

Terms of Reference for electricity and gas Groups under the Regulation 347/2013 as adopted and adapted by the Energy Community Ministerial Council Decision 2015/09/MC-EnC of 16 October 2015¹

(1) Background: The Regulation on Guidelines for Trans-European energy infrastructure as adopted and adapted in the Energy Community ('the Regulation')

Building on the experience taken from the work of the Task Force which led to the adoption of the first Projects of Energy Community Interest ('PECI') by the 11th Energy Community Ministerial Council, decision dated 24 October 2013, and followed by the Recommendation No. 2014/01/MC-EnC of 23 September 2014 on guidelines for trans-European energy infrastructure, the EU Regulation 347/2013 was adopted and adapted in the Energy Community by the decision of the Ministerial Council from 16 October 2015.

The Regulation identifies **energy infrastructure categories concerning electricity, gas, oil and 1 thematic area (smart grid)**. For the identification of the PEGI, as well as Projects of Mutual Interest ('PMI'), as defined in Article 4 paragraph 5 and 6, the Regulation foresees an **approach**, based on the categories laid out in Annex I of the Regulation, as adapted and adopted in the Energy Community.

The terms of reference explain the objectives and tasks of the two Groups, including the process for establishing of preliminary PEGI and PMI lists leading to the establishment of the Energy Community list, and the monitoring of the project implementation.

(2) Objectives of the Groups

- to list all projects eligible to be candidates for PEGI / PMI status;
- to assess all eligible projects, based on the proposed and accepted methodology so as to define a limited number of projects which by fulfilling the necessary criteria defined in the Regulation contribute to the fullest extent to the objectives set by the Regulation
- to adopt a preliminary and Energy Community list and to perform monitoring tasks accordingly;

(3) Electricity and Gas Groups

Electricity and a Gas Group will be established for the entire Energy Community that will cover the categories and thematic area. Groups shall meet together, when relevant, to discuss matters common to them and each time when it is justified on grounds of efficiency reasons. The structure of each Group shall be as follows:

i. concerning electricity:

- (a) high-voltage overhead transmission lines, if they have been designed for a voltage of 220 kV or more, and underground and submarine transmission cables, if they have been designed for a voltage of 150 kV or more;

¹ The TEN-E Regulation (347/2013), as adapted and adopted in the Energy Community by the Ministerial Council in October 2015, identifies the energy infrastructure categories and one thematic area. The current Terms of Reference covers the electricity and gas Groups established under Article 3 of the TEN-E Regulation as adapted for the Energy Community.

(b) electricity storage facilities used for storing electricity on a permanent or temporary basis in above-ground or underground infrastructure or geological sites, provided they are directly connected to high-voltage transmission lines designed for a voltage of 110 kV or more;

(c) any equipment or installation essential for the systems defined in (a) and (b) to operate safely, securely and efficiently, including protection, monitoring and control systems at all voltage levels and substations;

(d) any equipment or installation, both at transmission and medium voltage distribution level, aiming at two-way digital communication, real-time or close to real-time, interactive and intelligent monitoring and management of electricity generation, transmission, distribution and consumption within an electricity network in view of developing a network efficiently integrating the behaviour and actions of all users connected to it — generators, consumers and those that do both — in order to ensure an economically efficient, sustainable electricity system with low losses and high quality and security of supply and safety;

The Electricity Group will also cover the thematic area: Smart grids deployment.

ii. concerning gas:

(a) transmission pipelines for the transport of natural gas and bio gas that form part of a network which mainly contains high-pressure pipelines, excluding high-pressure pipelines used for upstream or local distribution of natural gas;

(b) underground storage facilities connected to the above-mentioned high-pressure gas pipelines;

(c) reception, storage and regasification or decompression facilities for liquefied natural gas (LNG) or compressed natural gas (CNG);

(d) any equipment or installation essential for the system to operate safely, securely and efficiently or to enable bi-directional capacity, including compressor stations.

The Gas Group will also cover the projects in the category concerning oil, as follows:

iii. concerning oil:

(a) pipelines used to transport crude oil;

(b) pumping stations and storage facilities necessary for the operation of crude oil pipelines;

(c) any equipment or installation essential for the system in question to operate properly, securely and efficiently, including protection, monitoring and control systems and reverse-flow devices.

a) Membership

Each Group comprises of the representatives of Contracting Parties and Member States concerned, National Regulatory Authorities, the gas and electricity transmission system operators, the European Commission and the Energy Community Secretariat, and upon invitation, ENTSO for electricity and gas. Project promoters of oil infrastructure will be also invited to the respective Group meetings when the oil projects are discussed.

b) Other participants

The Groups may decide to invite promoters of third country projects potentially eligible for selection as a PECEI or a PMI. The decision to invite third country representatives shall be based on consensus.

c) Decision making powers

The Decision making powers in each Group are restricted to the Parties to the Treaty which for the decision-making purpose shall form the decision-making body. Decision-making process in the each decision-making body of each Group is based on consensus. Decision-making bodies may merge.

(4) Establishment of the Energy Community list

The Regulation sets out in Article 4 a set of general and specific criteria for projects to become PECl. The projects must fall in at least one of the energy infrastructure categories and areas as described in Annex I of the Regulation; the potential overall benefits of the project, assessed according to specific criteria in paragraph 2 of the Article 4 of the Regulation, outweigh its costs, including in the longer term; involve at least two Contracting Parties or a Contracting Party and a Member State by directly crossing the border of two or more Contracting Parties, or of one Contracting Party and one or more Member States; or be located on the territory of one Contracting Party and have a significant cross-border impact. Furthermore electricity and gas projects need to contribute to at least one of the following specific criteria: market integration, sustainability and/or security of supply for electricity and market integration, security of supply, competition and/or sustainability for gas. The contribution is measured by the indicators for each criterion which are defined in Annex III of the Regulation. Since the first Energy Community list is due to be established by the end of 2016, the Parties to the Treaty which at the same time form the decision-making bodies of both Groups shall strive to decide on a preliminary list in the most efficient way possible and to encourage all institutions involved to take any necessary action without delay.

a) Submission of project proposals

Promoters of projects potentially eligible for selection as PECl wanting to obtain the status of PECl shall submit an application to the Energy Community Secretariat. The application is based on the call for selection of priority projects in line with trans-European energy infrastructure Regulation. The application includes an analysis of the fulfilment of the relevant criteria defined in Article 4 of the Regulation and for projects having reached a sufficient degree of maturity, an assessment of their project with regard to the contribution to implementing the Energy Community goals, a project-specific cost-benefit analysis based on the methodologies developed by the ENTSO for electricity or the ENTSO for gas pursuant to Article 11 of the Regulation, as adopted in the Energy Community. The Groups can decide on the scope of additional information which needs to be provided for the assessment of the proposed projects.

The proposed projects shall be part of the latest available 10-year network development plan (TYNDP) for electricity, respectively for gas, developed by the ENTSO for Electricity, and Gas, with the exception of those located in a Contracting Party, which is not included in the TYNDPs. For those, the relevant projects shall be part of national ten year network development plans.

b) Assessment of the proposed projects

The Groups shall meet to examine the proposed projects. The Groups shall evaluate the projects against the general and specific criteria described above. An External consultant (REKK and DNV GL) was appointed to support Groups, especially in applying a methodology and by facilitating a dialogue with participants and compiling a list of the proposed projects.

This evaluation shall lead to a ranking of projects which is to be used for the identification of the proposed preliminary PECl lists and which is for internal use of the Groups only.

In the case of projects submitted as potentially eligible to obtain the status of PECl, that do not meet the criteria set in Article 4(5), and based on the assessment, these may be proposed as Projects of mutual interest (PMI) on a separate list.

All recipients of information related to the assessment of the proposed projects shall preserve the confidentiality of commercially sensitive information and moreover shall not share personal information outside the Groups. The Contracting Party and the concerned Member State have to approve each individual proposal for a project, which relates to its territory. If a Contracting Party or

a concerned Member State decides not to give its approval, it shall present its substantiated reason for doing so to the relevant Group. The Decision-making body shall examine, at the request of a Contracting Party or the concerned Member State of the Group, the substantiated reasons presented by a Contracting Party or a Member State for not approving a PEI related to its territory.

Each Contracting Party or Member State to whose territory a proposed project does not relate, but on which the proposed project may have a potential net positive impact or a potential significant effect, such as an impact or effect on the environment or the operation of the energy infrastructure on its territory, may present an opinion to the Group specifying its concerns.

During the assessment of project proposals, the National Regulatory Authorities and if deemed necessary the Energy Community Regulatory Board, shall check the consistent application of the criteria / cost benefit analysis methodology and evaluate the cross-border relevance of the proposed projects.

Each Group shall further consult the organisation(s) representing relevant stakeholders including producers, distribution system operators, suppliers, consumers and organisations for environmental protection.

The Groups shall agree on the draft preliminary list of potential PEIs, and respectively PMIs, for the specific energy infrastructure categories not later than mid-September. Each Group shall examine and rank projects which meet the above mentioned criteria taking into account the assessment of Regulators, projects urgency, the number of Contracting Parties or Member States concerned and complementarities, whilst ensuring equal opportunities also for projects involving peripheral Contracting Parties to be represented in a fair way.

c) Opinion of the Energy Community Secretariat, the Regulatory Board and the Agency

The draft preliminary PEI lists of proposed projects shall be submitted to the Energy Community Secretariat, the Regulatory Board and the Agency. The Regulatory Board, seeking cooperation with the Agency, and with the support of the Energy Community Secretariat shall provide an opinion on the draft preliminary PEI lists, in particular on the consistent application of the criteria and the cost-benefit analysis across regions.

d) Adoption of the preliminary PEI lists

Within one month of the date of receipt of the Regulatory Board's opinion, the decision-making body of each Group shall adopt its final preliminary PEI list.

e) Adoption of the Energy Community PEI list

The Ministerial Council shall establish the list of Projects of Energy Community Interest by way of a Decision under Title III of the Treaty.

If, based on the preliminary PEI lists received and after having taken into account the Regulatory Board's opinion, the total number of proposed PEIs on the Energy Community list would exceed a manageable number, the Permanent High Level Group shall consider, after having consulted each relevant Group, not to include in the Energy Community list the projects that were ranked lowest by the Group concerned, according to the ranking established.

f) Meetings

Meetings of the Groups take place in Vienna. The meetings are organised by the Energy Community Secretariat.

The reimbursement of costs related to the meetings, is made for the eligible groups in line with the Energy Community Reimbursement Rules.

The terms of reference, an updated list of member organisations, regularly updated information on the progress of the work, meeting agendas, as well as final conclusions and decisions of each Group shall be published by the Energy Community Secretariat on the infrastructure transparency platform created in line with the Regulation.

Work plan for the year 2020 shall be as follows:

- 1) 1st Groups meeting (30/01/2020)
- 2) Eligibility test and data validation by the consultant (by 14/03/2020)
- 3) 2nd meeting of gas and electricity Groups (18-19 03 2020)
- 4) 3rd meeting of gas and electricity Groups (15-16 04/2020 – OPTIONAL)
- 5) 4th meeting of gas and electricity Groups (26-27/05/2020)
- 8) Preliminary list/Draft Final Report 12.06.2020
- 9) Endorsement of the preliminary list by PHLG (June 2020)
- 10) Ministerial Council decision on the Energy Community list (by the end of December 2020)

(5) Monitoring

The Energy Community Secretariat and the Groups concerned shall monitor the progress achieved in implementing the PECl and, if necessary, make recommendations to facilitate their implementation. By 31 March of each year, following the year of inclusion of a PECl on the Energy Community list, project promoters shall submit an annual report, for each gas and electricity project to the competent authority referred to in Article 8 responsible for facilitating and co-ordinating the permit granting process, and either to the Regulatory Board or the respective Group.

Within three months of the receipt of the annual reports the Energy Community Secretariat shall submit to the Groups a consolidated report for the PEClS evaluating the progress achieved and make, where appropriate, recommendations on how to overcome the delays and difficulties encountered.

Additionally, each year the national authorities responsible for facilitating and co-ordinating the permit granting process shall report to the respective Groups on the progress and, where relevant, on delays in the implementation of PEClS located on their respective territories with regard to the permit granting process, and on the reason for such delays.