU) No 347/2013 defines Projects of Common Interest (PCI) necessary for the implementation of priority corridors and areas falling under the categories of energy infrastructure in electricity, gas, oil and carbon dioxide.

(4) Under Regulation (EC) No 347/2013, PCI can benefit expedited procedures for granting permits, if cross-border capacity allocation applied or additional incentives necessary and funding through the Connecting Europe Facility under certain conditions.

**Art. 2. (1)** The Agency for Cooperation of Energy Regulators (ACER) has published Recommendation No. 03/2014 of 27 June 2014 on PCI projects incentives and a common methodology on risk assessment (Recommendation No. 03/2014).

(2) Recommendation No. 03/2014 summarizes the national regulatory practices of risk evaluation and provides recommendations regarding a common methodology for risk identification and assessment.

**Art. 3.** In pursuance of art.13, para.6 of Regulation (EC) No 347/2013 each national regulatory authority shall publish its methodology and the criteria used to evaluate investments in electricity and gas infrastructure projects and the higher risks incurred by them.

**Chapter Two**

**EVALUATION OF INVESTMENTS IN ELECTRICITY AND GAS TRANSMISSION NETWORKS**

**Art. 4.** (1) The Energy Act (EA), transposing Directive 2009/72/EC of the European Parliament and the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EO (OB L 211), as well as Directive 2009/73/EC of the European Parliament and the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EO (OB L 211), regulates the Bulgarian electricity and gas transmission networks development.

(2) EA provides for the powers of the Energy and Water Regulatory Commission (EWRC) to approve investments in electricity and gas transmission networks as part of the 10-year transmission networks development plans (TYNDP), to monitor them and control their implementation.

(3) As per Art.81d Para.1 of EA, TSOs draft, consult with all stakeholders and at submit annually at EWRC till 30 April a ten-year plan that shows market participants the main transmission infrastructure envisaged for construction, expansion, reconstruction and modernization over the next 10 years; it also contains all the investments already decided and identifies new investments to be made over the next three years; the draft plan provides for a schedule of all investment projects.

(4) TYNDPs are based on existing and forecast supply and demand and contain efficient measures to ensure networks adequacy and security of supply.

**Art. 5.** (1) Transmission system operators in drafting TYNDP must make reasonable predictions about the development of generation, supply, consumption and exchanges with other countries, taking into account regional networks investment plans and in the gas sector storage facilities investment plans too.

(2) TYNDP is to contain sufficient measures to ensure systems adequacy and guarantee a high level of capacity availability regarding infrastructure security of supply.

(3) In drawing up the plan technical and economic expediency, the interests of all market participants and consistency with the Community-wide network development plan are to be taken into account.

(4) Prior to submitting the TYNDP at EWRC for approval, the TSOs must consult all relevant market participants.

(5) EWRC consults all current and potential network users on TYNDP in an open and transparent manner. Entities or undertakings claiming to be potential system users may be required to substantiate such claims. Outcomes of the consultation process, including possible investment needs are published on EWRC's website.

(6) EWRC examines whether TYNDP covers all investment needs identified during the consultation process and whether it is consistent with the Community-wide ten-year networks development plans.

**Art. 6.** EWRC approves the TYNDP by a decision using the following criteria to approve investments: the investments to be necessary due to technical reasons – interconnection transmission capacity upgrade or transmission system security, to be adequate and economically efficient.

**Art. 7.** (1) EWRC performs continuous surveillance and assessment of TSO's TYNDP implementation.

(2) Should an independent transmission operator fails to make an investment that according to TYNDP is to be executed in the following three years, EWRC requires the operator to present a written explanation of the reasons with supporting data and documents.

(3) By a decision EWRC obliges the TSO to implement the necessary investments if still relevant and to provide coverage of these investments through network services prices, unless failure under par. 2 is due to overriding reasons beyond TSO's control.

**Art. 8.** After TYNDP approval, investment costs are reimbursed through the prices in accordance with the Energy Act and the secondary legislation for its application.

### **Chapter Three**

#### **RISK MITIGATING MEASURES IN ELECTRICITY SECTOR REGULATORY FRAMEWORK**

**Art. 9.** (1) Investments included in the approved TYNDP are eligible for the following risk-mitigating measures:

1. Any expenses directly associated with the realisation of investments which are part of TYNDP are included in the tariffs.

2. Cost of capital for financing is set based on capital asset pricing model (CAPM).

3. Costs arising in connection with realising investments included in the TYNDP are considered costs beyond the control of the system operator and no markups nor offsets apply to these costs.

**Art. 10.** (1) Independent electricity TSO's prices are currently regulated under a "rate of return on capital" regulatory regime with a one-year regulatory period.

(2) Annually, after a regulatory review, EWRC verifies whether the costs reported are reasonable, expedient and related to the licensed activity; then it approves the revenue requirements and tariffs to the independent TSO in compliance with EA and the secondary legislation.

(3) Annual revenue requirements include allowed by EWRC economically justified costs and a return on capital.

(4) Return on capital is determined by multiplying the established regulatory asset base and the rate of return on capital.

(5) Approved by EWRC regulatory asset base represents the sum of: 1) the allowed value of the assets on which the independent electricity TSO receives a return on capital invested and includes the following elements: recognized value of the assets used which have useful life, determined based on the cost of acquisition reduced by the depreciation rate set for regulatory purposes, for the usage period of the acquired assets for the performance of licensed activity and calculated by applying the straight-line method and 2) necessary working capital.

(6) Rate of return on capital for the regulatory period is equal to the estimated weighted average cost of capital. EWRC determines the rate of return on capital, taking into account factors such as: risk-free return in comparison to other companies with similar risk, access to financing, current financial and economic conditions in the country, alternative cost of capital, enterprise specific risk, financial policy and capital structure of the enterprise, financial history on the basis of statistics on market values and/or officially published forecast information.

**Art. 11.** Rules under Chapter Three apply to all PCI approved as part of TYNDP.

### **Chapter Four**

#### **RISK MITIGATING MEASURES IN NATURAL GAS SECTOR REGULATORY FRAMEWORK**

**Art. 12.** (1) Independent gas transmission operator's tariffs are defined by a methodology for setting prices of access and transmission through the transmission network, and applying "revenue cap" regulation method.

(2) The first regulatory period is 3 years and the next periods - 5 years.

(3) Before the start of each regulatory period the regulator approves by a decision: the annual revenue requirements for the transmission activity for the first year of the regulatory period for each gas grid or total annual revenue requirements for the transmission system in the first year of the regulatory period; return basis for the first year of the regulatory period; rate of return on capital for the regulatory period; estimated costs included in the basic annual revenue requirements as well as of the directly transferable costs for the first year of the regulatory period after evaluating their feasibility; an efficiency improvement factor, which applies to the projected operating costs; revenue requirements distribution ratio by entry and exit points; revenue requirements distribution ratio by natural gas access and transmission price.

(4) Directly transferable expenditure for the relevant year of the regulatory period is determined each year and include the following items: costs arising from public service obligations, including those related to security of supply and obligations of the operator under " Emergency Action Plan under Regulation № 994/2010" approved by the Minister of energy; portion of the grid fees due by the operator for participating in the European Network of Transmission System Operators for Gas and other charges for the relevant year; excise duty on fuel gas and technological costs; license fees payable by the operator under EA.

(5) By a decision under par. 3, EWRC determines the approach that the entry-exit model shall be applied for the relevant regulatory period or for a price period within the regulatory period: for each gas network or for the transmission system.

(6) Return basis is the one on which independent gas transmission operator earns return on invested capital. Return basis comprises of the assets acquired by the operator, serving for the natural gas transmission activity through the relevant network or transmission system. Return basis elements are: value of assets, investment component, depreciation component, carrying amount of the grant assets and working capital required.

(7) The rate of return on capital is equal to the weighted average cost of capital. The weighted average cost of capital is the rate of return of the debt and equity, weighted according to the share of each of these funding sources.

(8) The rate of return on equity is approved taking into account factors such as: comparison with other companies with similar risk, access to finance, current financial and economic conditions in the country, opportunity cost of capital, enterprise specific risk, financial policy and capital structure of the company, financial history of the company.

(9) Methodology on the price formation of natural gas access and transmission through the gas transmission networks is published on EWRC's website.

**Art. 13.** (1) When a major new gas infrastructure is to be constructed, as well as significant capacity increase of the existing gas infrastructure and its enlargement, reconstruction and modernization, which enable the development of new gas supply sources, EWRC may grant temporary exemptions from obligations for: independence in respect of direct and indirect control acquisition, assets ownership, the acquisition of direct and indirect control of the independent operator; price regulation of services provided.

(2) Temporary exemption under par. 1 is granted when: investment stimulates competition in gas supply and enhance security of supply; investment risk level is such that it would not take place unless an exemption granted; infrastructure is owned by an entity unbundled at least in terms of its legal form from the system operators in whose systems the infrastructure is to be built; new infrastructure users pay a charge for its use; exemption should not be detrimental to competition or to the effective functioning of the internal natural gas market, or to the efficient functioning of the infrastructure the new infrastructure shall be connected to.

**Art. 14.** Rules under Chapter Four apply to all PCI approved as part of TYNDP.

## **Chapter Five**

### **EVALUATION OF PROJECT-SPECIFIC RISKS OF INVESTMENTS IN ELECTRICITY AND COMMON RISK IN GAS PROJECTS**

**Art. 15.** (1) In cases when a project promoter incurs higher risks for the development, construction, operation or maintenance of PCI compared to the normal risks faced by comparable infrastructure projects, according to Art.13 par.1 of Regulation (EU) № 347/2013, it should be provided with appropriate incentives.

(2) The assessment whether to grant incentives or not refers to risks that can significantly reduce the profitability of a project, thereby possibly delay or prevent a PCI to be carried out.

(3) Considering the condition under par.2 is carried out following criteria and method for evaluating project-specific risks applied to PCI.

**Art. 16.** (1) Criteria for PCI risk evaluation in order to grant incentives are:

1. Eligibility of the project under art.13, par.1 of Regulation (EC) № 347/2013 – PCI, that fall under the categories set out in Annex II.1 (a), (b) and (d) and Annex II.2 and are not covered by any of the exemptions from Article 13 (1) of Regulation (EC) № 347/2013.

2. Availability of information about project risks - EWRC can only evaluate risks if and when the project promoter has submitted any and all relevant information in a comprehensible and quantified way. The project promoter must prove the degree to which a potential risk may actually increase cost or revenue risk, and that it is the project promoter (and not the customer) who bears this risk. The documents that must be submitted include, but are not limited to:

- a) Proof that the project has been granted PCI status;
- b) Proof that the project is sufficiently mature;
- c) PCI cost-benefit analysis in accordance with Article 11 of Regulation (EC) № 347/2013;
- d) A description of the risk, including probability of occurrence and a quantitative estimate of the financial consequences;
- e) An explanation justifying why this risk is higher than that faced by comparable projects, and why it cannot be covered by operational measures or is not covered by regulatory measures, as well as that the risk is borne by the project promoter or its owner.

**Art. 17.** (1) Risk evaluation method includes:

1. Identifying risks from a regulatory perspective – EWRC is able to assess the nature of the project-specific risk that the promoter faces and whether this is different from that of other comparable investment projects based on the information provided by the project promoter.

2. Risk mitigation measures taken by the project promoter - the regulator evaluates whether there are existing or applicable risk mitigation measures that the project promoter could employ, such as general or economic instruments that limit potential negative impacts. Where such measures are available or applicable, projects do not qualify for additional incentives.

3. Risk coverage through risk components in rate of return on capital invested – EWRC evaluates the potential impact of a risk on a project promoter as part of the overall regulatory framework. Therefore checks are carried out whether or not the project-specific

risk has already been accounted for when determining the allowed rate of return on capital invested.

4. Risk mitigation measures provided by the regulatory framework - a risk already accounted for by corresponding regulatory mitigation measures is not eligible for additional incentives.

5. Quantifying the risk – in case a risk has not already been accounted for by operational or regulatory measures and it will not be borne by the future users of a facility, EWRC assesses whether the financial impact and probability of occurrence of the risk are such that additional incentives should be granted. This will be only the case when the risk is considered unacceptably high. In such cases the project promoter provides a financial estimate of the risk that accounts for the existing regulatory framework.

6. Comparable infrastructure projects - EWRC evaluates whether the risk the project promoter is exposed to is higher than for comparable projects.

7. Justification of the risk profile - EWRC analyses whether the risk profile is justified when compared to a lower-risk alternative. This analysis also considers the results of the PCI cost-benefit analysis. Where necessary, EWRC will consider mitigating the residual risk by taking adequate steps which address the particular nature of the risk.

## **FINAL PROVISION**

§ 1. This methodology pursuant to art.13, par.6 Regulation (EC) № 347/2013 of the European Parliament and of the Council of 17 April 2013 on guidelines for trans-European energy infrastructure and repealing Decision № 1364/2006 / EC and amending Regulations (EC) № 713/2009, (EC) № 714/2009 and (EC) № 715/2009, has been adopted by the Energy and Water Regulatory Commission by a Decision under Protocol № 47 of 15 March 2016, item 2.