

[National Emblem of Ukraine]

**NATIONAL ENERGY AND UTILITIES REGULATORY COMMISSION  
(NEURC)**

**RESOLUTION**

17 December 2021

Kyiv

No. 2589

On approval of final decision on certification of the electricity transmission system operator and recognition of NEURC Resolution No. 901 dated 2 June 2021 as invalid

In accordance with paragraph 7 of part 1 of Article 17 of the Law of Ukraine “On the National Energy and Utilities Regulatory Commission,” paragraph 3 of part 3 of Article 6, Articles 31, 32, 33 and 34 of the Law of Ukraine “On Electricity Market,” part 2 of Article 1 of the Law of Ukraine “On ratification of the Protocol on the accession of Ukraine to the Treaty establishing the Energy Community,” the Procedure for certifying the electricity transmission system operator, approved by Resolution of the National Energy and Utilities Regulatory Commission No. 1016 dated 10 August 2017, the National Energy and Utilities Regulatory Commission

**RESOLVES:**

1. To approve the final decision on certification of PRIVATE JOINT STOCK COMPANY NATIONAL POWER COMPANY UKRENERGO (EDRPOU code 00100227), attached below.

NEURC Chairman

V. Tarasiuk

## **FINAL DECISION ON CERTIFICATION OF PRIVATE JOINT STOCK COMPANY NATIONAL POWER COMPANY UKRENERGO**

### **1. Introduction**

Requirements for the designation of the transmission system operator as an economic entity that has received a certification decision are set out in Articles 9 and 10 of Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC (hereinafter – the Directive) and Article 3 of Regulation 714/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the network for cross-border exchanges in electricity (hereinafter – the EC Regulation).

In order to implement the requirements of the Directive and the EC Regulation into the national law, which is among the international obligations of Ukraine under the Association Agreement between Ukraine, of the one part, and the European Union, the European Atomic Energy Community and their Member States, of the other part (hereinafter – the Agreement) ratified by the Law of Ukraine “On ratification of the Association Agreement between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community and their Member States, on the other hand”), the Treaty establishing the Energy Community, signed on 24 September 2010 in the city of Skopje (Macedonia) and ratified by the Law of Ukraine “On ratification of the Protocol on the accession of Ukraine to the Treaty establishing the Energy Community”, the Law of Ukraine “On Electricity Market” (hereinafter – the Law).

In accordance with part 2 of Article 34 of the Law, the procedure for certification, which contains requirements for notifications, documents, data and information provided by the entity requesting certification, the deadline for the submission, the amount and procedure for payment for certification and the term of validity of the decision on certification are approved by the Regulator.

The National Energy and Utilities Regulatory Commission (hereinafter – the NEURC), by its Resolution No. 1016 dated 10 August 2017, approved the Procedure for certification of the electricity transmission system operator (hereinafter – the Certification Procedure). In accordance with the Certification Procedure, the Regulator (NEURC) decides on the certification of (or refusal to certify) the transmission system operator (hereinafter – the TSO) based on the results of verification of the applicant's compliance with the requirements for unbundling and independence of the TSO, as well as the criteria specified in paragraph 3.1. of the Certification Procedure.

On 17 May 2021, the NEURC received a request from Private Joint Stock Company National Power Company Ukrenergo (hereinafter – NPC UKRENERGO) (EDRPOU code 00100227) for certification of the transmission system operator in accordance with the ISO model together with the documents, data and information required by the Certification Procedure.

The NEURC considered the documents, data and information submitted by NPC UKRENERGO on compliance with the requirements for unbundling and independence of the electricity transmission system operator provided by the Law, as well as information provided by other institutions and enterprises, and the resolution of June 2, 2021, № 901, made a preliminary decision on the certification of the TSO taking into account that the owner of the transmission system and corporate rights management body in the authorized capital of NPC UKRENERGO is the Ministry Finance of Ukraine.

At the same time, on September 2, 2021, the NEURC received a letter from NPC UKRENERGO, informing about a possible significant change in the circumstances, on the basis of which the preliminary decision was made to certify the TSO because of the approval by the Cabinet of Ministers of Ukraine of Direction No. 833-r<sup>1</sup> dated 28 July 2021 (hereinafter – Direction No. 833), which envisages:

1) to agree with the proposal of the Ministry of Economy to transfer the powers to manage corporate rights owned by the state in the share capital of NPC UKRENERGO to the Ministry of Energy;

2) to designate the Ministry of Energy as the authorised body to manage the state property assigned to NPC UKRENERGO under the right of economic management as the property not included in the company's share capital in the process of its formation;

3) for the Ministry of Finance together with the Ministry of Energy, within a two-week period, in the prescribed manner, to perform measures necessary for the registration of corporate rights of the state in the share capital of NPC UKRENERGO.

Taking into account a significant change in the circumstances, on the basis of which the preliminary decision on certification of the TSO was made, in particular regarding the change of the transmission system's owner and the body for managing the state corporate rights in the share capital of NPC UKRENERGO, there was a need for a new preliminary decision on certification of the transmission system operator.

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In view of the above, the NEURC's Resolution of October 1, 2021, № 1683 declared invalid the NEURC's Resolution of June 2, 2021, № 901 and a new preliminary decision on certification of the electricity transmission system operator was made, which established that for a final decision on certification of the transmission system operator, NPC UKRENERGO must submit to the NEURC:

1) documents confirming the absence in the use of economic entities that have licenses for the production of electricity (storage of natural gas) and supply of electricity (natural gas), state property, the management of which is performed by the Ministry of Energy of Ukraine (hereinafter – the Ministry of Energy).

According to the results of the analysis of the provided list of state property used by economic entities that have licenses for electricity production (extraction, storage of natural gas) and supply of electricity (natural gas), the management functions of which are carried out by the Ministry of Energy, it was found out that the vast majority of such property relates to housing, civil defense, mobilization resources, recreation and tourism, health, history, culture and art, engineering infrastructure, etc. (production equipment, appliances, tools, workbenches, motor transport), and has no significant impact and is not used in the process of electricity production (extraction, storage of natural gas) and electricity supply (natural gas).

In view of the above, the presence in the use of economic entities that have licenses for the production of electricity (extraction, storage of natural gas) and supply of electricity (natural gas), state property, the management of which is carried out by the Ministry of Energy, does not affect independence and unbundling of NPC UKRENERGO and the Ministry of Energy as the owner of the transmission system;

2) information and documents confirming compliance of the transfer of the single property complex of the state enterprise Market Operator (hereinafter – SE Market Operator) to the Ministry of Energy with the requirements for unbundling and independence of the transmission system operator.

According to the information provided, SE Market Operator is responsible for the organization of purchase and sale of electricity in the day ahead market and intraday market, helps to ensure a balance between supply and demand in the electricity market. At the same time, the Market Operator operates on the principle of exchange, and transactions of purchase/sale of electricity in the day ahead market and intraday market are carried out automatically, without any manual control, which prevents abuse and provides equal conditions for all market participants.

Therefore, the implementation of the functions of the authorized management body of the single property complex of SE Market Operator does not affect unbundling and independence of NPC UKRENERGO and the Ministry of Energy as the owner of the transmission system;

3) documents and information confirming the absence of risk of violation of the legislation on unbundling and independence of the TSO, namely, confirmation of the transfer of universal service suppliers to the state enterprise National Nuclear Energy Generating Company Energoatom (hereinafter – NNEGC Energoatom) before transfer

to the management of the Ministry of Energy of electricity distribution systems operators.

According to the information provided by NPC UKRENERGO, the distribution system operator Khmelnytskobleno (hereinafter – JSC Khmelnytskobleno) has been transferred to the Ministry of Energy's management, which is the sole participant in the authorized capital of the limited liability company Khmelnytskenergozbut (hereinafter – LLC Khmelnytskenergozbut, the Company) (supplier of universal services in Khmelnytskyi region).

In order to unbundle the activities of electricity distribution system operators from electricity supply activities and take measures to prevent the operation of vertically integrated economic entities, JSC Khmelnytskobleno and NNEGC Energoatom on November 10, 2021 concluded:

agreement on purchase and sale of shares of Limited Liability Company Khmelnytskenergozbut (hereinafter – the Agreement), according to which JSC Khmelnytskobleno transfers ownership of its share (100 percent) in the authorized capital of Limited Liability Company Khmelnytskenergozbut to NNEGC Energoatom on the terms and in the manner specified in the Agreement, and NNEGC Energoatom takes ownership of this share and pays for it in accordance with the Agreement. In addition, in accordance with the terms of the Agreement from the date of signing of this Agreement and until the actual transfer to the Buyer of ownership of the share capital of the Company, JSC Khmelnytskobleno undertakes to refrain from direct management of LLC Khmelnytskenergozbut and transfer such right to NNEGC Energoatom by concluding a corporate agreement. SE NNEGC Energoatom has the right to manage the Company at its own discretion in accordance with the terms of the corporate agreement;

Corporate Agreement of Khmelnytskenergozbut Limited Liability Company (hereinafter – the Corporate Agreement), which regulates the above-mentioned relations between JSC Khmelnytskobleno and NNEGC Energoatom regarding the management of Khmelnytskenergozbut LLC. In addition, by a power of attorney dated November 22, 2021 № 1974, JSC Khmelnytskobleno in accordance with the terms of the Corporate Agreement authorized SE NNEGC Energoatom to manage the Limited Liability Company Khmelnytskenergozbut by participating in the General Meeting or by making a decision of the sole participant of the Company, for which NNEGC Energoatom has been granted the relevant rights.

At the same time, although under the terms of the Corporate Agreement, the management of Khmelnytskenergozbut LLC is carried out exclusively by the future participant within the rights due to the participants of Khmelnytskenergozbut LLC in accordance with the provisions of the Charter of Khmelnytskenergozbut LLC and the Law of Ukraine “About limited and additional liability companies”, however, paragraph 4.3 of the same agreement provides for certain restrictions on such management, paragraph 4.2 – the possibility of interference in the management of the Company by JSC Khmelnytskobleno in some cases specified in the agreement.

Given that a number of corporate rights for the entire period of the Corporate Agreement remain with JSC Khmelnytskobleno, there is a risk of influence on LLC

Khmelnyskenergozbut, which may involve the risk of violating the law on unbundling and independence of the TSO.

It should be noted that according to Section 19 of the Charter of JSC Khmelnytskoblenenergo, decision-making on the establishment and / or participation in any legal entities / their associations, their reorganization, liquidation and decision-making on the activities of such persons / associations is carried out by the Supervisory Board. At the same time, the representative of JSC Khmelnytskoblenenergo at the General Meeting of legal entities of which he is a participant (shareholder) acts on the basis of a power of attorney, and voting at such General Meeting is based on the voting task approved by the Supervisory Board or General Meeting of JSC Khmelnytskoblenenergo.

According to paragraph 2 of the Procedure for granting voting tasks to state representatives at the General Meeting of the company, the authorized capital of which includes corporate rights of the state, approved by the Cabinet of Ministers of Ukraine dated October 30, 2014 № 678, orders approving voting tasks are issued by subjects of management of state property directly, without convening a meeting of shareholders on matters within the competence of the General Meeting, in the form of an order.

Thus, the possibility of the Ministry of Energy's influence on the activities of LLC Khmelnytskenergozbut is seen by issuing voting tasks, on the basis of which the representative of JSC Khmelnytskenergozbut votes at the General Meeting of LLC Khmelnytskenergozbut. At the same time, the procedure for making decisions (voting) by the Future Participant and/or JSC Khmelnytskoblenenergo on issues on which the issuance of voting tasks by the subject of management of state property (ie the Ministry of Energy).

In order to avoid risks of violation of the requirements for unbundling and independence of the TSO, the provisions of the Charter of JSC Khmelnytskoblenenergo and the Corporate Agreement should provide no requirement for a representative of JSC Khmelnytskoblenenergo/SE NNEGC Energoatom at the General Meeting of legal entities, the participant (shareholder) of which is the Company, to act on the basis of a power of attorney, and to vote at such General Meeting on the basis of the voting task approved by the Supervisory Board or General Meeting of JSC Khmelnytskoblenenergo.

We also draw your attention to the fact that according to the order of the Cabinet of Ministers of Ukraine of September 15, 2021, № 1222-r, powers to manage corporate rights owned by the state in the authorized capital of Private Joint Stock Company Ukrainian Energy Saving Service Company (hereinafter – PJSC UkrESCO), the state share is 99.6585 percent, are transferred to the Ministry of Energy of Ukraine.

In turn, PJSC UkrESCO owns a stake of 25 percent of the authorized capital of the distribution system operator PJSC Cherkasyoblenergo (state share – 46 percent), which in turn owns 100 percent of the authorized capital of universal service supplier LLC Cherkasyenergozbut.

In accordance with the requirements of part four of Article 32 of the Law, any natural or legal person has no right to simultaneously control the transmission system operator and directly or indirectly exercise sole or joint control over an economic entity

engaged in production (extraction) and/or or the supply of electricity (natural gas), and vice versa.

It should be noted that according to paragraph 9.16 of the Charter of PJSC Cherkasyoblenergo, the General Meeting is recognized as valid subject to quorum, ie if it is attended by shareholders (their representatives) who collectively own at least sixty percent of the voting shares.

As the share of PJSC UkrESCO in the authorized capital of PJSC Cherkasyoblenergo is 25%, a quorum for the meeting may be formed without the participation of PJSC UkrESCO.

At the same time, if there is a quorum for the General Meeting, the share of PJSC UkrESCO of the total number of shares registered to participate in the meeting, which form a quorum, will be 41.6%.

According to paragraph 9.4 of the Charter of PJSC Cherkasyoblenergo, the decision of the General Meeting is made by more than three quarters of the votes of shareholders registered to participate in the General Meeting, on the following issues:

- amending the Charter or approving the new version of the Charter;

- decision-making on cancellation of bought out shares;

- decision-making on changing the type of Company;

- decision-making on the placement of shares;

- decision-making on increase or decrease of the Authorized capital;

- decision-making on separation and termination of the Company, except for cases provided by law, on liquidation of the Company, election of the liquidation committee, approval of the procedure and terms of liquidation, distribution of property remaining after satisfaction of creditors' claims, and approval of liquidation balance;

- in other cases provided by law.

The decision to commit a significant transaction in cases specified by law is made by more than fifty percent of the votes of shareholders of their total number.

The decision on the election of members of the Supervisory Board and the Audit Commission is made by cumulative voting in the manner prescribed by law.

Decisions on other issues are made by a simple majority of shareholders (more than fifty percent of shareholders) who have registered to participate in the General Meeting.

At the same time, if there is a quorum for the General Meeting, the share of PJSC UkrESCO of the total number of registered shares to form a quorum will be 41.6%, which is insufficient for a single decision of PJSC UkrESCO or for blocking decision-making by other shareholders participating in the meeting.

Since PJSC UkrESCO owns 25% of the authorized capital of PJSC Cherkasyoblenergo (state share of PJSC UkrESCO and the Ministry of Energy as a body of corporate rights management in the authorized capital of PJSC UkrESCO) and and 41.6% of the total number of shares registered to participate in the meeting, which form a quorum (less than sixty percent of the voting shares), PJSC UkrESCO does not have sufficient authority to exercise direct and/or indirect control over the activities of LLC Cherkasyenergozbut.

In addition, among the above issues considered by the General Meeting, there are none that are directly related to the powers of PJSC Cherkasyoblenergo to manage the corporate rights of PJSC Cherkasyoblenergo in the authorized capital of LLC Cherkasyenergozbut.

It should also be noted that pursuant to the Decree of the President of Ukraine of August 28, 2021, № 452/2021 "On the decision of the National Security and Defense Council of Ukraine of July 30, 2021 "On measures to neutralize threats in the energy sector" (hereinafter – Decree № 452/2021), which put into effect the decision of the National Security and Defense Council of Ukraine of July 30, 2021 "On measures to neutralize threats in the energy sector", it is planned to transfer to the Ministry of Energy of Ukraine, in particular, PJSC Cherkasyoblenergo.

In order to ensure the requirements of the Law on Independence of the Transmission System Operator, Cherkasyenergozbut LLC is to be transferred to SE NNEGC Energoatom and sell the shares of PJSC Cherkasyoblenergo in Cherkasyenergozbut LLC to SE NNEGC Energoatom in the same manner as JSC Khmelnytskoblenergo. At the same time, the above-mentioned reservations regarding JSC Khmelnytskyoblenergo should also be settled;

4) documents confirming the revision of the Regulation on the Unit for Coordination of Activities and Interaction of Fuel and Energy Operators (or the relevant structural unit designated to perform these functions in the event of a change in the structure of the Ministry of Energy) and bringing the provisions on structural subdivisions of the Ministry of Energy and job descriptions of its employees in line with the requirements for unbundling and independence of the TSO and the owner of the transmission system, Compliance programmes of the Ministry of Energy and the Regulation on the Ministry of Energy of Ukraine approved by the Resolution of the Cabinet of Ministers of Ukraine of June 17, 2020, № 507 (hereinafter – the Regulation on the Ministry of Energy).

According to the information provided, the Ministry of Energy is currently undergoing organizational and structural changes, according to which it is planned to establish the Unit of System Operators Management, the structure of which provides for the establishment of the Unit of Financial and Legal Support of System Operators, Corporate Rights Management Unit of System Operators, the State Property Management Unit of System Operators and the Capital Construction Project Coordination Unit. These changes are aimed at delimiting the functions of the structural unit that will implement the powers of the Ministry of Energy to manage corporate rights owned by the state in the authorized capital of the transmission system operator and gas transmission system operator and state property used in electricity transmission and electricity transportation of natural gas by main pipelines, from the functions of other structural units of the Ministry of Energy of Ukraine. In this regard, the NEURC was provided with draft regulations on the Unit for Coordination of Activities and Interaction of FEC Operators and other structural units of the Ministry of Energy, the wording of which partially (taking into account the current structure of



the Ministry of Energy) removes remarks of the NEURC in the preliminary decision on certification.

Thus, after approval of the new organizational structure of the Ministry of Energy, the drafts of the above provisions (and/or regulations on other structural units in accordance with the new organizational structure), as well as job descriptions of employees must be brought in line with the new organizational structure of the Ministry of Energy taking into account the requirements for unbundling of the owner of the transmission system and approved after preliminary discussion with the NEURC;

5) approved by the Ministry of Energy decisions on the division of functional responsibilities between the management of the Ministry of Energy, which meet the requirements for unbundling and independence of the TSO and the owner of the transmission system.

According to the information provided, the order of the Ministry of Energy of December 6, 2021, № 318 "On the subordination of structural units of the Ministry of Energy of Ukraine and the distribution of functional responsibilities among the management of the Ministry" (hereinafter – Order № 318), changes were made to the division of powers between the Minister and the Deputy Ministers of Energy of Ukraine, in particular:

the powers of the Minister of Energy have been limited with regard to:

signing orders (amendments thereto) concerning the implementation by the Ministry of corporate rights management of the state of the private joint-stock company National Power Company UKRENERGO, Joint Stock Company Main Gas Pipelines of Ukraine and management of state property used in the process of electricity transmission and natural gas transportation by main pipelines,

forming, liquidating, reorganizing, approving regulations (charters), perform within its powers other functions of the Ministry in terms of powers to manage state property and corporate rights of the state of the private joint stock company National Power Company UKRENERGO, the joint stock company Main Gas Pipelines of Ukraine,

representing the Ministry in public-law relations with other bodies, enterprises, institutions and organizations in Ukraine and abroad on issues related to the implementation by the Ministry of corporate rights management powers of the private joint-stock company National Power Company UKRENERGO, Joint Stock Company Main Gas Pipelines of Ukraine and management of state property used in the process of electricity transmission and natural gas transportation by main pipelines,

approving draft laws of Ukraine, acts of the President of Ukraine and the Cabinet of Ministers of Ukraine submitted for approval to the Ministry concerning the implementation by the Ministry of corporate rights management of the state of the private joint stock company National Power Company UKRENERGO, Joint Stock Company Main Gas Pipelines of Ukraine and management of state property used in the process of electricity transmission and natural gas transportation by main pipelines without consent (approval) of the Deputy Minister for European Integration;

it is determined that the approval of the structure of the Ministry's staff, regulations on independent structural subdivisions of the Ministry's staff, definition of responsibilities of the First Deputy Minister, Deputy Ministers, division of powers of the Minister between the First Deputy Minister and Deputy Ministers in their absence, the Minister shall issue mandatory instructions to be executed by civil servants and employees of the Ministry, taking into account the requirements for unbundling and independence of the transmission system operator and gas transmission system operator, transmission system owner and gas transmission system owner in accordance with the Law and the Law of Ukraine "On Natural Gas Market";

the powers of the First Deputy Minister Yu. M. Vlasenko are limited in the part of state property management, accounted for on the balance sheet of NPC UKRENERGO and JSC MGU, it is determined that the implementation of the functions of the Ministry of Energy in terms of developing the procedure for forming the forecast balance of electricity of the integrated power system of Ukraine; formation and approval of fuel and energy balance, development, approval and implementation within the powers of rules of security of electricity supply and monitoring of security of electricity supply, approval of regulatory characteristics of technological costs of electricity transmission and distribution by electricity is carried out in compliance with transparency and non-discrimination, non-interference in decision-making by the relevant economic entities of the electricity complex, taking into account the requirements of the Law and in compliance with the requirements on unbundling and independence of the transmission system operator;

the powers of the Deputy Minister Yu. A. Pidkomorna to ensure the coordination and approval of financial plans of NPC UKRENERGO and JSC MGU, as well as to monitor their implementation are limited;

the powers of the Deputy Minister for European Integration Ya. S. Demchenkov in the sphere of activity of the Ministry include, in particular:

coordination of the activities of the Ministry for the management of corporate rights owned by the state in the authorized capital of the joint stock company Main Gas Pipelines of Ukraine and the private joint stock company National Power Company UKRENERGO,

ensuring consideration, agreement and approval of documents in accordance with regulations concerning the implementation by the Ministry of powers of corporate rights management of the private joint stock company National Power Company UKRENERGO, joint stock company Main Gas Pipelines of Ukraine, including the charters of these companies,

signing of orders of the Ministry on the implementation by the Ministry of powers of corporate rights management of the private joint stock company National Power Company UKRENERGO, joint stock company Main Gas Pipelines of Ukraine and management of state property used in the process of electricity transmission and natural gas transportation by main pipelines, including the appointment of members of the supervisory boards of these companies, on the basis of a power of attorney of the Minister,

signing of administrative documents of the Ministry concerning the exercise by the Ministry of powers to manage the corporate rights of the state in the private joint stock company National Power Company UKRENERGO and the joint stock company Main Gas Pipelines of Ukraine on the basis of a power of attorney of the Minister,

within its powers, management of state property not included in the authorized capital of the private joint stock company National Power Company UKRENERGO and state property accounted for on the balance sheet of the joint stock company Main Gas Pipelines of Ukraine and business entities 100% of shares (stock) of which belongs to the joint stock company Main Gas Pipelines of Ukraine, in particular objects that are not subject to privatization,

control over the effective use and preservation of state property used in the process of electricity transmission, transportation of natural gas,

ensuring the agreement and approval of financial plans of the private joint stock company National Power Company UKRENERGO and the joint stock company Main Gas Pipelines of Ukraine, as well as in the prescribed manner control over the implementation of these plans,

exercising within its powers other functions of the management of corporate rights of the state in the private joint stock company National Power Company UKRENERGO, joint stock company Main Gas Pipelines of Ukraine,

coordination of cooperation with the joint stock company Main Gas Pipelines of Ukraine on the implementation of the functions and powers of the founder and sole participant of the limited liability company Gas Transmission System Operator of Ukraine,

organization of development and approval of draft laws, acts of the President of Ukraine and the Cabinet of Ministers of Ukraine, orders of the Ministry on issues related to the implementation by the Ministry of corporate rights management of the private joint stock company National Power Company UKRENERGO, joint stock company Main Gas Pipelines of Ukraine (limited liability company Gas Transmission System Operator of Ukraine) and management of state property used in the process of electricity transmission activities and natural gas transportation activities via main pipelines.

At the same time, until the introduction of the new structure of the Ministry of Energy, the Directorate for Strategic Planning and European Integration and the Department of Financial Planning and Budget Policy Implementation continue to perform some functions in the exercise of corporate rights management powers of NPC Ukrenergo, JSC MGU (LLC Gas Transmission System Operator of Ukraine) and remain under the joint authority of Deputy Minister Ya. Demchenkov together with other Deputy Ministers.

In order to ensure compliance with the requirements for unbundling and independence of the transmission system operator and the transmission system owner, the Ministry of Energy shall ensure that employees of the Ministry of Energy do not combine the functions in part of:

performing the functions of officials of economic entities for the production (extraction) and/or supply of electricity (natural gas);

Simultaneous implementation of powers on corporate rights management of NPC UKRENERGO, JSC MGU (LLC Gas Transmission System Operator of Ukraine) and functions of corporate rights management and/or performance of functions of officials of distribution system operators.

After the establishment of the Department of System Operators Management in the Ministry of Energy, all functions of the Ministry of Energy in terms of exercising the powers of corporate rights management of NPC Ukrenergo, JSC MGU (LLC Gas Transmission System Operator of Ukraine) should be transferred to this structural unit, which should be subordinated exclusively to the Deputy Minister for European Integration, and should not perform the functions of enterprise management, public property management and corporate rights management of other economic entities;

6) documents and information confirming amendments to regulations in terms of eliminating the risk of the Ministry of Energy's influence on the activities of economic entities engaged in the production (extraction) and/or supply of electricity (natural gas).

According to the analysis, the following regulations need to be amended:

Law of Ukraine "On Management of State Property" in part of prohibiting entities managing state property to participate in short-term and medium-term investment planning of transmission system operators and gas transmission system, including approve and monitor their annual and medium-term investment plans;

Law of Ukraine "On Central Executive Bodies" in the definition of Deputy Minister, who independently of the Minister, First Deputy Minister and other Deputy Ministers performs tasks on management of state property and/or management of corporate rights of the state in the authorized capital of management objects, operating on the basis of a license to conduct natural gas transportation activities or on the basis of a license to conduct electricity transmission activities (including corporate rights of the state in the authorized capital of economic entities that have corporate rights in the authorized capital of such entities); the right of such Deputy Minister to sign orders of the Ministry of State Property Management and/or Corporate Rights Management in the authorized capital of economic entities operating on the basis of a license to conduct natural gas transportation activities or on the basis of a license to conduct electricity transmission activities (including corporate rights of the state in the authorized capital of economic entities that have corporate rights in the authorized capital of such entities);

Regulations on the Ministry of Energy, in particular, regarding the exclusion of the powers of the Ministry of Energy to approve annual financial and investment plans, investment plans for the mid-term (three to five years) for transmission and gas transmission system operators;

The procedure for forming the forecast balance of electricity of the integrated power system of Ukraine for the estimated year, in particular in terms of ensuring its formation and approval in a transparent and non-discriminatory manner (in particular by disclosing information (data) and consulting with stakeholders at all stages of preparing the forecast balance), implementation by the transmission system operator

of functions in the process of preparation of the forecast balance independently of the Ministry of Energy, non-interference in decision-making by relevant economic entities in the electricity market operation taking into account the requirements of the Law;

7) documents and information confirming the replacement of the Ministry of Energy with another body in international agreements (loan agreements), to which the Ministry of Energy is a party and which are aimed at financing the activities of economic entities with regard to the production of electricity.

According to the information provided, the process of replacing or excluding the Ministry of Energy as a party to international agreements (loan agreements) aimed at financing the activities of economic entities with regard to the production of electricity is still ongoing;

8) information and documents confirming the absence of risk of violation of the Law and the Directive on unbundling and independence of the TSO in the case of appointment of Yu. Boyko and D. Olefir to the positions of members of the Supervisory Board of NPC UKRENERGO.

The order of the Cabinet of Ministers of Ukraine of December 2, 2021, № 1580-r canceled as not implemented the order of the Cabinet of Ministers of Ukraine of July 21, 2021, № 815 “Some issues of the Supervisory Board of the private joint stock company National Power Company UKRENERGO” in terms of approving the candidacy of Dmytro Oleksandrovykh Olefir for the position of a member of the Supervisory Board of the private joint stock company National Power Company UKRENERGO as a representative of the state.

By the order of the Ministry of Energy of December 9, 2021, № 327 Yu. Boyko was appointed a member of the Supervisory Board of NPC UKRENERGO as a representative of the state.

According to the documents provided by NPC UKRENERGO, as of December 15, 2021, Yu. Boyko is not in an employment relationship and has no civil relations with the Secretariat of the Cabinet of Ministers of Ukraine;

9) for approval by the NEURC, the candidature of the authorized person for compliance with NPC UKRENERGO and the draft employment contract. After its approval, the Regulator shall appoint an authorized person for compliance and sign an agreement with him/her in the wording agreed with the NEURC.

As of the date of this decision, the candidature of the authorized person for compliance of NPC UKRENERGO was not submitted to the Regulator.

However, according to sub-clause 16 of clause 3.1 of the Certification Procedure, if the applicant has not appointed an authorized person for compliance and/or has not signed a contract with him/her before the NEURC makes a final decision on the TSO certification, the certification decision should provide for the period, during which the applicant must appoint an authorized person for compliance and sign a contract with him/her in the wording agreed with the NEURC;

10) a copy of the additional agreement to the Agreement on the transfer of economic ownership of state-owned objects used in the process of electricity transmission activities, dated May 27, 2021 № 13110-05 / 301 (hereinafter – the Management Agreement), regarding the change of the authorized subject of management of state property used in the process of conducting electricity transmission activities;

It should be noted that on December 6, 2021, the Minister of Energy approved the Act of acceptance and transfer of state property assigned to NPC UKRENERGO on the right of economic management, not included in the authorized capital of the company in its formation, from the Ministry of Finance to the Ministry of Energy.

In addition, an agreement was signed between the Ministry of Energy and NPC UKRENERGO on the replacement of the subject of management of state property used in the process of conducting electricity transmission activities of December 8, 2021, № 131/21, which amended the Agreement on economic management in terms of replacing the subject of management of state property used in the process of electricity transmission activities, with the Ministry of Energy;

11) information and documents on the absence of risk of violation of the Law and the Directive on unbundling and independence of the TSO in the activities of members of the Supervisory Board of the private joint stock company Ukrhydroenergo O. Havva and V. Kushnirov.

According to the order of the Cabinet of Ministers of Ukraine of July 21, 2021 № 814-r, O. Havva and V. Kushnirov are appointed members of the Supervisory Board of the private joint stock company Ukrhydroenergo (licensee for the production of electricity) as representatives of the state from the Ministry of Energy.

According to the declaration of April 6, 2021, V. Kushnirov held the position of Director General of the Directorate of Strategic Planning and European Integration of the Ministry of Energy of Ukraine, which could indicate a violation of the Law and Directive on the independence of the transmission system operator.

At the same time, by the order of the Ministry of Energy of October 28, 2021, № 497-k, V. Kushnirov was dismissed from the position of Director General of the Directorate of Strategic Planning and European Integration of the Ministry of Energy of Ukraine.

According to the information provided to the NEURC, O. Havva is currently not in an employment relationship with the Ministry of Energy. In addition, on December 2, 2021, by the order of the Cabinet of Ministers of Ukraine № 1589-r, the appointment of O. Havva as the acting director of the State Enterprise Market Operator was approved.

Thus, the risks of violating the requirements of the Law and the Directive on unbundling and independence of the transmission system operator mentioned in the previous decision on certification have been eliminated;

12) documents confirming the elimination of the comments of the NEURC to the Compliance Programme of the Ministry of Energy and the procedure for interaction of officials and employees of structural units of the Ministry of Energy with an independent structural unit of the Ministry of Energy, which ensures the performance of functions on the management of state property of the transmission system and the gas transmission system and the management of corporate rights of the state in the authorized capital of NPC UKRENERGO and JSC MGU.

The Order of the Ministry of Energy of December 6, 2021, № 317 amended the Compliance Programme of the Ministry of Energy of Ukraine approved by the order of the Ministry of Energy of September 17, 2021, № 209, by rewording it, taking into account the recommendations of the NEURC in the preliminary decision on certification.

The procedure for interaction of officials and employees of structural subdivisions of the Ministry of Energy with an independent structural subdivision of the Ministry of Energy as of the date of adoption of this decision was not provided to the NEURC.

On October 1, 2021, the NEURC informed the Secretariat of the Energy Community about the preliminary decision and provided information and data provided by NPC UKRENERGO in accordance with the requirements of the Certification Procedure.

According to the opinion of the Secretariat of the Energy Community (hereinafter – the Secretariat) of November 25, 2021, № 4/21 to the preliminary decision of the NEURC on certification approved by the resolution of the NEURC of October 1, 2021, № 1683 (hereinafter – the Opinion), NPC UKRENERGO can be certified as a transmission system operator subject to the requirements set out in Section 5 of the Opinion.

## **2. Applied legislation**

The issues of the transmission system operator's activity and its certification are regulated by the Law. The Law defines two models of unbundling from the three possible provided by the provisions of the Directive: it specifies general requirements for unbundling and independence of the transmission system operator (OU model) (Article 32 of the Law) and special requirements for unbundling and independence of the transmission system operator (ISO unbundling model) 36<sup>1</sup>, 36<sup>2</sup>, 36<sup>3</sup>, 36<sup>4</sup> of the Law).

In order to ensure the implementation of the requirements for unbundling and independence of the transmission system operator under the ISO model in accordance with the Law, the Verkhovna Rada of Ukraine adopted Law of Ukraine No. 264-IX dated 31 October 2019 “On amending certain legislative acts of Ukraine in connection with unbundling the activity of natural gas transportation” (hereinafter referred to as Law No. 364) and No. 1396-IX dated 15 April 2021 “On amending certain legislative acts of Ukraine on certification of the transmission system operator” (hereinafter referred to as Law No. 1396), which regulate problematic issues, in particular:

amendments were made to the Commercial Code of Ukraine, which:

eliminated the indirect control over the transmission system operator on the part of the Government by means of excluding the requirement for the Cabinet of Ministers of Ukraine to approve the financial plan,

granted the Cabinet of Ministers of Ukraine or the relevant authorised property management body an opportunity to transfer the state property (electricity transmission system) into the economic management of the TSO;

determined the scope of rights and obligations according to the ISO model of the owner of the property transferred to the TSO under the right of economic management in terms of its control, use and preservation in accordance with the requirements of the Law;

amendments were made to the Land Code of Ukraine, which specify the possibility of providing the TSO's land plots on the right of permanent use;

the Law of Ukraine "On Managing State Property" was amended to establish the scope of TSO rights required for certification according to the selected ISO unbundling model;

the Law of Ukraine "On the Cabinet of Ministers of Ukraine" was amended to eliminate the possibility of the Prime Minister of Ukraine or the Cabinet of Ministers of Ukraine influencing decision-making by the Ministry in the process of managing the state corporate rights in the TSO and, accordingly, exercising indirect control over producers/suppliers of electricity or natural gas;

the Law of Ukraine "On the National Energy and Utilities Regulatory Commission", according to which the Regulator is empowered to monitor compliance with the requirements for independence by the owner of the electricity transmission system in accordance with the Law, including by way of approving contracts, concluded between the TSO and the owner.

In accordance with part 3 of Article 31 of the Law, the organisational and legal form of the transmission system operator is a joint stock company. The state owns 100 percent of the shares (stakes) in the share capital of the transmission system operator, which are not subject to privatisation or alienation in any other way.

Requirements for unbundling and independence of the transmission system operator are defined, in particular, by Article 32 of the Law, according to which the transmission system operator is a legal entity that is not part of a vertically integrated business entity and carries out economic activities independent of generation, distribution, supply of electricity and trading activities. The transmission system operator has no rights to conduct electricity generation, distribution, supply and trading activities. A transmission system operator may be exclusively the owner of the transmission system or a business entity with 100 percent of the corporate rights in the share capital belonging to the state or to a business entity with 100 percent of the corporate rights in the share capital belonging to the state, to which, on the basis of a decision of the business entity and the relevant agreement, the state property used for carrying out the activity of electricity transmission was transferred under the right of economic management, except as provided in part 1 of Article 36<sup>1</sup> of this Law.

In order to ensure the independence of the transmission system operator, no natural or legal person must have the right at the same time:



1) to exercise sole or joint control directly or indirectly over at least one business entity (including a foreign one) that carries out activities of generation (production) and/or supply of electricity (natural gas), and directly or indirectly exercise sole or joint control over the transmission system operator (including being the owner of the transmission system), or exercise any right in relation to the transmission system operator (including any rights in relation to the transmission system itself);

2) to exercise sole or joint control directly or indirectly over the transmission system operator (including being the owner of the transmission system) and directly or indirectly exercise sole or joint control over at least one business entity (including a foreign one) that carries out activities of generation (production) and/or supply of electricity (natural gas), or use any right in respect of at least one business entity (including a foreign one), which carries out activities of generation (production) and/or supply of electricity (natural gas);

3) to appoint at least one official of the transmission system operator and directly or indirectly exercise sole or joint control over at least one business entity (including a foreign one) that carries out activities of generation and/or supply of electricity, or use any right with relation to at least one business entity engaged in generation and/or supply of electricity;

4) to be an official of the transmission system operator and at least one business entity (including a foreign one) that carries out activities of generation and/or supply of electricity.

If a person or persons referred to in part 4 of this Article are state authorities, then two different state authorities exercising control over the transmission system operator or the transmission system, on one hand, and control over the business entity carrying out generation (production) activities and/or supply of electricity (natural gas), on the other hand, must be considered different persons.

The term “right” means:

1) the right to vote in the bodies of a legal entity, if the formation of such a body is provided by the charter or other constituent document of this legal entity;

2) the right to appoint officials of the bodies of a legal entity;

3) ownership of 50 percent or more of the corporate rights of a legal entity.

In accordance with Article 36<sup>1</sup> of the Law, in case of choosing the ISO unbundling model, the transmission system operator is obliged:

1) to meet the requirements established by Article 32 of this Law;

2) to have at its disposal the financial, technical, material and human resources necessary for the performance of functions assigned by Article 33 of this Law, in particular, cooperation with the transmission system operators of neighbouring states;

3) to develop and submit for approval to the Regulator the Ten-Year Network Development Plan, Report on assessing the adequacy (sufficiency) of generating capacity in accordance with the requirements of this Law.

If the ISO unbundling model is chosen, the owner of the transmission system is obliged to meet the requirements established by part 2 of Article 36<sup>3</sup> of this Law.

During the certification procedure, the owner of the transmission system must provide the Regulator with drafts of all agreements with the business entity that submitted the request for certification and with any other relevant persons.

At the same time, part 2 of Article 36<sup>2</sup> of the Law stipulates that the owner of the transmission system, where an independent transmission system operator is appointed, is obliged:

1) to provide the necessary cooperation and support to the independent transmission system operator to perform its functions, including all necessary information;

2) to finance investments provided for in the Ten-Year Network Development Plan and approved by the Regulator, or to consent to the financing of such investments by any interested party, including an independent transmission system operator;

3) to ensure the fulfilment of financial obligations of the transmission system operator related to the assets of the network, except for the obligations related to the functions of the independent transmission system operator;

4) to provide guarantees to facilitate the financing of the transmission system development, except for the investments, when in accordance with paragraph 2 of this part, the owner agreed their financing at the expense of loans or funds obtained from other sources not prohibited by law.

The transmission system operator is an economic entity that received a licence to conduct electricity transmission activities. The licence to conduct electricity transmission activities is issued after the final decision on certification of the transmission system operator in accordance with this Law (parts 1 and 2 of Article 31 of the Law).

### **3. Information on the Applicant of Certification Request (NPC UKRENERGO) and other stakeholders**

As already mentioned in the Rationale to the preliminary decision on certification of NPC UKRENERGO (Resolution of the NEURC of October 1, 2021, № 1683), from the moment of creation until February 4, 2019, SE NPC UKRENERGO belonged to the management of a vertically integrated entity – the Ministry of Energy and Coal

Industry of Ukraine (whose successor is the Ministry of Energy of Ukraine – Ministry of Energy), the management of which also included, in particular, legal entities engaged in the production, distribution and supply of electricity.

By the order of the Cabinet of Ministers of Ukraine of November 14, 2018, № 1001-r, integral property complex of SE NPC UKRENERGO was transferred from the sphere of management of the Ministry of Energy and Coal Industry of Ukraine to the sphere of management of the Ministry of Finance of Ukraine.

On July 29, 2019, in accordance with the order of the Ministry of Finance of Ukraine of July 29, 2019, № 321 state registration of termination of the legal entity - state enterprise National Power Company UKRENERGO by its transformation into Private Joint Stock Company National Power Company UKRENERGO.

According to the order of the Cabinet of Ministers of Ukraine of January 20, 2021, № 50-r (hereinafter – Order № 50), the Ministry of Economy together with the Ministry of Energy and the Ministry of Finance had to submit draft decisions to the Cabinet of Ministers of Ukraine:

1) on the transfer of powers to manage corporate rights owned by the state in the authorized capital of the private joint stock company National Power Company UKRENERGO and the joint stock company Main Gas Pipelines of Ukraine, to the Ministry of Energy;

2) on the designation of the Ministry of Energy as the authorized body for the management of state property:

gas transportation system, which is not subject to privatization, used in the process of natural gas transportation by main pipelines, according to the list of property compiled as a result of paragraph 1 of the order of the Cabinet of Ministers of Ukraine of November 15, 2019, № 1087 “About determination of the authorized body of management of the state property of the gas transportation system used in the process of natural gas transportation by main pipelines”;

assigned to the private joint stock company National Power Company UKRENERGO on the right of economic management as such, which is not included in the authorized capital of the company in the process of its formation.

Order № 833 provides:

1) to agree with the proposal of the Ministry of Economy to transfer the authority to manage corporate rights owned by the state in the authorized capital of NPC UKRENERGO to the Ministry of Energy;

2) to designate the Ministry of Energy as the authorized body of state property management assigned to NPC UKRENERGO on the right of economic management as not included in the authorized capital of the company in the process of its formation;

3) the Ministry of Finance together with the Ministry of Energy to take within two weeks in the prescribed manner the measures necessary for the registration of corporate rights of the state in the authorized capital of NPC UKRENERGO;

Thus, the corporate rights of the state in the authorized capital of NPC UKRENERGO were transferred to the Ministry of Energy, which is confirmed by PJSC NATIONAL DEPOSITORY OF UKRAINE register of registered securities

holders of September 16, 2021, according to which the Ministry of Energy of Ukraine owns 100 percent of the shares of NPC UKRENERGO.

It should be noted that the main requirement of the legislation on the independence of the transmission system operator is the absence of direct or indirect control over these operators (including ownership of the transmission system and gas transportation system) by any legal entity (including public authorities), which simultaneously directly or indirectly exercises control over at least one business entity (including a foreign one), which is engaged in the extraction (production) and/or supply of natural gas and/or electricity, or enjoys any right in respect of at least one business entity (including a foreign one) that is engaged in the extraction (production) and/or supply of natural gas and/or electricity or the supply of natural gas and / or electricity.

The Order of the Ministry of Energy of Ukraine of November 1, 2021, № 273 approved the Lists of state enterprises, institutions and organizations belonging to the Ministry of Energy, companies in respect of which the Ministry of Energy performs corporate rights management and economic structures, control over activities of which is carried out by the Ministry of Energy (hereinafter – the Lists), as of October 22, 2021, namely:

- list of state enterprises, institutions and organizations belonging to the sphere of management of the Ministry of Energy of Ukraine;

- list of companies, in respect of which the Ministry of Energy of Ukraine performs corporate rights management functions;

- list of economic structures controlled by the Ministry of Energy of Ukraine;

- list of companies, in respect of which the Ministry of Energy of Ukraine performs the functions of corporate rights management and is the body of state property management, in accordance with paragraph 2 of the order of the Cabinet of Ministers of Ukraine of July 28, 2021 № 833-r “Some issues of state property management”.

According to the Lists, as of October 22, 2021, the sphere of management of the Ministry of Energy includes, in particular, 126 companies, in respect of which the Ministry of Energy manages corporate rights of the state, 5 economic structures controlled by the Ministry of Energy, 275 state enterprises, institutions and organizations belonging to the sphere of management of the Ministry of Energy, as well as NPC UKRENERGO, JSC MAIN GAS PIPELINES OF UKRAINE, and LLC GAS TRANSMISSION SYSTEM OPERATOR OF UKRAINE, in respect of which the Ministry of Energy performs the functions of corporate rights management and is the state property management body.

At the same time, the Lists do not include business entities engaged in the production (extraction) and/or supply of electricity (natural gas).

Thus, as of today, the Ministry of Energy does not manage economic entities engaged in the production (extraction) and/or supply of natural gas and/or electricity.

In the part of special features of managing state enterprises, the Ministry of Energy of Ukraine and other ministries are separate state bodies not subordinated to each other, while their spheres of activity are specified by the Cabinet of Ministers of Ukraine and enshrined in the relevant regulations on ministries.

Article 6 of the Constitution of Ukraine stipulates that state power in Ukraine is exercised on the basis of its division into legislative (Verkhovna Rada of Ukraine), executive (Cabinet of Ministers of Ukraine and other executive bodies), and judicial (courts).

The competence of the Cabinet of Ministers of Ukraine as an executive body in relation to the activities of ministries and other executive bodies is conditioned by constitutional principles and is exercised by this body exclusively within the framework of exercising executive functions. In accordance with Article 6 of the Constitution of Ukraine, the bodies, in particular of the executive branch, exercise their powers within the limits established by the Constitution and in accordance with the laws of Ukraine. In accordance with Article 19 of the Constitution of Ukraine, state and local authorities, their officials are obliged to act only on the basis of, within the powers and in the manner prescribed by the Constitution and laws of Ukraine.

Article 113 of the Constitution of Ukraine provides that the Cabinet of Ministers of Ukraine is the highest body in the system of executive bodies. The Cabinet of Ministers of Ukraine in its activities is guided by the Constitution and laws of Ukraine, as well as decrees of the President of Ukraine and resolutions of the Verkhovna Rada of Ukraine adopted in accordance with the Constitution and laws of Ukraine. The Cabinet of Ministers of Ukraine consists of the Prime Minister of Ukraine, the First Vice Prime Minister, Vice Prime Ministers, and Ministers. The Prime Minister of Ukraine directs the work of the Cabinet of Ministers of Ukraine, directs it to the implementation of the Programme of Activities of the Cabinet of Ministers of Ukraine, approved by the Verkhovna Rada of Ukraine (Article 114 of the Constitution of Ukraine).

In accordance with paragraphs 5, 9, 10 of Article 116 of the Constitution of Ukraine and Article 2 of the Law of Ukraine “On the Cabinet of Ministers of Ukraine” the Cabinet of Ministers of Ukraine, in particular, directs and coordinates the work of ministries and other executive bodies, manages state property in accordance with law; exercises other powers defined by the Constitution and laws of Ukraine.

Part 2 of Article 1 of the Law of Ukraine “On the Cabinet of Ministers of Ukraine” provides that the Cabinet of Ministers of Ukraine exercises executive power directly and through ministries, other central executive bodies, the Council of Ministers of the Autonomous Republic of Crimea and local state administrations, directs, coordinates and controls these bodies.

In accordance with Article 3 of the Law of Ukraine “On the Cabinet of Ministers of Ukraine,” the Cabinet of Ministers of Ukraine is a collegial body and makes decisions after discussing issues at its meetings.

In accordance with paragraphs 1 and 2 of paragraph 21 of Section 2 of Chapter III of the Rules of Procedure of the Cabinet of Ministers of Ukraine, approved by Resolution of the Cabinet of Ministers of Ukraine No. 950 dated 18 July 2007, decisions of the Cabinet of Ministers are approved by majority vote of the Cabinet of Ministers. If the draft decision is supported by half of the Cabinet officials and the Prime Minister votes in favour of the draft, the decision is considered approved.

The Cabinet of Ministers of Ukraine exercises constant control over the implementation of the Constitution of Ukraine and other acts of legislation of Ukraine by executive authorities, takes measures to eliminate shortcomings in the work of these bodies (part 2 of Article 19 of the Law of Ukraine “On the Cabinet of Ministers of Ukraine”).

In accordance with part 6 of Article 21 of the Law of Ukraine “On the Cabinet of Ministers of Ukraine,” the Cabinet of Ministers of Ukraine is empowered to repeal acts of ministries and other central executive bodies in whole or in part. These powers of the Cabinet of Ministers of Ukraine do not apply to decisions of ministries and other central executive bodies issued by them in the exercise of powers to manage corporate rights owned by the state in the share capital of business entities operating on the basis of a licence for transporting natural gas, electricity transmission, as well as legal entities owning corporate rights in such entities.

Article 44 of the Law of Ukraine “On the Cabinet of Ministers of Ukraine” stipulates that the Ministry, which exercises direct or indirect control over business entities operating on the basis of a licence to conduct electricity transmission activities, exercises powers to manage corporate rights owned by the state in respect of such business entities or economic organisations that own corporate rights in respect of such entities, solely and independently, on the principles of openness and transparency, responsibility for the decisions made. Such rights do not apply to the management and allocation of capacity and investment planning, which fall within the competence of business entities engaged in the transmission of electricity.

Exclusively in agreement with the Cabinet of Ministers of Ukraine, decisions are made on the management of corporate rights that belong to the state and relate to:

reorganisation (merger, acquisition, division, separation) or liquidation of such business entities or economic organisations;

transactions, which may result in the termination of the right of economic management over the property used in the process of conducting electricity transmission activities of such entities or economic organisations;

amending the charter of such business entities or economic organisations concerning the purpose, subject, main directions of their activity;

approval of the part of the net profit of such business entities or economic organisations, which must be used to pay dividends.

Interference in the exercise of powers by the Ministry (which exercises direct or indirect control over business entities operating on the basis of a licence to conduct electricity transmission activities, exercises powers to manage corporate rights owned by the state in relation to such business entities or economic organisations possessing corporate rights in respect of such entities) is prohibited.

The Cabinet of Ministers of Ukraine, Prime Minister of Ukraine, Minister heading the Ministry supervising generation or supply in the electricity and natural gas markets in accordance with the legal requirements for unbundling and independence of the transmission system operator and the gas transmission system operator, may not coordinate and control business entities operating on the basis of a licence to conduct

electricity transmission or transportation of natural gas, as well as may not appoint members of the governing bodies of such business entities.

Thus, none of the officials of the Government of Ukraine is empowered to make individual decisions on the issues within the competence of the Cabinet of Ministers of Ukraine, which makes an additional guarantee of limiting their influence on central executive bodies, in particular on managing corporate rights in the share capital of joint-stock companies with the state as a sole shareholder. Conditions have also been created by amending the Law of Ukraine “On the Cabinet of Ministers of Ukraine” to prevent conflicts between private interests and public duties of officials.

#### **4. Assessment of compliance of NPC UKRENERGO with the requirements for unbundling and independence and measures taken by NPC UKRENERGO and other stakeholders after the adoption of the Preliminary Decision on Certification**

##### *4.1. Unbundling of electricity transmission activities from production (extraction) and/or supply of electricity (natural gas) activities.*

According to the laws of Ukraine "On Electricity" (which expired on June 11, 2017, and certain provisions – on July 1, 2019), and “On Electricity Market” (entered into force on June 11, 2017), economic activity on production, transmission, distribution of electricity, supply of electricity to consumers, trading activities, implementation of the functions of market operator and guaranteed buyer is carried out in the electricity market subject to obtaining a license issued by the Regulator.

Licensing of economic activity in the field of electric power industry and control over observance by licensees of licensing conditions of economic activity in accordance with Article 6 of the Law is attributed to the powers of the NEURC. According to the license register of the NEURC, licenses for the right to conduct activities for the production, distribution, supply, resale (trading activity) of electricity, SE NPC UKRENERGO and NPC UKRENERGO as its successor did not receive and, accordingly, do not carry out these types of activities.

By the order of the Ministry of Energy dated September 21, 2021 № 218, the Charter of NPC UKRENERGO was approved (hereinafter – the Charter).

According to the Charter (paragraphs 10.1, 10.5 - 10.7 of the Charter), the supreme body of NPC UKRENERGO is the General Meeting. The powers and functions of the General Meeting, provided by the Charter and the legislation of Ukraine, are exercised unilaterally by the sole shareholder of the Company – the state represented by the Ministry of Energy of Ukraine. The decision of the sole shareholder of the Company – the state represented by the Ministry of Energy of Ukraine on matters within the competence of the General Meeting is made in writing (in the form of an order), and such a decision has the status of the minutes of the General Meeting of the Company. The members of the Supervisory Board are nominated without cumulative voting.

According to subparagraph 10.9.13 of paragraph 10.9 of the Charter, the exclusive competence of the General Meeting includes appointment and (or) election of members

of the Supervisory Board, decision-making on termination of powers of members of the Supervisory Board, except as provided by law.

Thus, the Ministry of Energy of Ukraine, performing on behalf of the state the functions and powers of the General Meeting of NPC UKRENERGO, appoints (elects) members of the Supervisory Board of NPC UKRENERGO, decides to terminate the powers of members of the Supervisory Board subject to the requirements and restrictions established by law in order to ensure the independence of the electricity transmission system operator.

According to paragraph 9 of the Regulation on the Ministry of Energy, the Ministry is headed by a Minister, who is appointed by the Prime Minister of Ukraine and dismissed by the Verkhovna Rada of Ukraine. The Minister has a First Deputy and Deputies, who are appointed and dismissed by the Cabinet of Ministers of Ukraine based on the proposal submitted by the Prime Minister of Ukraine in accordance with the Minister's proposals.

By Resolution No. 1425-IX issued by the Verkhovna Rada of Ukraine on 29 April 2021, Herman Valeriiovych Haluschenko was appointed the Minister of Energy of Ukraine.

As per subparagraph 19 of paragraph 10 of the Regulation on the Ministry of Energy, the Minister determines the responsibilities of the First Deputy, Deputy Ministers, the division of powers of the Minister between the First Deputy Minister and Deputy Ministers, which they perform in his absence.

Yurii Mykolayovych Vlasenko was appointed First Deputy Minister of Energy of Ukraine (Resolution No. 490-r dd. 21 May 2021 of the Cabinet of Ministers of Ukraine).

Appointed Deputy Ministers of Energy:

Yu. A. Pidkomorna (Resolution No. 456-r dd. 19 May 2021 of the Cabinet of Ministers of Ukraine).

Ya. S. Demchenkov (appointed Deputy Minister of Energy of Ukraine for European Integration by Resolution No. 633-r dd. 10 June 2020 of the Cabinet of Ministers of Ukraine);

F.K. Safarov (appointed Deputy Minister of Energy of Ukraine for Digital Development, Digital Transformations and Digitization by the order of the Cabinet of Ministers of Ukraine of November 10, 2021 № 1420-r).

In addition, by Resolution No. 1223-r dd. 9 October 2020 of the Cabinet of Ministers of Ukraine V. V. Bondarenko was appointed State Secretary of the Ministry of Energy of Ukraine.

According to the available to the NEURC information, the Minister of Energy, Deputy Ministers, State Secretary of the Ministry of Energy and members of their families do not own securities and/or corporate rights in the authorized capital of economic entities (including foreign ones) engaged in production (extraction) and/or supply of electricity (natural gas).

It should be noted that the resolution of the Cabinet of Ministers of Ukraine of August 11, 2021, № 863 amended the Regulation on the Ministry of Energy, in particular:



it is determined that the Ministry of Energy, in accordance with the tasks assigned to it, develops the procedure for forming the forecast balance of electricity of the integrated power system of Ukraine; forms and approves the forecast balance of electricity of the integrated power system of Ukraine in compliance with the principles of transparency and non-discrimination taking into account the requirements of the Law;

the powers of the Ministry of Energy to approve investment programs of the transmission system operator and distribution system operators are excluded;

It is envisaged that the Ministry of Energy in the process of fulfilling its tasks on the management of state property and / or management of corporate rights of the state in the authorized capital of economic entities operating on the basis of a license to conduct natural gas transportation or on the basis of a license to conduct electricity transmission activities (including corporate rights of the state in the authorized capital of economic organizations that have corporate rights in the authorized capital of such entities), ensures compliance with the requirements for functional, administrative, operational independence and autonomy of such entities in decision-making, as well as the separation of such entities in accordance with the laws of Ukraine "On Electricity Market" and "On Natural Gas Market";

It is envisaged that the Ministry of Energy, while performing the functions of managing state property used in the process of electricity transmission, transportation and/or storage of natural gas, promotes the independence of the transmission system operator and gas transmission system operator in making decisions on use, operation, maintenance, planning, development and financing of such property in accordance with the laws of Ukraine "On Electricity Market", "On Natural Gas Market", transferred to the transmission system operator and the gas transmission system operator on the right of economic management;

It is determined that the Minister performs functions on management of corporate rights of the state in the authorized capital of the transmission system operator and gas transmission system operator (including corporate rights of the state in the authorized capital of economic organizations with corporate rights in the authorized capital of such entities) and distribution of performance such functions with the exercise of powers to ensure the formation and implementation of state policy in the electricity and oil and gas sector in compliance with the principles of independence in the decision-making process;

In addition, the Resolution of the Cabinet of Ministers of Ukraine of September 29, 2021, № 1025 in order to ensure unbundling and independence of the Ministry of Energy as the owner of the transmission system and the body authorized to manage corporate rights in the authorized capital of NPC UKRENERGO, amended some legal acts and Regulation on the Ministry of Energy, according to which:

the obligation of the Ministry of Energy to adhere to the principle of non-interference in decision-making by economic entities of the electricity sector is determined taking into account the requirements of the Law of Ukraine "On Electricity Market" during the formation and approval of the forecast electricity balance;

Powers in the management of state property and/or corporate rights management in the authorized capital of NPC UKRENERGO are exercised by the Deputy Minister, who acts independently of the Minister, First Deputy Minister and other Deputy Ministers, and does not participate in the formation of state policy on production/extraction and supply of electricity/natural gas;

The Ministry of Energy ensures the independence of the TSO in making decisions on the use, operation, maintenance, planning, development and financing of property used in the process of electricity transmission activities;

functional, administrative, operational independence of the transmission system operator is ensured by the relevant Deputy Minister;

control over ensuring the independence of the Ministry of Energy of the TSO is carried out by the authorized person for compliance, who is appointed by the Secretary of State of the Ministry of Energy in agreement with the Minister and in prior consultation with the NEURC;

approval of the compliance programme of the Ministry of Energy is carried out by the Minister of Energy;

from the list of investment projects of strategic importance for the economic development of the state and for the implementation of which the Ministry of Energy is currently responsible, the measure to modernize existing and complete construction of new thermal power plants and development of trunk networks of the IPS of Ukraine to ensure capacity of nuclear and pump storage power plants;

the influence of the State Inspectorate for Energy Supervision, whose activities are directed and coordinated by the Cabinet of Ministers of Ukraine through the Minister of Energy, on the transmission system operator is limited by excluding the powers of the State Inspectorate for Energy Supervision to submit to the Ministry of Energy conclusions on the priority of technical solutions for the development of the transmission system, provided by the draft investment programs of the transmission system operator.

In order to ensure compliance with the requirements for the independence of the transmission system operator and the transmission system owner by order of the Ministry of Energy of July 29, 2021 № 162 created a separate structural unit – Unit for coordination and interaction of fuel and energy operators (hereinafter – the Unit), which is directly subordinated to the Deputy Minister of Energy for European Integration and which will perform the functions of the Ministry of Energy for the management of corporate rights owned by the state in the authorized capital of JSC MGU and NPC UKRENERGO, as well as management of state property used in the process on the transmission of electricity and activities for the transportation of natural gas by main pipelines.

According to the Charter of the Supervisory Board of the Company, the Supervisory Board of the Company is a collegial body that protects the rights of shareholders of the Company, and within the competence defined by the legislation of Ukraine and the Charter, manages the Company and controls and regulates the activities of the Board. Issues that fall within the exclusive competence of the supervisory board of joint stock company may not be resolved by other bodies of the

Company, except for the General Meeting, excluding the cases provided by law. The Supervisory Board operates on the basis of the legislation of Ukraine, the Charter and its provisions. Each member of the Supervisory Board acts in the interests of the Company and the shareholder in order to prevent a conflict of interest, ensuring the balance of objectives (purpose) of the activities of the Company and the shareholder. The Supervisory Board of the Company shall consist of seven members, four of whom must meet criteria and requirements for the independence of the member of the Supervisory Board (hereinafter – independent member) established by the law of Ukraine.

In accordance with the Charter, election and termination of powers of the Chairman and Deputy Chairman of the Supervisory Board, chairmen and members of committees of the Supervisory Board, approval of regulations on committees of the Supervisory Board, appointment and dismissal (termination of the contract) of the authorized person on compliance, election, appointment, termination of powers, removal of the Chairman of the Board and members of the Management Board belongs to the exclusive competence of the Supervisory Board.

The order of the Ministry of Energy dated December 9, 2021, № 327 appointed members of the Supervisory Board of NPC UKRENERGO:

Peder Ostermark Andreasen – independent member;

Daniel Dobbeni – independent member;

Dejan Ostojic – independent member;

Roman Pionkowski – independent member;

Yuriy Mykolayovych Boyko – state representative;

Yurii Bohdanovych Tokarskyi – state representative;

Mykhailo Vasyliovych Ilnytskyi – state representative.

According to the information provided by NPC UKRENERGO, members of the Supervisory Board of NPC UKRENERGO do not directly or indirectly exercise control over business entities (including foreign ones) engaged in the production (extraction) and/or supply of electricity (natural gas).

At the same time, according to NPC UKRENERGO, M. Ilnytskyi from July 2018 to the present holds the position of Chairman of the Management Board of the distribution system operator – JSC Chernihivoblenergo, which until January 1, 2019 also carried out electricity supply activities.

Pursuant to paragraph 11.9 of the Charter, a member of the Supervisory Board of NPC UKRENERGO may not be a person who has been an employee of an economic entity engaged in electricity supply for the last three years.

In addition, according to Articles 32 and 33 of the Law, the transmission system operator is a legal entity that is not part of a vertically integrated business entity and which carries out economic activities that are independent of electricity generation, distribution, supply and trading. The transmission system operator shall ensure the confidentiality of information received from market participants used by it to carry out its functions in the electricity market and constitute a trade secret in accordance with the law, and shall ensure the confidentiality of information concerning its activities.

Please note that until January 1, 2019 JSC Chernihivoblenergo had a license to conduct business activities for the supply of electricity at a regulated tariff, and is currently a market participant (engaged in the distribution of electricity).

In view of the above, M. Ilnytskyi should refrain from participating in the meetings of the Supervisory Board of NPC UKRENERO until January 1, 2022. In addition, it is necessary to avoid conflicts of interest of M. Ilnytskyi, in particular, in terms of access to information of the transmission system operator obtained from market participants, which he uses to perform its functions in the electricity market and constitutes a trade secret in accordance with law, and on the activities of the transmission system operator, the disclosure of which may provide commercial benefits to JSC Chernihivoblenergo.

In accordance with the Charter, current activity of NPC UKRENERGO is directed by the Management Board, which is a collegial executive body of the Company. The Management Board is formed in composition of no less than three members and no more than five members including the Chairman of the Management Board.

The Management Board is headed by the Chairman, who is elected and (or) appointed and dismissed by the Supervisory Board of the Company in accordance with the legislation of Ukraine and the Charter. The election and (or) appointment of other members of the Management Board and termination of their powers at the request of the Chairman of the Management Board of the Company belongs to the exclusive competence of the Supervisory Board.

Members of the Management Board are:

Volodymyr Dmytrovych Kudrytskyi (Chairman of the Management Board)

Maryna Volodymirivna Bezrukova;

Oleksii Oleksandrovych Brekht (acting member of the Management Board).

According to the information received by the NEURC, members of the Management Board of NPC UKRENERGO do not exercise sole or joint control over economic entities (including foreign ones) engaged in the production (extraction) and/or supply of electricity (natural gas).

Also, according to Article 36<sup>4</sup> of the Law, the transmission system operator shall develop and implement a compliance programme establishing the measures to ensure the prevention of discriminatory actions, and monitor the implementation of such measures. The compliance programme should clearly define the responsibilities of employees of the transmission system operator to achieve these objectives and be approved by the Regulator. The fulfilment of the compliance programme shall be monitored by the compliance officer of the transmission system operator in accordance with the procedure established by the Regulator. The candidate for the position of the compliance officer of the transmission system operator should be preliminarily agreed with the Regulator.

In addition, in accordance with Article 36<sup>4</sup> of the Law of Ukraine "On Electricity Market", the authorized person for compliance of the transmission system operator is appointed:

- 1) by the Supervisory Board of the transmission system operator;

2) in the absence of the Supervisory Board – by the executive body of the transmission system operator.

The compliance programme of NPC UKRENERGO, which defines measures to ensure the prevention of discriminatory actions and monitor the implementation of such measures, as well as clear responsibilities of employees of the transmission system operator to achieve these goals, is approved by the NEURC's resolution of August 6, 2021, № 1281.

In addition, NPC UKRENERGO submitted draft terms of the agreement between the authorized person for compliance and the transmission system operator and the procedure for selection of the authorized person for compliance to the request for certification.

The candidacy of the authorized person for compliance for the approval of the NEURC was not submitted.

However, according to sub-clause 16 of clause 3.1 of the Certification Procedure, if the Applicant has not appointed the authorized person for compliance and/or has not signed a contract with him/her before the NEURC makes a final decision on the TSO certification, the certification decision should provide a period during which the Applicant shall appoint the authorized person for compliance and sign a contract with him/her in the wording agreed with the NEURC.

#### *4.2. Compliance of NPC UKRENERGO with the requirements on the availability of financial, technical, material and human resources necessary to perform the functions of the TSO.*

The order of the Cabinet of Ministers of Ukraine of November 22, 2017 № 829-r established that the property that ensures the integrity of the integrated power system of Ukraine and dispatch (operational and technological) control, trunk and cross-border electricity networks, which are on the balance of the state enterprise National Power Company Ukrenergo, are assigned to the private joint stock company, formed in the process of transformation of the enterprise, on the right of economic management and are not subject to alienation.

According to the transfer deed of assets and liabilities on the accounts of the State Enterprise National Power Company Ukrenergo, approved by the order of the Ministry of Finance of Ukraine dated July 29, 2019, № 321 (hereinafter – the transfer and acceptance act), all liabilities of SE NPC Ukrenergo to creditors, all rights and obligations, as well as all assets and liabilities pass to the successor – NPC UKRENERGO. The authorized capital on the right of economic management includes trunk and cross-border electric networks and property, which ensures the integrity of the integrated power system of Ukraine and the implementation of functions of dispatch (operational and technological) control.

The list of objects of the transmission system is specified in the Register of non-current assets that are not included in the authorized capital of the joint stock company as of March 31, 2019, which is an annex to the transfer deed.

According to the explanatory note to the transfer deed, other information and data provided by NPC UKRENERGO, the structure of NPC UKRENERGO is based on the territorial principle and combines the head office and 7 power systems (PS) with the functions of operational and dispatch management that covers the whole territory of Ukraine, namely: Dniprovskya PS, Zakhidna PS, Pivdenna PS, Pivdenno-Zakhidna PS, Pivnichna PS, Tsentralna PS, Krymska PS (located in the temporarily occupied territory).

In particular, the balance sheet of NPC UKRENERGO includes:

Number of substations, units								
Total	including the following voltage, kV							
	750	500	400	330	220	110		
<b>141</b>	<b>9</b>	<b>3</b>	<b>2</b>	<b>88</b>	<b>33</b>	<b>6</b>		
Length of overhead power lines along the route, thousand km								
Total	including the following voltage, kV							
	800	750	500	400	330	220	110	35
<b>21.86</b>	<b>0.10</b>	<b>4.40</b>	<b>0.38</b>	<b>0.34</b>	<b>13.01</b>	<b>3.04</b>	<b>0.46</b>	<b>0.13</b>

NPC UKRENERGO provided Agreement on economic management concluded with the Ministry of Finance of Ukraine.

According to paragraph 3.3 of the Agreement on economic management, the composition of the property transferred under the agreement on the right of economic management is specified in the Register of non-current assets not included in the authorized capital of the company as of March 31, 2019, which is attached to the order of the Ministry of Finance of Ukraine dated July 29, 2019 № 321 (taking into account changes in non-current assets as of March 31, 2021), and the Register of fixed assets and intangible assets located in the temporarily occupied territories of the Autonomous Republic of Crimea, Donetsk and Luhansk regions, attached to the order of the Ministry of Finance of Ukraine dated December 28, 2019, № 584 (including changes in fixed assets and intangible assets as of 31 March 2021). The composition of other property, which will be further transferred under the agreement on the right of economic management, is indicated in the relevant acts of acceptance-transfer of property, which were also provided to the NEURC.

According to the Order № 833, the Ministry of Energy is determined as an authorized state property management body assigned to NPC UKRENERGO on the right of economic management as not included in the authorized capital of the company in the process of its formation.

At the same time, the change of the authorized body for the management of state property assigned to NPC UKRENERGO on the right of economic management does not terminate the Agreement.

By the joint order of the Ministry of Energy of Ukraine and the Ministry of Finance of Ukraine dated 13.10.2021 № 249 “On the transfer of state property”, it was

decided to transfer from the sphere of management of the Ministry of Finance of Ukraine to the sphere of management of the Ministry of Energy of Ukraine state property assigned to NPC UKRENERGO on the right of economic management, which was not included in the authorized capital of the company in the process of its formation, and the Commission on the transfer of state property was formed, which must carry out the acceptance and transfer of the said property.

It should be noted that on December 6, 2021 the Minister of Energy approved the Act of acceptance and transfer of state property assigned to NPC UKRENERGO on the right of economic management, which was not included in the authorized capital of the company in the process of its formation, from the sphere of management of the Ministry of Finance to the sphere of management of the Ministry of Energy.

In addition, an agreement was signed between the Ministry of Energy and NPC UKRENERGO on the replacement of the subject of management of state-owned facilities used in the process of electricity transmission activities dated December 8, 2021 № 131/21, which amended the Agreement on economic management in terms of replacing the subject of management of state property used in the process of electricity transmission activities, with the Ministry of Energy.

Financial and economic activity of NPC UKRENERGO, which is a subject of natural monopoly, is carried out in accordance with the financial plan.

NPC UKRENERGO prepares a financial plan in accordance with the Procedure for preparation, approval and control of the financial plan of a business entity of the public sector of the economy, approved by the order of the Ministry of Economic Development and Trade of Ukraine dated March 2, 2015, № 205, which reflects the expected financial results of the planned year, the sources of funds and areas of their use in order to ensure effective financial and economic activities and development of the enterprise, as well as the fulfillment of its obligations.

According to the third paragraph of the third part of Article 89 of the Commercial Code of Ukraine, the financial plans of the gas transmission system operator and/or gas storage operator, transmission system operator, as well as a company that has corporate rights in the gas transmission system operator are developed in accordance with their constituent documents and approved by the subjects of management of state-owned objects used in the process of carrying out activities of transportation and/or storage of natural gas, transmission of electricity.

In accordance with the requirements of the second part of Article 75 of the Commercial Code of Ukraine, electric power companies draw up financial plans taking into account the structure of electricity tariffs approved by the NEURC. Therefore, NPC UKRENERGO prepares a draft financial plan taking into account the structure of tariffs for electricity transmission services and dispatch (operational and technological) control services (hereinafter – the Tariffs).

Together with the calculation of the tariff for electricity transmission services, the transmission system operator develops an investment programme on the basis of the Transmission System Development Plan for the next 10 years and submits it to the NEURC (part eight of Article 37 of the Law).

In accordance with Article 19 of the Law, the transmission system operator annually develops a Report on the assessment of sufficiency (adequacy) of generating capacities (hereinafter – the Report) in accordance with the requirements of the Transmission System Code, approved by the resolution of the NEURC of March 14, 2018, № 309 (hereinafter – the Code), and taking into account the methods and recommendations of the European Network of Transmission System Operators for Electricity (ENTSO-E), the Agency for the Cooperation of Energy Regulators (ACER) and other international organizations, the development of scientific knowledge in the field of research of large power systems, assessment of sufficiency (adequacy) of generating capacities.

On June 16, 2021, by Resolution № 975, the NEURC approved the Report on the assessment of the sufficiency (adequacy) of generating capacities to cover the projected demand for electricity and provide the necessary reserve in 2020, which passed all the necessary procedures of public discussions and consultations.

NPC UKRENERGO also developed a draft Transmission System Development Plan for 2021-2030, which was approved by the NEURC's Resolution of January 20, 2021, № 57. Resolution of the NEURC dated 10.12.2021, № 2477 approved the Transmission System Development Plan for 2022 – 2031.

The tariffs are calculated in accordance with the Procedure for setting (forming) the tariff for electricity transmission services, approved by the resolution of the NEURC of April 22, 2019, № 585, and the Procedure for setting the tariff for dispatch (operational and technological) control services dated April 22, 2019, № 586.

The tariff for electricity transmission services of NPC UKRENERGO for 2021 was approved by the resolution of the NEURC of December 9, 2020, № 2353.

The tariff for dispatch (operational and technological) control services of NPC UKRENERGO for 2021 was approved by the resolution of the NEURC of December 9, 2020, № 2354.

Regarding the tariff for electricity transmission, it is necessary to note the following:

the structure of tariffs are components of economically justified costs of the licensee for the implementation of economic activities for the transmission of electricity, grouped by economic elements and on the basis of which the tariff is calculated and set;

the tariff for electricity transmission services – the amount of payment per unit of transmission volume (consumption), export of electricity by electricity networks of a certain quality, which provides reimbursement to the licensee of reasonable costs of activities, as well as profit;

The main factor in determining the level of the tariff for electricity transmission services is compliance with the requirements of the Law, taking into account the article "Expenditures for the performance of public service obligations to ensure the general interest of increasing the share of electricity production from alternative sources" (in accordance with part eight of Article 33 of the Law of Ukraine "On Electricity Market" the TSO performs functions related to the imposition of public service obligations to ensure the public interest in increasing the share of electricity production from



alternative sources, improving the efficiency of combined heat and power energy, other public service obligations).

When approving the structure of the tariff for electricity transmission services for 2021 (as amended), the NEURC has taken into account the level of economically justified costs:

operating costs;

financial costs (costs of servicing loan funds in agreement with the NEURC, including for the implementation of investment programmes);

estimated costs of profit, taking into account capital investments aimed at the development of production activities within the transmission of electricity, the requirements of current legislation on income tax and deductions of profits for the payment of dividends to the state budget, the need to repay loan funds and other income costs.

In addition, in accordance with sub-clause 15 of clause 2.3 of Chapter 2 of the Licensing Conditions for Conducting Economic Activity for Electricity Transmission, approved by the Resolution of the NEURC of November 9, 2017, № 1388 (as amended), NPC UKRENERGO is obliged to adhere to certain areas and volumes of use of funds by cost items in accordance with the structure of the tariff for electricity transmission services and dispatch (operational and technological) control services set by the NEURC and not to allow cross-subsidization.

In addition, one of the main market segments and a tool for balancing the energy system for the Company is the balancing market. In the balancing market, there is buying/selling of electricity to ensure a real-time balance of production, imports, exports, electricity consumption and imbalances. The balancing market mechanism and pricing are determined by the Market Rules approved by the resolution of the NEURC of March 14, 2018, № 307 (hereinafter – the Market Rules). According to Article 68 of the Law, in the balancing market, only the TSO and balancing service providers (BSPs), which are currently electricity producers, can buy/sell electricity for balancing, and the TSO and balance responsible parties (BRPs) can buy/sell imbalances.

To balance supply/demand and resolve imbalances, the TSO buys/sells balancing electricity (loading/unloading) to producers and sells/buys imbalances from BRPs that have created them. All settlements in the balancing market, in accordance with Article 75 of the Law, are made exclusively through the special account of the Company. Market participants that create imbalances (BRPs) pay the TSO for their settlement at the imbalance price, which according to the Market Rules is calculated taking into account the volume of activations and prices for unloading/loading of BSPs in this hour, and balancing service providers sell/buy balancing energy at the price of balancing energy. The difference between charges for imbalances and balancing energy creates a deficit/surplus of funds on the special account of the Company.

In order to prevent a shortage of funds in the coming years at the end of 2020, amendments were made to the Market Rules to minimize the difference in the sub-account, as well as to calculate the prices for balancing energy and imbalances to

eliminate the difference between them. For 9 months of 2021, the Company earned a profit of UAH 1,440 million as a result of activities in the balancing market.

NPC UKRENERGO compiles the Investment Programme in accordance with the Procedure for formation of investment programmes of licensees for electricity transmission by trunk and cross-border electric networks, approved by the Resolution of the NEURC of June 30, 2015, № 1972, which reflects the sources of investment, the plan of directing the costs of the licensee for new construction, reconstruction, technical re-equipment and development of fixed assets, other assets of the Company. Volumes of investments are determined based on the technical condition of fixed assets and other assets, the principles of economic feasibility of appropriate measures, as well as taking into account the need to ensure the appropriate level of quality of dispatching and transmission of electricity by trunk and cross-border electric networks.

The investment programme of NPC UKRENERGO for 2021 was approved by the resolution of the NEURC dated March 24, 2021, № 510 in the amount of UAH 4,328,830 thousand (excluding VAT).

According to the information provided by NPC UKRENERGO, in order to attract loan funds to finance these projects, as a result of which international financial institutions (hereinafter – IFIs) express a preliminary interest in preparing certain projects that may be eligible for funding, NPC UKRENERGO conducts preliminary consultations with IFIs.

The procedure for preparation of projects financed by IFIs is regulated by the Procedure for preparation, implementation, monitoring and completion of projects of economic and social development of Ukraine supported by international financial institutions, approved by the Cabinet of Ministers of Ukraine dated January 27, 2016, № 70 (hereinafter – the Procedure), according to the first paragraph of clause 6, NPC UKRENERGO prepares a project proposal and submits it to the Ministry of Finance of Ukraine for examination. Based on the results of the examination, the Ministry of Finance makes a decision (order) on the feasibility of preparing an investment project.

Subject to the paragraphs of the first and fifth clauses 15 of the Procedure and subparagraph 1 of clause 1 of Annex 5 to the Procedure for raising funds from IFIs shall be in agreement with the central executive authorities, namely: The Ministry of Finance of Ukraine, the Ministry of Economic Development and Trade of Ukraine, the Ministry of Foreign Affairs of Ukraine, the Ministry of Justice of Ukraine and the NEURC, in particular, by adopting an act of the Cabinet of Ministers of Ukraine for investment project.

In order to implement economic and social development projects of Ukraine supported by international financial institutions, NPC UKRENERGO has currently concluded a number of agreements with IFIs on providing sub-loans and repayment of debts to the state for fulfillment of guarantee obligations. Credit resources are provided under state guarantees for 15 - 20 and more years with low interest rates compared to the terms of lending by Ukrainian commercial banks and the value of other financial instruments. Accordingly, such a guarantee places on the state a joint responsibility with the TSO for the repayment of loans, and therefore is an additional guarantee of effective investment in network development.

It should also be noted that in November 2021 NPC UKRENERGO issued five-year green and sustainability-linked Eurobonds. Redemption of Eurobonds with interest will be carried out at the expense of the tariff for electricity transmission services, as concluded by the Agreement on measures to ensure the fulfillment of obligations under the Agreement dated 05.11.2021 № 13110-05/485 on repayment of the debt of the private joint-stock company National Power Company UKRENERGO to the state for fulfillment of guarantee obligations between the Ministry of Finance of Ukraine, NEURC and NPC UKRENERGO (hereinafter – the Agreement).

The provisions of the Agreement stipulate that in accordance with the powers provided for each of the parties by the current legislation of Ukraine, each party will take measures and actions that will be sufficient and admissible for NPC UKRENERGO to fulfill its obligations under the issued bonds. The fulfillment of NPC UKRENERGO's obligations to repay the debt is ensured in the amount of not less than 100 percent of the amount of debt obligations by receiving funds in the tariff, and the NEURC will take all necessary and statutory measures to establish a tariff that will cover redemption/repayment costs and interest.

NPC UKRENERGO has the necessary staff to effectively fulfill all its obligations under the Law. At the same time, the NEURC approves personnel costs in the form of a general salary fund, therefore NPC UKRENERGO is independent in hiring employees and establishing the level of their salaries.

The registered number of employees of NPC UKRENERGO as of September 1, 2021 is about 7.9 thousand people, among which 4.6 thousand are engaged in the operation and repair of equipment and facilities of electrical networks and 549 are involved in performing the functions of the TSO dispatching.

In order to create opportunities for the staff of the TSO to perform all duties and functions, NPC UKRENERGO created a proper and sufficient material and technical base of special equipment and special mechanisms, possible repair work, created and operated appropriate electrical laboratories, and the necessary software.

In addition, according to parts one, three and eleven of Article 21 of the Law, the transmission system operator has no right to refuse to connect the customer's electrical installations to the transmission system or distribution system provided that the customer complies with the transmission system code. The service of connecting the customer's electrical installations to the transmission system is a paid service and is provided by the transmission system operator in accordance with the connection agreement. The fee for connection to the electricity networks of the distribution system operator is determined on the basis of the methodology (procedure) for forming the fee for connection to the transmission system and distribution system approved by the Regulator after consultation with the Energy Community Secretariat.

The method (procedure) of forming the fee for connection to the transmission system and distribution system was approved by the resolution of the NEURC of December 18, 2018, № 1965.

Thus, the legislative and contractual principles testify to the existence and full disposal by NPC UKRENERGO of financial, technical, material and human resources necessary to perform the functions of the TSO prescribed by the Law.

#### *4.3. Relationship between the Applicant and the owner of the electricity transmission system*

According to the second part of Article 36<sup>3</sup> of the Law in order to ensure the independence of the owner of the transmission system:

1) the head and deputy heads of the transmission system owner, persons performing management functions on behalf of the transmission system owner may not participate in the activities of bodies (including exercising the powers of a sole body) of an economic entity engaged in production (extraction) and/or supply of electricity (natural gas) and belongs to the sphere of management of the owner of the transmission system or in which they own corporate rights;

2) the owner of the transmission system is obliged to develop and implement a compliance programme, which defines measures to avoid discriminatory actions and influence on the activities of the transmission system operator and to monitor the implementation of such measures. The compliance programme shall define the functional responsibilities of the transmission system owner's employees to achieve these goals. The annual report, which sets out the measures taken, shall be submitted to the Regulator by the compliance officer and published on the Regulator's website.

As noted above, the head and deputy heads of the Ministry of Energy of Ukraine, persons performing management functions on behalf of the owner of the transmission system, do not participate in the activities of economic entities engaged in the production (extraction) and/or supply of electricity (natural gas).

In addition, Article 136 of the Commercial Code of Ukraine stipulates that an economic entity to which state-owned objects have been transferred on the right of economic management for the purpose of creating a transmission system operator must be completely independent in making decisions on use, operation, maintenance, planning, development and financing in accordance with the Law of Ukraine "On Electricity Market". The authorized entity of the electricity transmission system management may not refuse financing, respectively, by the transmission system operator or other interested person of investments agreed with the NEURC. In approving such investments, the NEURC is guided, in particular, by the need to ensure the security of electricity transmission, operational security of the Integrated Power System of Ukraine.

Thus, the relationship between the owner (the state in the person of the authorized management body) and the business entity to which state property that is part of the electricity transmission system is provided under the right of economic management (NPC UKRENERGO) is regulated by the Commercial Code of Ukraine and the Law, therefore, the authorized management body (represented by the head, his deputies and other officials representing him) as the owner has no right to interfere in the economic activities and economic relations of NPC UKRENERGO, except for the cases specified by the legislation of Ukraine concerning realization of the property right, realization of

the right of management of the corporate rights defined by constituent documents, and also in connection with violation by the user of the order of use of property under this Agreement.

According to the information provided by NPC UKRENERGO, the Minister of Energy, Deputy Ministers, State Secretary of the Ministry of Energy do not participate in the activities of bodies (including not exercising the powers of a single body) of economic entities engaged in production (extraction) and/or supply of electricity (natural gas) and belong to the sphere of management of the Ministry of Energy or in which it has corporate rights.

The Order of the Ministry of Energy dated September 17, 2021, № 209 approved the Compliance Programme of the Ministry of Energy of Ukraine (hereinafter – the Compliance Programme).

The Order of the Ministry of Energy of December 6, 2021, № 317 amended the Compliance Programme by presenting it in a new wording, which takes into account the NEURC's comments on the Compliance Programme provided in the Rationale to the preliminary decision on certification.

In addition, by the order of the Ministry of Energy dated September 30, 2021, № 33-ag, the Authorized person for compliance of the Ministry of Energy of Ukraine with the requirements of Article 36<sup>3</sup> of the Law and Article 29 of the Law of Ukraine "On the Natural Gas Market" determined O.Lozynskyi (Acting Head of the Internal Control Unit of the Ministry of Energy).

Thus, the relationship between NPC UKRENERGO and the owner of the electricity transmission system is regulated in accordance with the Law.

## **5. Conclusions and recommendations of the Energy Community Secretariat**

On November 25, 2021, in accordance with the requirements of Article 3 of the EC Regulation and Article 10 of the Directive, the Energy Community Secretariat issued and promulgated Decision No. 4/21 on certification of NPC UKRENERGO (hereinafter – the Opinion) as for analysing the compliance of NEURC Resolution No. 1683 dated 1 October 2021 “On approving a preliminary decision on certification of the transmission system operator for electricity and recognising NEURC Resolution No. 901 dated June 2, 2021 as invalid” (hereinafter – preliminary decision of the NEURC) with requirements of Articles 9 and 13 of the Directive.

Thus, the Secretariat provided a regulatory assessment of the selected model of unbundling of the transmission system operator – the model of an independent system operator (ISO). The Secretariat agreed with the arguments of the NEURC regarding the compliance of the selected unbundling model of NPC UKRENERGO, namely the ISO unbundling model.

Also, taking into account the reservations set out in the preliminary decision of the NEURC, the Secretariat supported the NEURC’s opinion regarding compliance with requirements of the European legislation in part of independence of NPC UKRENERGO, including the requirements of Articles 9 and 13 of the Directive. At

the same time, the Secretariat emphasises the need for constant monitoring by the NEURC of the compliance by NPC UKRENERGO with the requirements for unbundling and independence of the transmission system operator, as well as adherence by the owner of the electricity transmission system to its obligations under the ISO unbundling model.

The Secretariat also draws attention to the need for the NEURC to control the possibility of interference by the Cabinet of Ministers of Ukraine in the autonomy of the transmission system operator and to intervene if necessary.

As for financial, technical, material and human resources of NPC UKRENERGO necessary to perform the functions required by Article 33 of the Law, taking into account the previous NEURC comments and the following proposed conditions and recommendations, the Secretariat supported the preliminary decision of the NEURC on certification as for compliance of NPC UKRENERGO with the requirements of Article 13 of the Directive.

Moreover, the Secretariat proposes conducting an additional analysis of several aspects of the activities of NPC UKRENERGO as a future certified transmission system operator.

In particular, it is proposed to check whether the Ministry of Energy exercises control over the supply activities related to the distribution system operators transferred into the sphere of management of this Ministry.

As mentioned above, the distribution system operator JSC Khmelnytskoblenenergo, the sole participant in the share capital of LLC Khmelnytskenergozbut (a supplier of universal services in Khmelnytskyi region), has been transferred to the Ministry of Energy.

In order to ensure the unbundling of electricity distribution system operators from electricity supply and take measures to prevent the functioning of vertically integrated business entities, JSC Khmelnytskoblenenergo and SE NNEGC Energoatom on 10 November 2021 concluded:

the Agreement specifying that JSC Khmelnytskoblenenergo transfers the ownership (100 percent) in the share capital of LLC Khmelnytskenergozbut into the ownership of SE NNEGC Energoatom on the terms and in the manner stipulated in the Agreement. From the date of signing this Agreement and until the moment of transfer of the ownership right to the specified share in the share capital to SE NNEGC Energoatom, JSC Khmelnytskoblenenergo undertakes to refrain from direct management of LLC Khmelnytskenergozbut and transfer this right to SE NNEGC Energoatom by means of concluding a corporate agreement;

The Corporate Agreement is regulating JSC Khmelnytskoblenenergo and SE NNEGC Energoatom on the management of LLC Khmelnytskenergozbut.

In addition, by power of attorney for corporate rights No. 1974 dated November 22, 2021, JSC Khmelnytskoblenenergo in accordance with the terms of the Corporate Agreement authorised SE NNEGC Energoatom to manage LLC Khmelnytskenergozbut by participating in the General Meeting or by means of making a decision of the sole participant of this Company.

At the same time, although under the terms of the Corporate Agreement LLC Khmelnytskenergozbut is managed exclusively by the future participant within the rights of the members of LLC Khmelnytskenergozbut in accordance with the provisions of the Charter of LLC Khmelnytskenergozbut and the Law of Ukraine “On Limited and Additional Liability Companies,” paragraph 4.3 of the same agreement provides for certain restrictions on such management, while paragraph 4.2 specifies the possibility of interference in the management of the Company by JSC Khmelnytskoblenenergo in some cases determined in the Agreement.

Given that a number of corporate rights for the entire validity period of the Corporate Agreement remain with JSC Khmelnytskoblenenergo, there is a possibility that the Ministry of Energy will have an impact on the activities of LLC Khmelnytskenergozbut by means of issuing voting tasks, based on which the representative of JSC Khmelnytskoblenenergo will vote at the General Meeting of LLC Khmelnytskenergozbut. At the same time, the procedure for making decisions (voting) by SE NNEGC Energoatom and/or JSC Khmelnytskoblenenergo on the issues on which voting tasks are provided by the subject of state property management (i.e., the Ministry of Energy) remains unclear.

In order to avoid risks of violating the requirements for unbundling and independence of the transmission system operator, the provisions of the Charter of JSC Khmelnytskoblenenergo and the Corporate Agreement must provide for the absence of the requirement for a representative of JSC Khmelnytskoblenenergo/SE NNEGC Energoatom at the General Meeting of legal entities, of which the Company is a participant, to act on the basis of the power of attorney and to vote at this General Meeting on the basis of the voting tasks, approved by the Supervisory Board or the General Meeting of JSC Khmelnytskoblenenergo.

In addition, according to the information available to the NEURC, other DSOs that own shares in the share capital of suppliers of universal services have not been transferred into the sphere of management of the Ministry of Energy.

At the same time, the Ministry of Energy and NPC UKRENERGO must immediately notify the NEURC about the transfer of these DSOs into the sphere of management of the Ministry of Energy and provide the NEURC with the Agreement concluded between the respective DSO and SE NNEGC Energoatom, consent to the conclusion of which was granted by the General Meeting, as well as with the act of transfer and acceptance of the specified rights (shares), the Corporate Agreement and the power of attorney for corporate rights.

The Secretariat also proposes to demand amendments to the regulations ensuring that the appointed Deputy Minister is responsible for amending the Charter of NPC UKRENERGO and official appointing of members of the Supervisory Board of NPC UKRENERGO.

As noted above, Order No. 318 amended the division of powers between the Minister and his/her deputies, in particular:

established restrictions on the powers of the Minister of Energy to sign orders (amendments thereto) related to the issues of exercise by the Ministry of powers of

managing the state corporate rights in NPC UKRENERGO and managing state property used in the process of electricity transmission activities;

the powers of Ya.S. Demchenkov, Deputy Minister for European Integration, in the sphere of activity of the Ministry include, in particular:

signing of orders of the Ministry of Energy on the exercise by the Ministry of the powers of managing the state corporate rights in NPC UKRENERGO and managing state property used in the process of electricity transmission, including the appointment of members of supervisory boards of these companies, based on a power of attorney issued by the Minister;

ensuring consideration, agreement and approval of documents in accordance with laws and regulations concerning the exercise by the Ministry of powers of managing state corporate rights in NPC UKRENERGO, JSC MGU (LLC Operator of GTS of Ukraine), including the charters of these companies;

signing of administrative documents of the Ministry of Energy, related to the exercise by the Ministry of powers of managing state corporate rights in NPC UKRENERGO on the basis of the power of attorney issued by the Minister.

Regarding the corporate governance of NPC UKRENERGO, the Secretariat notes that the Ministry of Energy, as the sole member of the shareholders' meeting, is the highest body of NPC UKRENERGO in accordance with Ukrainian corporate law and exercises direct control within the meaning of Article 2 (36) of the Directive. At the same time, the Charter also explicitly prohibits the shareholder from interfering in the operational and commercial activities of the company and obliges it to perform the tasks of its subsidiary NPC UKRENERGO in accordance with the ISO model. The Supervisory Board of NPC UKRENERGO was established to mitigate unrestricted control by the Ministry. While members of the Supervisory Board are officially appointed by the Ministry of Energy, most of its members must be independent of the state administration and elected on a competitive basis.

Moreover, due to the absence of the Supervisory Board of NPC UKRENERGO, the Ministry of Energy as the sole shareholder of NPC UKRENERGO approved Order No. 322 dated December 7, 2021 on termination of powers of members of the Management Board of NPC UKRENERGO M.O. Yurkov and A.I. Nemyrovskiy, which, in accordance with the Charter, belongs to the exclusive competence of the Supervisory Board of NPC UKRENERGO.

In this regard, we draw your attention to the fact that the exercise of powers by the Ministry of Energy, falling within the exclusive competence of the Supervisory Board of NPC UKRENERGO, is unacceptable and, subject to certification of the transmission system operator, will be further considered a violation of the requirements for unbundling and independence of the transmission system operator and the owner of the transmission system and will be penalised in accordance with Article 77 of the Law, in particular in the amount of up to 10 percent of the annual income (revenue) of the transmission system owner – to the transmission system owner for violating the requirements for unbundling and independence of the transmission system operator, specified by the Law.



Moreover, the Secretariat notes that the Law on the Electricity Market, as well as the Charter, provides for the appointment of the Authorized person for compliance to implement a compliance programme with measures to avoid discriminatory behaviour and conflicts of interest. The compliance programme also aims at monitoring the obligation of the shareholder, i.e., the Ministry of Energy, in accordance with the law to comply with the obligations for unbundling and independence.

It should be noted that as of the date of this decision, the candidacy of the Authorized person for compliance of NPC UKRENERGO was not submitted to the Regulator.

At the same time, in accordance with subparagraph 16 of paragraph 3.1 of the Certification Procedure, if the Applicant has not appointed the Authorized person for compliance and/or has not signed a contract with him/her before the NEURC makes a final decision on TSO certification, the decision on certification must specify the term during which the Applicant must appoint the Authorized person for compliance and sign a contract with him/her as worded and agreed with the NEURC.

The Secretariat also recommended taking the necessary actions to terminate the powers of the shareholders' meeting and/or the Ministry of Energy to approve and monitor the implementation of NPC UKRENERGO's investment plans, in particular in short- and mid-term investment and development planning.

It should be noted that in accordance with paragraph 6 of part 1 of Article 6 of the Law of Ukraine "On Managing State Property," the authorised management bodies in accordance with their tasks approve annual financial and investment plans and investment plans for the medium term (3-5 years) of state enterprises and business entities belonging to the sphere of their management, and exercise control over their implementation in the prescribed manner. Similar powers are defined in sub-paragraph 33 of paragraph 4 of the Regulation on the Ministry of Energy and in sub-paragraph 10.9.6 of paragraph 10.9 of the Charter of NPC UKRENERGO.

Therefore, the termination of the relevant powers of the Ministry of Energy requires making amendments to the Law of Ukraine "On Managing State Property," after which appropriate amendments must be made to the Regulations on the Ministry of Energy, the Charter of NPC UKRENERGO and other documents defining the relevant powers of the Ministry as the authorized management body (General Meeting) of the Company.

Moreover, the Secretariat insists on changing the parties to the Agreement on Economic Management from the Ministry of Finance of Ukraine to the Ministry of Energy before making a final decision on certification, as well as verifying the compliance of the Agreement on Economic Management with Article 13 (5) (c) of the Directive.

As noted above, on 6 December 2021, the Minister of Energy approved the act of transfer and acceptance of state property assigned to NPC UKRENERGO under the right of economic management, not included in the share capital of the company in the process of its establishment, from the sphere of management of the Ministry of Finance of Ukraine to the Ministry of Energy.

In addition, an agreement signed between the Ministry of Energy and NPC UKRENERGO on the replacement of the subject of management of state property used in the process of electricity transmission No. 131/21 dated 8 December 2021, which amended the Agreement on Economic Management in terms of replacement of the subject of management of state property used in the process of electricity transmission to the Ministry of Energy, was submitted.

It should also be noted that in accordance with sub-paragraph 7.2.5 of paragraph 7.2 of the Agreement on Economic Management, NPC UKRENERGO has the right to insure property in cases and in the manner prescribed by law.

At present, the legislation of Ukraine does not determine the procedure and cases of property insurance, which makes it impossible to amend the Agreement in terms of these obligations.

At the same time, on November 16, 2021, the Verkhovna Rada of Ukraine approved the draft Law of Ukraine “On Critical Infrastructure” (registered as No. 5219), sent on November 25, 2021 to the President of Ukraine for signature. Article 32 of this draft law specifies that the operator of critical infrastructure is obliged to insure the emergency risk. The list of critical infrastructure facilities included in the Register, insurance risks of emergency situation at such facilities subject to insurance, as well as the minimum liability limit (in case of third-party liability insurance) are approved by the Cabinet of Ministers of Ukraine, while regarding the critical infrastructure in the field of financial services, they are agreed with the National Bank of Ukraine.

Pursuant to paragraph 1 of Chapter Final and Transitional Provisions, this Law must enter into force on the day following the day of its publication and must be brought into action six months after its entry into force, except for part 2 of Article 32 (on insurance of critical infrastructure), which must enter into force three years after the date of entry into force of this Law.

Thus, making amendments to the Agreement regarding the definition of obligations to insure property owned by the state and used in the process of electricity transmission will be possible after the approval and entry into force of regulations governing the relevant legal relations.

At the same time, the compliance of the provisions of the Law of Ukraine “On Critical Infrastructure” with the provisions of Article 13 (5) (c) of the Directive in the context of ensuring the coverage of liabilities related to assets by the owner of the transmission system requires further analysis.

The Secretariat also recommended that in the final decision on certification, NPC UKRENERGO and the Ministry of Energy as a shareholder of NPC UKRENERGO submit proposals to effectively eliminate risks to the financial viability of NPC UKRENERGO inherent in the current model of public service obligations as for increasing the share of electricity generated from renewable energy sources.

## 6. Conclusions

Taking into account the documents, data and information provided by the Applicant for certification, other stakeholders and organizations, as well as the conclusions of the NEURC covered in the Rationale for the preliminary decision on certification of NPC UKRENERGO, the Opinion of the Secretariat of the Energy Community dated November 25, 2021, № 4/21, the NEURC makes a final decision on the certification of NPC UKRENERGO.

Taking into account the recommendations of the Energy Community Secretariat and in order to prevent possible violations of the Law and the Directive on unbundling and independence of the transmission system operator:

1. The Ministry of Energy of Ukraine and NPC UKRENERGO shall provide the NEURC within three working days with information and relevant documents confirming compliance of unbundling and independence of the transmission system operator with the requirements of the Law, in particular in the case of:

transfer to the sphere of management of the Ministry of Energy of distribution system operators that have shares in the authorized capital of universal service suppliers;

adoption by the Cabinet of Ministers of Ukraine or the Ministry of Energy of Ukraine of decisions (preparation, approval of draft decisions) that may affect the independence and unbundling of the transmission system operator;

appointment (dismissal) of members of the Supervisory Board and the Management Board of NPC UKRENERGO;

appointment (dismissal) of the Deputy Minister of Energy of Ukraine, who independently of the Minister, First Deputy Minister and other Deputy Ministers performs tasks related to the management of state property used in the process of electricity transmission and/or management of corporate rights of the state in the authorized capital of NPC UKRENERGO;

introduction (preparation) of amendments to the Charter of NPC UKRENERGO;

adoption by the Ministry of Energy of Ukraine, as the sole shareholder of NPC UKRENERGO, of decisions in the absence of the Supervisory Board.

2. NPC UKRENERGO within 30 working days from the date of adoption of this resolution shall submit to the NEURC the candidacy of the authorized person for compliance of the transmission system operator, and information (documents) necessary to analyze its compliance with the requirements of article 36<sup>4</sup> of the Law.

3. The Ministry of Energy of Ukraine, NPC UKRENERGO within two months from the date of adoption of this resolution shall provide the NEURC with information confirming compliance of the provisions of the Law of Ukraine “On Critical Infrastructure” with the provisions of Article 13 (5) (c) of the Directive in the context of ensuring the coverage of liabilities related to assets by the owner of the transmission

system or making proposals for the necessary changes in legislation to ensure such compliance.

4. The Ministry of Energy of Ukraine within 30 working days from the date of adoption of this resolution shall provide the NEURC with copies of documents confirming:

bringing corporate agreements and charters of distribution system operators transferred to the Ministry of Energy in line with the requirements for unbundling of the transmission system operator and the transmission system owner, in particular, with regard to the removal of provisions, which provide for the influence of the Ministry of Energy in making decisions concerning universal service suppliers, 100 percent of the shares of which belong to the relevant distribution system operators;

absence of overlapping of functions of employees of the Ministry of Energy in terms of:

performing the functions of officials of economic entities for the production (extraction) and/or supply of electricity (natural gas);

simultaneous implementation of corporate rights management powers of NPC UKRENERGO, JSC MGU (LLC GTS Operator of Ukraine), and functions on corporate rights management and/or performance of functions of officials of distribution system operators.

5. The Ministry of Energy of Ukraine within three months from the date of adoption of this resolution shall provide the NEURC with copies of documents confirming:

bringing the structure of the Ministry of Energy in line with the requirements for unbundling and independence of the TSO and the owner of the transmission system, in particular in terms of realization of all powers on corporate rights management of NPC UKRENERGO, JSC MGU (LLC GTS Operator of Ukraine) by a separate structural subdivision of the Ministry of Energy, which should be subordinated exclusively to the Deputy Minister for European Integration and not perform the functions of enterprise management, public property management and corporate rights management of other economic entities;

bringing the provisions on the Unit for coordination and interaction of fuel and energy operators (or the relevant structural unit designated to perform these functions in the event of a change in the structure of the Ministry of Energy), other structural subdivisions of the Ministry of Energy and job descriptions of their employees (including the Authorized Person for Compliance of the Ministry of Energy), in accordance with the requirements for unbundling and independence of the TSO and the owner of the transmission system, the Compliance Programme of the Ministry of Energy and the Regulations on the Ministry of Energy, after consultation with the NEURC;

determination of the procedure for interaction of officials and employees of structural subdivisions of the Ministry of Energy with an independent structural subdivision of the Ministry of Energy, which ensures the performance of functions on

the management of state property of the transmission system and management of corporate rights of the state in the authorized capital of NPC UKRENERGO;

replacement of the Ministry of Energy with another body in international agreements (loan agreements), to which the Ministry of Energy is a party, and which are aimed at financing the activities of economic entities for the production of electricity.

6. The Ministry of Energy of Ukraine within six months from the date of adoption of this resolution shall provide the NEURC with copies of documents confirming the Procedure for forming the forecast balance of electricity of the integrated power system of Ukraine for the estimated year in accordance with the Regulation on the Ministry of Energy on the development, formation and approval of the forecast balance in compliance with the principles of transparency and non-discrimination, non-interference in decision-making by the relevant economic entities of the electricity sector taking into account the requirements of the Law.

7. The Ministry of Energy of Ukraine within a year from the date of adoption of this resolution shall provide the NEURC with copies of documents confirming:

bringing the Agreement on economic management in line with the requirements of article 36<sup>2</sup> of the Law and article 13(5)(c) of the Directive;

amendments to the Law of Ukraine “On the management of state property” on ensuring independence and unbundling of the transmission system operator, in particular, paragraph 6 of the first part of Article 6, as well as subparagraph 33 of paragraph 4 of the Regulation on the Ministry of Energy and subparagraph 10.9.6 of paragraph 10.9 of the Charter of NPC UKRENERGO regarding the ban on the Ministry of Energy to participate in short-term and mid-term investment planning of NPC UKRENERGO, including approving and monitoring the implementation of annual and mid-term investment plans of NPC UKRENERGO;

amendments to the Law of Ukraine “On central bodies of executive power” in terms of ensuring the independence and autonomy of the Deputy Minister, who performs tasks related to the management of state property and/or management of corporate rights of the state in the authorized capital of business entities, operating on the basis of a license to conduct natural gas transportation activities or on the basis of a license to conduct electricity transmission activities (including corporate rights of the state in the authorized capital of economic entities that have corporate rights in the authorized capital of such entities), in particular in terms of the right to sign the relevant orders of the Ministry.

8. The Ministry of Energy of Ukraine and NPC UKRENERGO within one month from the date of adoption of this resolution shall provide the NEURC with a draft decision that will effectively eliminate risks to the financial viability of NPC UKRENERGO, inherent in the current regime of imposing special obligations to ensure an increase in the share of electricity production from alternative energy sources.

9. To recommend M. Ilnytskyi, a member of the Supervisory Board of NPC UKRENERO, to refrain from participating in the meetings of the Supervisory Board of NPC UKRENERO until January 1, 2022.

10. NPC UKRENERO within a month shall inform (with the provision of supporting documents) the NEURC on measures taken to avoid the risk of conflict of interest of the member of the Supervisory Board M. Ilnytskyi, in particular, regarding access to the information of the transmission system operator received from market participants used by it for the performance of its functions in the electricity market and constitutes a trade secret in accordance with the law, and the activities of the transmission system operator, the disclosure of which may provide commercial benefits to PJSC Chernihivoblenergo.

11. To warn the Ministry of Energy of Ukraine about inadmissibility in the future of:

activities of NPC UKRENERGO in the absence of a quorum in the Supervisory Board of NPC UKRENERGO;

exercising by the Ministry of Energy, as the sole shareholder of NPC UKRENERGO, of the powers referred to the exclusive competence of the Supervisory Board of NPC UKRENERGO.