

[National Emblem of Ukraine]

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

RESOLUTION

Kyiv

No. _____

On approval of a preliminary 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 a preliminary decision on certification of PRIVATE JOINT STOCK COMPANY NATIONAL POWER COMPANY UKRENERGO (EDRPOU code 00100227) on the basis of the substantiation of the preliminary decision on certification of PRIVATE JOINT STOCK COMPANY NATIONAL POWER COMPANY UKRENERGO, attached below.

2. To make a final decision on certification of PRIVATE JOINT STOCK COMPANY NATIONAL POWER COMPANY UKRENERGO subject to the implementation of measures provided in the substantiation of the preliminary decision on certification of PRIVATE JOINT STOCK COMPANY NATIONAL POWER COMPANY UKRENERGO.

3. To notify the Secretariat of the Energy Community of the preliminary decision on certification of PRIVATE JOINT STOCK COMPANY NATIONAL POWER COMPANY UKRENERGO.

4. To recognise as invalid Resolution of the National Energy and Utilities Regulatory Commission No. 901 dated 2 June 2021 “On approval of a preliminary decision on certification of the electricity transmission system operator.”

NEURC Chairman

V. Tarasiuk

**SUBSTANTIATION
OF THE PRELIMINARY DECISION ON CERTIFICATION OF
PRIVATE JOINT STOCK COMPANY
NATIONAL POWER COMPANY UKRENERGO**

1. Introduction

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 referred to as 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 referred to as the EU Regulation) set out the requirements for designation as a transmission system operator of an economic entity that has received a decision on certification in accordance with the Directive and the EU Regulation. In order to implement the mentioned requirements of the Directive and the EU 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 (the Agreement was ratified by the Law of Ukraine "On ratification of 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"), 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 referred to as the Law) was adopted.

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 their submission, the amount and procedure for payment for certification and the term of validity of the decision on certification are approved by the Regulator.

By Resolution No. 1016 dated 10 August 2017, the NEURC approved the Procedure for certification of the electricity transmission system operator (hereinafter referred to as 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 referred to as 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 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.

NEURC Resolution No. 901 dated 2 June 2021 approved a preliminary decision on certification of the electricity transmission system operator, of which the NEURC notified the Secretariat of the Energy Community by the letter dated 2 June 2021 and sent the documents related to the decision.

At the same time, on 2 September 2021, the NEURC received a letter from NPC UKRENERGO, informing about a possible significant change in the circumstances on the basis of which a preliminary decision was made to certify the transmission system operator in accordance with the NEURC Resolution No. 901 dated 2 June 2021 because of the approval by the Cabinet of Ministers of Ukraine of Direction No. 833-r¹ dated 28 July 2021 (hereinafter referred to as 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 transmission system operator 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 is a need for a new preliminary decision on certification of the transmission system operator.

¹ Translator's note: in Ukrainian – № 833-p

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) ^{36¹}, ^{36²}, ^{36³}, ^{36⁴} 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 ensure 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" was amended to strengthen the Regulator's capacity to monitor compliance with the requirements for independence by the owner of the electricity transmission system in accordance with the Law, including approval of 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 36¹ 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 36¹ 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 a 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 36³ 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 36² 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 Certification Request Applicant (NPC Ukrrenergo) and other interested parties

SE National Power Company Ukrrenergo was established in accordance with Order of the Ministry of Energy of Ukraine of No. 54 dated 15 April 1998 on the basis of state enterprises “National Electricity Dispatch Centre of Ukraine” (EDRPOU code 00100227) and State Electric Company “Ukrelektroperedacha” (EDRPOU code 22946373) in order to perform the functions of centralised dispatching (operational and technological) management of the integrated power system of Ukraine and the organisation of parallel operation with the power systems of other states.

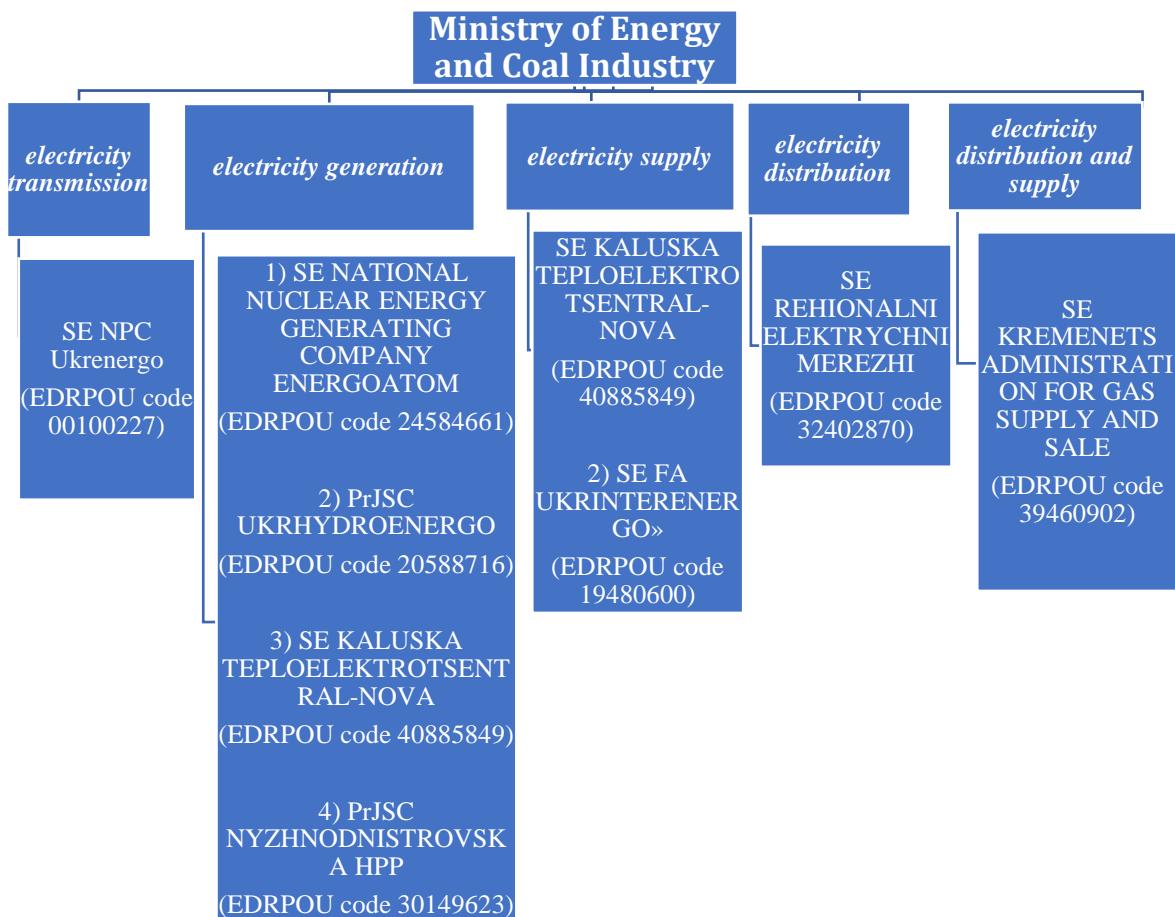
To perform electricity transmission activities, NPC Ukrrenergo received a licence for transmission of electricity through trunk and interstate power grids on the territory of Ukraine on 28 October 1998 (NEURC Resolution No. 1366 dated 28 October 1998). Ukrrenergo did not receive any other licences for the right to conduct economic activities on the electricity market.

In accordance with the Law of Ukraine “On Electricity” (which expired on 11 June 2017, and certain provisions – on 1 July 2019) and the Law of Ukraine “On Electricity Market” (which entered into force on 11 June 2017) economic

activity of generation, transmission, distribution of electricity, supply of electricity to consumers, trading activities, performing the functions of the market operator and the guaranteed buyer is carried out on the electricity market subject to obtaining the appropriate licence issued by the Regulator.

Licensing of economic activity in the field of electricity and control over the observance by licensees of the licensing conditions of economic activity in accordance with Article 6 of the Law is falling within the competence of the NEURC. In accordance with the NEURC licence register, SE NPC Ukrenergo and NPC UKRENERGO as its successor did not receive licences for the right to conduct generation, distribution, supply, resale (trading) activities of electricity and, accordingly, do not carry out these activities.

From the moment of its establishment until 4 February 2019, SE NPC Ukrenergo belonged to the management of a vertically integrated business entity, namely the Ministry of Energy and Coal Industry of Ukraine (whose successor is the Ministry of Energy of Ukraine – Minenergo), the management field of which also included, in



particular, legal entities engaged in the generation, distribution and supply of electricity (Figure 1).

Figure 1. List of business entities for transmission, generation, supply and distribution of electricity, falling within the scope of management of the Ministry of Energy and Coal Industry (as of 3 February 2019)

In accordance with provisions of Chapter XVII “Final and Transitional Provisions” of the Law, a state enterprise that carries out centralised dispatching (operational and technological) control of the IPS of Ukraine (SE NPC Ukrenergo) had to be corporatised.

In accordance with part 3 of Article 32 of the Law, the organisational and legal form of the transmission system operator must be a joint-stock company.

In pursuance of provisions of the Law, on 22 November 2017, the Cabinet of Ministers of Ukraine approved a decision (Direction No. 829-r²) to transform the state enterprise National Power Company Ukrenergo into a private joint stock company with 100 percent of shares belonging to the state, so the Ministry of Energy and Coal Industry of Ukraine launched the transformation of SE NPC Ukrenergo into a private joint stock company through approving Orders No. 728 dated 5 December 2017 “On establishing the commission on reorganisation (transformation) of SE NPC Ukrenergo” and dated 29 December 2017 “On approval of the Action Plan for reorganisation (transformation) of SE NPC Ukrenergo.”

Direction of the Cabinet of Ministers of Ukraine No. 1001-r³ dated 14 November 2018 transferred the integral property complex of State Enterprise National Power Company Ukrenergo from the Ministry of Energy and Coal Industry of Ukraine to the Ministry of Finance of Ukraine.

Order of the Ministry of Finance of Ukraine No. 3 dated 4 January 2019 established a commission on transfer, as a result of the work which the act of transfer and acceptance of the integral property complex of SE NPC Ukrenergo from the Ministry of Energy and Coal Industry of Ukraine to the Ministry of Finance of Ukraine from 4 February 2019 was concluded.

On 29 July 2019, in accordance with Order of the Ministry of Finance of Ukraine No. 321 dated 29 July 2019, the state registration of termination of the legal entity – State Enterprise National Power Company Ukrenergo – was fulfilled by means of its transformation into Private Joint Stock Company National Power Company Ukrenergo.

In accordance with the Unified State Register of Legal Entities, Individual Entrepreneurs and Public Associations, as well as information provided by the letter from the Ministry of Finance of Ukraine dated 5 May 2021, the sphere of management of the Ministry of Finance of Ukraine includes 29 business entities, the activities of which are directed and coordinated by the Cabinet. Ministers of Ukraine through the Minister of Finance and which do not carry out activities of generation, distribution, supply of electricity (natural gas) and activities of resale (trading activity) of electricity/natural gas. Moreover, the Ministry of Finance of Ukraine manages the state corporate rights in the share capital and owns shares of three banks (Figure 2).

² Translator's note: in Ukrainian – № 829-p

³ Translator's note: in Ukrainian – № 1001-p

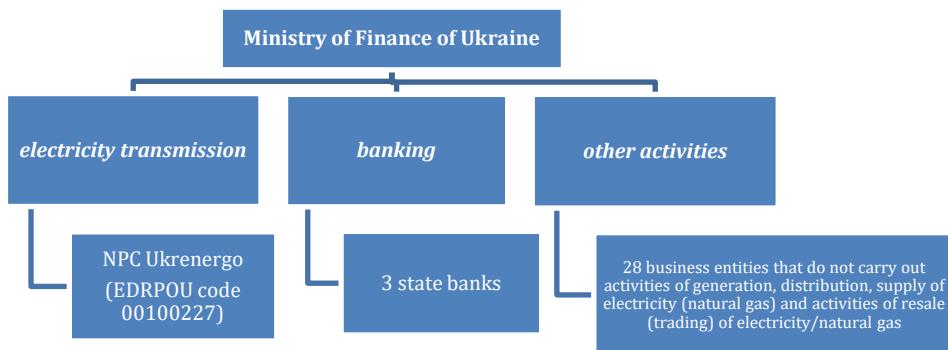


Figure 2. Enterprises and institutions belonging to the sphere of management of the Ministry of Finance of Ukraine (as of the date of submission of the request for certification)

Given that the corporate rights of NPC UKRENERGO belong to the Ministry of Finance of Ukraine, Order of the Ministry of Finance of Ukraine No. 437 dated 21 October 2019 approved the Charter of NPC UKRENERGO (hereinafter referred to as the Charter).

Order of the Ministry of Finance of Ukraine No. 354 dated 11 June 2021 amended the Charter, bringing the Charter in line with the current legislation of Ukraine, in particular Articles 31, 32, 33 and 36⁴ of the Law, Article 44 of the Law of Ukraine “On the Cabinet of Ministers of Ukraine,” the Commercial Code of Ukraine.

The Charter stipulate that NPC UKRENERGO is a legal entity formed as a joint stock company with 100 percent of the shares fixed in state ownership. The founder and sole shareholder of the Company is the state represented by the Ministry of Finance of Ukraine. The management of corporate rights of the state in the share capital of the Company is carried out by the Ministry of Finance of Ukraine.

In accordance with the Charter, the management of activities and control over the financial and economic activities of the Company are carried out by its bodies, the composition and procedure of election (appointment) of which is determined by the legislation of Ukraine and the Charter. The governing bodies of NPC UKRENERGO are the General Meeting, the Supervisory Board, and the Management Board.

In the part of special features of managing state enterprises, the Ministry of Finance of Ukraine, 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 provides for the division of state power (competence) among the legislative body (the Verkhovna Rada of Ukraine), the executive body (the Cabinet of Ministers of Ukraine) and the system of judicial bodies.

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.

It should also be noted that in accordance with Direction of the Cabinet of Ministers of Ukraine No. 50-r⁴ dated 20 January 2021 (hereinafter referred to as Direction No. 50), the Ministry of Economy together with the Ministry of Energy and the Ministry of Finance must submit draft decisions to the Cabinet of Ministers:

1) on the transfer of powers to manage corporate rights owned by the state in the share capital of the private joint stock company National Power Company Ukrenergo and joint stock company Mahistralni Gazoprovody Ukrainy, the Ministry of Energy;

2) on designation of the Ministry of Energy as the authorised body to manage the state property:

of the gas transmission system, which is not subject to privatisation, is used in the process of natural gas transportation by main pipelines, according to the list of property prepared as a result of implementation of paragraph 1 of Direction of the Cabinet of Ministers of Ukraine No. 1087 dated 15 November 2019 “On determining the authorised body to manage the state property of the gas transportation system, used in the process of carrying out activities for the transportation of natural gas by main pipelines”;

assigned to private joint stock company National Power Company Ukrenergo under the right of economic management as the property not included in the share capital of the company in the process of its formation.

In accordance with Direction No. 833, the following is provided:

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

⁴ Translator's note: in Ukrainian – № 50-p

economic management as the property not included in the share capital of the company in the process of its formation;

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

The transfer of corporate rights of the state in the share capital of NPC UKRENERGO to the Ministry of Energy is confirmed by the register of owners of registered securities provided by PJSC NATIONAL DEPOSITORY OF UKRAINE on 16 September 2021, specifying that the Ministry of Energy of Ukraine is the owner of 100% of the shares of NPC UKRENERGO.

In addition, Order of the Ministry of Energy dated No. 218 dated 21 September 2021 approved the charter of NPC UKRENERGO. At the same time, the version of the Charter approved by the Ministry of Energy differs from the version of the Charter approved by Order of the Ministry of Finance of Ukraine No. 354 dated 11 June 2021 only in terms of provisions on the body authorised to manage corporate rights in the share capital of NPC UKRENERGO.

It should be noted that the main requirement of the legislation on the independence of the transmission system operator and the gas transmission system operator is the absence of direct or indirect control over these operators (including ownership of the transmission system and gas transmission system) by any legal entity (including any state authority), which simultaneously directly or indirectly controls at least one business entity (including a foreign one), which carries out activities of generation (production) and/or supply of natural gas and/or electricity, or enjoys any right with respect to at least one business entity (including a foreign one) that carries out activities of generation (production) and/or supply of natural gas and/or electricity.

As noted above, as of 3 February 2019, the Ministry of Energy's management sphere included business entities engaged in generation of electricity, supply of electricity and natural gas.

In accordance with Direction No. 50, the functions to manage corporate rights owned by the state in the share capital of private joint stock company "Ukrhydroenergo" (EDRPOU code 20588716) and private joint stock company "Nyzhnodnistrovska HPP" (EDRPOU code 30149623), and the integral property complexes of State Enterprise National Nuclear Energy Generating Company Energoatom (EDRPOU code 24584661), State Enterprise Teploelektrotsentral-2 ESKHAR (EDRPOU code 30034023), State Enterprise Kaluska teploelektrotsentral – Nova (EDRPOU code 40885849), State Enterprise Lysychanska Teploelektrotsentral(EDRPOU code 00131067), were to be transferred to the Cabinet of Ministers of Ukraine.

Also, Direction No. 50 provides for the transfer of the integral property complex of the state enterprise of foreign economic activity Ukrinterenergo (EDRPOU code 19480600) from the sphere of management of the Ministry of Energy to the sphere of management of the Ministry of Economy.

According to the information available in the NEURC as of 1 September 2021:

the management of corporate rights owned by the state in the share capital of private joint stock company Ukrhydroenergo and private joint stock company Nyzhnodnistrovska HPP, and the integral property complexes of State Enterprise National Nuclear Energy Generating Company Energoatom, State Enterprise Teploelektrotsentral-2 ESKHAR and State Enterprise Kaluska teploelektrotsentral – Nova was transferred to the Cabinet of Ministers of Ukraine;

the integral property complex of the state enterprise of foreign economic activity Ukrinterenergo was transferred to the sphere of management of the Ministry of Economy.

Moreover, during 2021, the NEURC took a number of decisions to revoke licences for the supply of electricity and/or natural gas granted to business entities managed by the Ministry of Energy.

Order of the Ministry of Energy of Ukraine No. 90 dated 12 May 2021 approved the Lists of state enterprises, institutions and organisations belonging the sphere of management of the Ministry of Energy, business entities in respect of which the Ministry of Energy performs the state corporate rights management, and economic structures controlled by the Ministry of Energy (hereinafter referred to as the Lists) as at 30 April 2021:

List of state enterprises, institutions and organisations belonging to the sphere of management of the Ministry of Energy;

List of business entities in respect of which the Ministry of Energy performs the functions of state corporate rights management;

List of economic structures controlled by the Ministry of Energy.

In accordance with the Lists, as at 30 April 2021, the sphere of management of the Ministry of Energy includes, in particular, 123 business entities in respect of which the Ministry of Energy manages state corporate rights, 5 economic structures controlled by the Ministry of Energy, and 275 state enterprises, institutions and organisations belonging to the sphere of management of the Ministry of Energy (Figure 3).

At the same time, there are no business entities in the Lists that carry out activities of generation (production) and/or supply of electricity (natural gas).

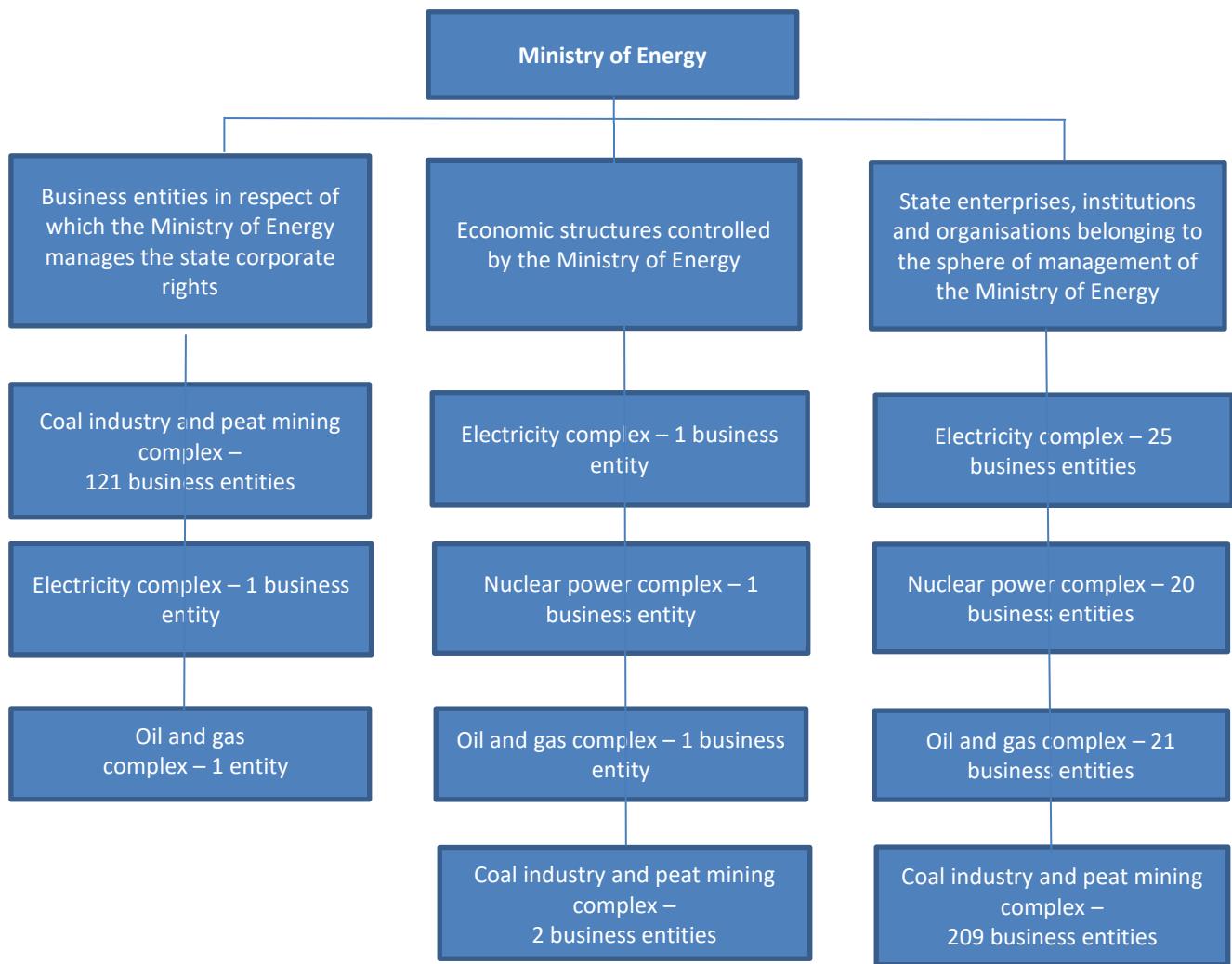


Figure 3. The list of state enterprises, institutions and organisations belonging to the sphere of management of the Ministry of Energy, business entities in respect of which the Ministry of Energy manages the state corporate rights, and economic structures controlled by the Ministry of Energy, as of 30.04.2021

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

At the same time, according to the analysis of the information available in the NEURC on the state property not included during corporatisation in the share capital of the companies and managed by the Ministry of Energy, some state property objects under the management of the Ministry of Energy are used by business entities with licences for generation of electricity (storage of natural gas) and supply of electricity (natural gas).

In view of the above, the final decision on certification is possible subject to the submission to the NEURC of the documents confirming the absence in the use of business entities with licences for generation of electricity (storage of natural gas) and supply of electricity (natural gas) of the state property managed by the Ministry of Energy.

It should also be noted that Resolution No. 50 provides for the transfer of the total asset package of the State Enterprise "Market Operator" (EDRPOU code 43064445) into the management of the Ministry of Energy.

According to the Charter of the State Enterprise "Market Operator", approved by Resolution No. 454 issued by the Cabinet of Ministers of Ukraine on 22 May 2019 , the enterprise was formed to ensure functioning of the day-ahead and the intra-day electricity markets, organize the purchase and sale of electricity in these markets, and to make a profit from the implementation of economic activities.

At the same time, the NEURC was not provided with sufficient information and documents to confirm that the transfer of the total asset package of the State Enterprise "Market Operator" into the management of the Ministry of Energy is performed in compliance with the Law on unbundling and independence of the transmission system operator.

Therefore, the final decision on the certification is subject to the provision of information and documents to the NEURC that confirm that the transfer of the total asset package of the State Enterprise "Market Operator" into the management of the Ministry of Energy is performed in compliance with the Law on unbundling and independence of the transmission system operator.

In addition, item "a" of paragraph 12 of the decision of the National Security and Defense Council of Ukraine of 30 July 2021 "On measures to neutralise threats in the energy sector" approved by Decree No. 452/2021 issued by the President of Ukraine on 28 August 2021 provides that by 31 August 2021 the following activities should be performed:

to exclude from the list of objects of large-scale privatization of state property and the list of objects of small-scale privatization of state property the state-owned blocks of shares of electricity distribution system operators with the further appointment of the Ministry of Energy of Ukraine as the managing body of such blocks of shares;

to complete the measures of unbundling the activities of state-owned electricity distribution system operators and universal service providers and transfer state-owned universal service providers into the management by the State Enterprise "National Atomic Energy Generating Company "Energoatom".

It should be noted that at present some of these distribution system operators participate in the operation of electricity suppliers to consumers, performing the functions of universal service providers in the designated area, and were created to implement the provisions of paragraph 13 of Section XVII "Final and Transitional Provisions" for unbundling of the distribution system operator.

In view of the above, the final decision on certification is possible on condition that the NEURC will be provided with documents and information confirming that there is no breach of the law on TSO unbundling and independence, in particular, confirming the transfer of universal service providers to SE Energoatom until the transfer to the Ministry of Energy of Ukraine of the relevant distribution system operators.

Please also note that according to the Regulation No. 507 on the Ministry of Energy of Ukraine approved by the Cabinet of Ministers of Ukraine on 17 June 2020 (hereinafter – the Regulation on the Ministry of Energy), the Ministry of Energy is the main body in the system of central executive bodies that ensures:

formation and implementation of the state policy in the electricity, nuclear industry, coal industry, peat production, oil and gas, and oil and gas refining sectors;

formation and implementation of state policy in the field of efficient use of fuel and energy resources, energy saving, renewable energy sources and alternative fuels (except for energy efficiency of buildings and other structures) and in the field of supervision (monitoring) in the fields of electricity and heat.

In this case, the orders of the Ministry of Energy issued within the powers provided by law, are binding on the central executive bodies, enterprises, institutions and organizations, regardless of their type of ownership.

Accordingly, it is necessary to take measures to avoid the influence of the Ministry of Energy on economic entities engaged in the production (extraction) and/or supply of electricity (natural gas).

Resolution No. 863 issued by the Cabinet of Ministers of Ukraine on 11 August 2021 amended the Regulation on the Ministry of Energy, in particular, it:

determines 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 in line with requirements of the Law;

excludes the powers of the Ministry of Energy to approve investment programmes of the transmission system operator and the distribution system operators;

provides that the Ministry of Energy in the process of fulfilling its tasks of the management of state-owned objects and/or management of corporate rights of the state in the authorized capital of economic entities operating on the basis of a licence of natural gas transportation or on the basis of a licence of electricity transmission (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 economic entities during decision-making, as well as unbundling of such economic entities in accordance with the Laws of Ukraine "On the Electricity Market" and "On the Natural Gas Market";

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

determines that the Minister performs the functions of managing the corporate rights of the state in the authorized capital of the transmission system operator and the 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 distributes such functions with the exercise of powers to

ensure the formation and implementation of state policy in the electricity and oil and gas sector as per the principles of independence in the decision-making process.

In order to ensure the compliance with the requirements for the independence of the transmission system operator and the transmission system owner, the Ministry of Energy issued Order No. 162 on 29 July 2021 to create a separate structural unit – the Fuel and Energy Operators Coordination and Interaction Unit (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 of the state in the authorized capital of JSC MGU and NPC Ukrrenergo, as well as for the management of the state property used in the electricity transmission and natural gas transportation by main pipelines.

However, the Regulation on the Unit (hereinafter – the Regulation) provided to the NEURC should be revised, because the Regulation:

- 1) does not establish the mechanism of ensuring the independence of the Unit and the relevant rights of the Unit and its managing officer in the exercise of their functions and tasks;
- 2) does not establish the range of matters on which the Unit shall act to fulfil the instructions issued only by the Deputy Minister, and matters that do not require approval by the Minister/other Deputy Ministers, relevant structural units, etc.;
- 3) in the description of functions and rights of the Unit and tasks of the head of the Unit, etc. it is stated "the management of the Ministry" but not "the relevant Deputy Minister", so there is no confirmation that the Unit is independent from the Minister and other management of the Ministry;
- 4) it is not specified who can give instructions to the Unit, and there is no information as to the rights of the Unit in terms of not fulfilling the instructions of the Ministry of Energy's management, which are issued in contradiction to the requirements for unbundling and independence;
- 5) paragraph 2.1 of Section II of the Regulation requires more specific information stating that in the fulfilment of functions of managing corporate rights owned by the state in the authorized capital of JSC MGU and NPC UKRENERGO, as well as managing the state property used in the transmission of electricity and the transportation of natural gas by main pipelines, the Unit shall act in compliance with the laws of Ukraine "On the Electricity Market", "On the Natural Gas Market", "On the Cabinet of Ministers of Ukraine" and the Commercial Code of Ukraine and shall act within the rights and obligations of the managing entity of state property, defined by agreements on transfer on the right of economic management of state-owned objects used in the process of carrying out activities of electricity transmission / natural gas transportation by main pipelines;

6) a number of functions of the Unit, in particular, as defined in subparagraphs 1, 4, 8, 9, 10, 11, 18, 19, 21, 24, 30, 32 and 34 of paragraph 3.1 of Section III of the Regulation, do not comply with requirements for unbundling and independence of the transmission system operator and the transmission system owner, also the Regulation is missing some of the Unit's functions that are necessary to ensure the performance of the obligations of the owner of the transmission system in accordance with Article 36² of the Law;

7) Section VI of the Regulation does not provide for the specifics and restrictions in terms of the interaction of the Unit with other structural units to ensure the performance of its functions independently and in line with requirements for unbundling and independence of fuel and energy operators and the transmission system owner.

Therefore, the final decision on certification is possible under the condition that the NEURC will be provided with documents confirming that the Regulation has been revised and incorporates the comments listed.

The NEURC also reviewed the regulations on other separate structural units of the Ministry of Energy that may have influence on the operation of the electricity and gas transmission system operators, and the review findings are as follows:

1) The Regulation on the Directorate of Electric Power Sector and Electricity Market Development:

paragraphs 3.27, 3.28, 3.29, 3.32 contradict the requirements for unbundling of the transmission system operator;

functions of paragraphs 3.12, 3.14, 3.16, 3.17, 3.18, 3.19, 3.20, 3.22, 3.23, 3.26, 3.31, 3.36, 3.37, 3.39, 3.40, 3.42 shall be performed in compliance with requirements for unbundling of the transmission system operator and shall not limit the independence of the TSO its functions under the law;

paragraphs 4.1, 4.2, 4.3 of Section IV, subparagraph 5.4.10 of Section V, paragraph 6.1 of Section VI and Section VII need to be more specific to reflect the provisions of the Regulation on the Ministry of Energy and the Compliance Programme of the Ministry of Energy in terms of performing the functions of corporate rights management in the authorized capital of JSC MGU and NPC UKRENERGO, as well as the management of the state property used in the process of electricity transmission and natural gas transportation by main pipelines, by a separate independent structural unit to ensure unbundling and independence of the transmission system operator and the transmission system owner;

2) The Regulation on the Department of Nuclear Energy and Nuclear Industry:

paragraphs 3.5, 3.6, 3.8, 3.9, 3.14, 3.16, 3.17 should be brought in line with requirements for unbundling and independence of the transmission system operator and the transmission system owner;

some other paragraphs (in particular 3.10, 3.11, 3.33) require additional analysis for compliance with requirements for the independence of the transmission system operator;

3) in the Regulation on the Directorate for the Formation of Energy and Resource-Efficient Policy, paragraphs 3.29, 3.30, 3.43 should be brought in line with requirements for unbundling and independence of the transmission system operator and the transmission system owner;

4) in the Regulation on the Directorate of Oil and Gas Complex and Development of Oil, Natural Gas and Petroleum Products Markets, paragraphs 3.29, 3.22 should be brought in line with requirements for unbundling and independence of the transmission system operator and the transmission system owner;

5) regulations on all structural units do not contain requirements for abiding by the Ministry of Energy's Compliance Programme, do not describe the specifics of interaction with a separate structural unit entrusted with the function of the management of the Ministry of Energy's corporate rights in the authorized capitals of JSC MGU and NPC UKRENERGO and the management of state property used in the process of electricity transmission and natural gas transportation by main pipelines, including the requirement of non-interference in its operation.

In addition, job descriptions of the above-mentioned structural units were not provided to the NEURC. And the Regulation on the Directorate for Strategic Planning and European Integration was not provided to the NEURC.

Therefore, the final decision on certification is possible under the condition that the NEURC will be provided with documents confirming that regulations on the structural units of the Ministry of Energy and job descriptions of their employees are aligned with requirements for unbundling and independence of the TSO and the transmission system owner, the Ministry of Energy's Compliance Programme, and the Regulation on the Ministry of Energy.

In addition, the Cabinet of Ministers of Ukraine by Resolution No. 1025 of 29 September 2021, aiming 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 owned by the state in the authorized capital of NPC Ukrrenergo, amended some regulatory legal acts and the Regulation on the Ministry of Energy as follows:

the Ministry of Energy is obliged to adhere to the principle of non-interference in decision-making by economic entities of the electricity sector as per the requirements of the Law of Ukraine "On the Electricity Market" during the formation and approval of the forecast electricity balance of the IPS of Ukraine;

powers in the management of state property and/or management of corporate rights of the state in the authorized capital of NPC UKRENERGO are exercised by the Deputy Minister, who acts autonomously and 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, and operational independence of the transmission system operator is ensured by the relevant Deputy Minister;

the TSO independence assurance is monitored by the compliance officer appointed by the State Secretary of the Ministry of Energy in agreement with the Minister and in prior consultation with the NEURC;

the Compliance Programme of the Ministry of Energy is approved by the Minister of Energy;

the measure to modernize existing and complete construction of new thermal power plants and develop main networks of the IPS of Ukraine to ensure power output of nuclear and hydropower plants is excluded from the list of investment projects that are of strategic importance for the economic development of the state and for which the Ministry of Energy is currently responsible;

the influence of the State Energy Inspectorate (Derzhenergonagliad), whose operation is 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 power of the State Energy Inspectorate to submit conclusions on the priority of technical solutions for the transmission system development.

Also, Order No. 224 "On subordination of structural units of the Ministry of Energy of Ukraine and distribution of functional responsibilities among the management of the Ministry" issued by the Ministry of Energy on 27 September 2021 (hereinafter referred to as Order No. 224) introduced changes to the division of powers between the Minister of Energy of Ukraine and their Deputy Ministers, in particular:

1) limitation of the powers of the Minister of Energy:

to sign draft legislative acts and other normative legal acts developed by the Ministry on matters pertaining to the Ministry's powers to manage the corporate rights of the state in the authorized capital of NPC Ukrerengo and JSC MGU;

to sign orders and changes to such orders, the signature of which is within the powers of the Secretary of State;

to form, liquidate, and reorganize enterprises, institutions or organizations within the limits of the Ministry's powers on the management of corporate rights of the state in the authorized capital of NPC UKRENERGO, JSC MGU;

to appoint and dismiss managers, to make decisions on their promotion and disciplinary action within the limits of the Ministry's powers on the management of corporate rights of the state in the authorized capital of NPC UKRENERGO, JSC MGU;

2) it limits the powers of First Deputy Minister Yu. M. Vlasenko in terms of management of the state property on the balance sheet of NPC Ukrenergo and JSC MGU;

3) it limits the powers of Deputy Minister Yu. A. Pidkomorna in terms of concurrence and approval of financial plans of NPC Ukrenergo and JSC MGU, including monitoring of such plans execution;

4) the powers of Deputy Minister for European Integration Ya. S. Demchenkov in terms of the Ministry's sphere of operation include:

coordination of the Ministry's activities the management of corporate rights owned by the state in the authorized capital of NPC Ukrenergo and JSC MGU;

assurance of the review, concurrence and approval of documents in accordance with regulatory legal acts pertaining to the implementation of the Ministry's powers of managing corporate rights of the state in the authorized capital of NPC UKRENERGO, JSC MGU;

signature of draft regulations and administrative documents developed by the Ministry and applicable to the implementation of the Ministry's powers of managing corporate rights of the state in the authorized capital of NPC UKRENERGO, JSC MGU;

implementation within the powers of management of state property, which is not included in the authorized capital of NPC Ukrenergo, and state property on the balance sheet of JSC MGU and economic entities whose 100% of shares are owned by JSC MGU, in particular, the facilities that are not subject to privatization, the decision on the further use of the said property (except for material carriers of classified information), including the facilities that are not subject to privatization;

assurance of the concurrence and approval of financial plans of NPC Ukrenergo and JSC MGU, as well as due monitoring of the execution of these plans;

assurance of the concurrence and approval of annual investment plans, medium-term investment plans (three to five years) of NPC UKRENERGO and JSC MGU, as well as due monitoring of the execution of these plans;

exercising within his powers other functions for the management of corporate rights of the state in the authorized capital of NPC Ukrenergo, JSC MGU;

assurance of establishing priority areas and development strategies of NPC UKRENERGO and JSC MGU;

coordination of the Ministry's interaction as a shareholder with NPC UKRENERGO and JSC MGU.

At the same time, in accordance with paragraph 1 of Order No. 224:

Minister H. V. Haluschenko within the areas of activity coordinates the Department of Finance and Public Property Management (in terms of enterprise management);

First Deputy Minister Yu. M. Vlasenko directs and coordinates the Department of Finance and Public Property Management (in terms of public property management

and corporate rights management) and the Unit of Accounting and Control of State Property;

Deputy Minister Yu. A. Pidkomorna directs and coordinates the Directorate for the Formation of Energy and Resource-Efficient Policy and the Department of Finance and Public Property Management (in terms of financial planning and implementation of budget policy);

Deputy Minister M. O. Nemchynov directs and coordinates the Directorate of Oil and Gas Complex and Development of Oil, Natural Gas and Petroleum Products Markets and the Directorate of Strategic Planning and European Integration;

Deputy Minister for European Integration Ya. S. Demchenkov according to the areas of his activity coordinates the operation of the Directorate for Strategic Planning and European Integration (in terms of European integration and management of corporate rights of the Private Joint Stock Company "National Power Company Ukrenergo", the Joint Stock Company "Mahistralni Gasoprovody Ukrainy") and the Department of Finance and Public Property Management (in terms of exercising the powers of corporate rights management of the Private Joint Stock Company "National Power Company Ukrenergo", the Joint Stock Company "Mahistralni Gasoprovody Ukrainy").

Therefore, it is necessary to ensure consistency with the Regulation on the Ministry of Energy and coordination of functions between structural units of the Ministry of Energy in terms of a clear definition of the structural unit that will perform the functions of managing the corporate rights of NPC Ukrenergo and the property of the transmission system.

It is also necessary to ensure consistency with requirements for unbundling and independence in subparagraph 6 of paragraph 2, subparagraphs 5, 6, 7, 11, 12, 13, 18, 19, 20, 21, 22 of paragraph 4, subparagraphs 7, 8, 9, 22, 28 30 of paragraph 6, subparagraphs 14, 15, 16 of paragraph 7; subparagraphs 23, 24 of paragraph 8 and subparagraphs 1, 4 of paragraph 10 of Order No. 224.

In addition, there is a risk of a breach of requirements for unbundling of the owner of the transmission system because other structural units of the Ministry, the activities of which are directed and coordinated by the First Deputy Minister and other Deputy Ministers, will also be subordinated to Deputy Minister Ya. S. Demchenkov. It is also necessary to ensure compliance with the requirements for unbundling and independence of the TSO and the transmission system owner in case of an interchange of the management of the ministry

In particular, according to paragraph 14 of Order No. 224 in the absence of the Deputy Minister for European Integration Ya. S. Demchenkov his functions are performed by Deputy Minister Yu. A. Pidkomorna (and vice versa), who also directs and coordinates the Directorate for the Formation of Energy and Resource-Efficient Policy, whose functions in accordance with the Regulation, in particular, include the organizational and information support to the auction committee for electricity sales under bilateral contracts.

Besides, Order No. 224 does not provide for ensuring the fulfilment of requirements of the Compliance Programme of the Ministry of Energy, the exercise of powers by the compliance officer and their subordination.

In addition, the text of Order No. 224 should indicate GTS Operator LLC, as the Ministry of Energy (as the sole shareholder of JSC MGU) also has powers over GTS Operator LLC and shall exercise such powers in compliance with the requirements for unbundling and independence.

In view of the above, the final decision on certification is possible under the condition that the NEURC will be provided with decisions approved by the Ministry of Energy on the distribution of functional responsibilities between the management of the Ministry that meet the requirements for unbundling and independence of the TSO and the transmission system owner.

Also, today there are regulatory legal acts governing the powers of the Ministry of Energy, the provisions of which need to be clarified to eliminate 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).

Therefore, the final decision on certification is possible under the condition that the NEURC will be provided with documents and information confirming the amendments to regulatory legal acts in terms of eliminating the risk of the Ministry of Energy's influence on the activities of economic entities engaged in production (extraction) and/or supply of electricity (natural gas).

Please also note that according to the information provided to the NEURC, the Ministry of Energy is a party to a number of international agreements and loan contracts aimed at financing the activities of economic entities engaged in electricity generation, which creates risks for the Ministry of Energy will influence such economic entities through the administration of these agreements (contracts).

Therefore, the final decision on certification is possible under the condition that the NEURC will be provided with documents and information confirming that the Ministry of Energy will be replaced with another body in international agreements (loan contracts) in which the Ministry of Energy serves as a party and which are aimed at financing the activities of economic entities.

4. Preliminary conclusions on NPC UKRENERGO compliance with unbundling and independence requirements

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

According to 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 (paragraph 10.7 of the Charter).

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.

It means that 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.

At the same time, as noted above, Resolution No. 833 provides for the transfer of powers of managing corporate rights owned by the state in the authorized capital of NPC UKRENERGO to the Ministry of Energy, as well as to nominate the Ministry of Energy as the authorized body managing the electricity transmission system.

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 Valeriovych 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.

Yuri Mykolaiovych 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).

M. O. Nemchynov (Resolution No. 875-r dd. 15 July 2020 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);

Ye. O. Vladimirov (appointed Deputy Minister of Energy of Ukraine for Digital Development, Digital Transformations and Digitization by Resolution No. 1449-r dd. 18 November 2020 of the Cabinet of Ministers of Ukraine).

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).

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 a 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.

As per subparagraph 10.9.13 of paragraph 10.9 of the Charter, appointing and (or) electing the members of the Supervisory Board, resolving on terminating the powers of the members of the Supervisory Board, except in cases established by the law shall be the exclusive competence of the General Meeting.

According to subparagraph 11.13.23 of paragraph 11.13 of the Charter, electing and terminating the powers of a Chairman and Deputy Chairman of the Supervisory Board, chairman and members of the Supervisory Board Committees, approving the regulations on the Supervisory Board Committees belongs to the exclusive competence of the Supervisory Board.

Members of the Supervisory Board of NPC UKRENERGO are:

Chairman of the Supervisory Board – Sevki Acuner;

Independent Members of the Supervisory Board:

Peder Ostermark Andreasen

Olivier Appert

Luigi de Francisci

Representative of the state – Yurii Bohdanovych Tokarskyi.

It should be noted that Sevki Acuner is the Chairman of the Supervisory Board of NPC UKRENERGO and at the same time he was the Chairman of the Supervisory Board of JSC Ukrzaliznytsia.

JSC Ukrzaliznytsia (EDRPOU code 40075815) carries out economic activities of electricity distribution on the basis of a license authorizing it to perform the economic activity of electricity distribution (Resolution No. 1395 dd. 8 November 2018 issued by the National Energy and Utilities Regulatory Commission).

According to the Unified State Register of Legal Entities, Individual Entrepreneurs and Public Associations, JSC Ukrzaliznytsia is the sole founder (participant) of ZBUT ENERGY LTD LLC (EDRPOU code 43757131), which, in turn, is the only participant of ENERHO ZBUT TRANS LLC (EDRPOU code 42588390), which was issued:

license for electricity supply to the consumer as per NEURC Resolution No. 1539 dd. 27 November 2018;

license for natural gas supply as per NEURC Resolution No. 838 dd. 22 April 2020.

Therefore, there was a risk of breaching the requirements of the legislation on the TSO unbundling and independence in terms of exercising control by a person who is a member of the supervisory boards of NPC UKRENERGO and JSC Ukrzaliznytsia within the meaning of part four of Article 32 of the Law and the Directive.

At the same time, on 21 September 2021, JSC Ukrzaliznytsia published information about a change in the composition of officials, according to which the powers of the member of the Supervisory Board of JSC Ukrzaliznytsia Sevki Acuner were terminated due to the term expiration.

In addition, Luigi de Francisci is a member of the Supervisory Board of NPC UKRENERGO and a manager of ACEA SPA, which, according to the company's website⁵, is engaged in electricity generation, electricity and natural gas supply, and distribution of electricity.

Under part four of Article 32 of the Law, in order to ensure the independence of the transmission system operator, no physical or legal person shall have the right to serve as an official of the transmission system operator and of at least one business entity (including a foreign one) that is engaged in the production and/or supply of electricity.

In addition, as per Article 9 of the Directive, the same person is not entitled to be a member of the supervisory board, the administrative board or bodies legally representing the undertaking, of both an undertaking performing any of the functions of generation or supply and a transmission system operator or a transmission system.

According to information provided by NPC UKRENERGO, Luigi de Francisci at ACEA SPA is responsible for the holding's regulatory department, which does not conduct electricity generation, electricity supply and/or natural gas activities. Luigi de Francisci is in charge of the regulatory function, which is to represent ACEA on behalf of ACEA Group in relations with the government and regulatory bodies, to assist the company in assessing the regulatory impacts and actions needed to maximize the objectives of the production plan, etc.

Therefore, Luigi de Francisci performing the combined functions of a member of the Supervisory Board of NPC UKRENERGO and the manager at ACEA SPA does not lead to potential risks of NPC UKRENERGO breaching the unbundling and independence requirements of the law.

It should also be noted that in accordance with Resolution No. 815-r dd. 21 July 2021 of the Cabinet of Ministers of Ukraine (hereinafter referred to as Resolution

⁵ <https://www.gruppo.acea.it/en>

No. 815) the Cabinet of Ministers of Ukraine approved the candidacies of Yurii Mykolayovych Boiko and Dmytro Oleksandrovych Olefir as members - representatives of the state in the Supervisory Board of NPC UKRENERGO.

The process of nominating and approving candidates –state representatives to supervisory boards of companies in the authorized capital of which more than 50 per cent of shares are owned by the state (hereinafter referred to as the companies) is established by Procedure No. 143 for nominating and approving candidates from the state to supervisory boards of unitary state-owned enterprises, who participate in the general meeting and are elected to the supervisory boards of companies in the authorized capital of which more than 50 per cent of shares is owned by the state, approved by the Cabinet of Ministers of Ukraine on 10 March 2017 (hereinafter referred to as Procedure No. 143), and the Procedure for competitive selection of heads of economic entities of the public sector of the economy, approved by Resolution No. 777 dd. 3 September 2008 of the Cabinet of Ministers of Ukraine (hereinafter referred to as Procedure No. 777).

As per Procedure No. 777, for the nomination of heads of enterprises that are of particular importance for the economy, the Cabinet of Ministers of Ukraine shall form a committee (hereinafter referred to as the appointment committee) to appoint candidates for the positions of heads of enterprises that are of particular importance for the economy.

Based on results of the procedure of selecting candidates for the position of a state representative – member of the supervisory board of a state-owned enterprise of particular importance for the economy, the appointment committee prepares conclusions on approval of the selected candidate for the position of a state representative – member of the supervisory board of the enterprise more than 50 per cent of shares of which are owned by the state. Based on the decision of the appointment committee, the First Vice Prime Minister of Ukraine – Minister of Economy submits to the Cabinet of Ministers of Ukraine proposals to approve the candidate for the position of the head of the enterprise of particular importance for the economy.

The decision of the Cabinet of Ministers of Ukraine is the basis for concluding a contract between the managing entity and the successful candidate within two weeks.

As per Procedure No. 143, a state representative to the supervisory board of an enterprise or company of particular importance for the economy, in the authorized capital of which 100 per cent of shares are owned by the state, shall be appointed by the decision of the managing entity.

Therefore, the approval of Yu. M. Boiko and D. O. Olefir as state representatives – members of the Supervisory Board of NPC Ukrrenergo is only a precondition for their appointment to the Supervisory Board of NPC UKRENERGO, and not the actual appointment to the Supervisory Board.

As of today, Yu. M. Boiko and D. O. Olefir have not been appointed as members of the Supervisory Board of NPC UKRENERGO.

At the same time, the NEURC was not provided with documents confirming that Yu. M. Boiko and D. O. Olefir comply with the Law in terms of unbundling of the

transmission system operator and the transmission system owner, and Directive 2009/EC.

It should be noted that according to available to NEURC information, D. O. Olefir works as a director of the department at the Private Joint Stock Company "Ukrhydroenergo" (licensee for electricity production).

So, D. O. Olefir combining the functions of a director of the department at PJSC "Ukrhydroenergo" and a member of the Supervisory Board of NPC UKRENERGO (if he is appointed) may indicate a breach of the provisions of the Law and the Directive regarding the independence of the transmission system operator.

Besides, NEURC does not have information about Yu. M. Boiko employment relations, so it is not possible to assess whether his appointment to the position of a member of the Supervisory Board of NPC UKRENERGO complies with the requirements of the Law and the Directive regarding the independence of the transmission system operator.

Therefore, the final decision on certification is possible under the condition that the NEURC will be provided with information and documents confirming that there is no risk of a breach of the Law and the Directive on unbundling and independence of the TSO, should Yu. M. Boiko and D. O. Olefir be appointed as members of the Supervisory Board of NPC UKRENERGO.

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 appointed and dismissed from the office by the Supervisory Board of the Company in accordance with the legislation of Ukraine and the Charter. Appointment of the other members of the Management Board and termination of their powers is carried out by the Supervisory Board upon agreement with the Chairman of the Management Board.

As of the date of the application for certification, the members of the Management Board are:

Volodymyr Dmytrovych Kudrytskyi (Chairman of the Management Board)
 Maryna Volodymyrivna Bezrukova;
 Andrii Ihorovych Nemyrovskyi;
 Maksym Oleksandrovych Yurkov;
 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 36⁴ 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 36⁴ 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.

At the same time, 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.

Thus, before the final decision on the certification of NPC UKRENERGO, the candidature of the authorized person for compliance and the draft employment agreement should be submitted to the NEURC for approval. After its approval, the Regulator shall appoint the authorized person for compliance and sign an agreement with him/her in the wording agreed with the NEURC.

4.2. Compliance of NPC UKRENERGO with the requirements of sub-clause 2 of part three of Article 36¹ of the Law on the availability of financial, technical, material and human resources necessary to perform the functions prescribed by Article 33 of the Law.

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 deed), 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: Dniprovska 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
141	9	3	2	88	33	6
Length of overhead power lines along the route, thousand km						
Total	including the following voltage, kV					
	800	750	500	400	330	220
21.86	0.10	4.40	0.38	0.34	13.01	3.04
						0.46
						0.13

NPC UKRENERGO was granted an Agreement on the transfer of state-owned facilities used in the process of electricity transmission activities, dated May 27, 2021, № 13110-05/301 (hereinafter – the 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.

It should be noted that Order № 833 provides for the Ministry of Energy to designate 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 NEURC did not receive any documents confirming the transfer of state property 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.

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 directions 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.

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 take into account 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 structures of the tariff for electricity transmission services for 2021 (as amended), the NEURC took 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 directions 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. During the first quarter of 2021, the result of the Company's activity in the balancing market was a surplus on a special account in the amount of UAH 365 million.

In accordance with the changes to the Market Rules from September 1, 2021, the prices for balancing energy and imbalances will be equal to each other and, accordingly, there expected to be no deficit on the special account of the Company.

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.

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.

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

According to the second part of Article 36³ 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.

Pursuant to the order of the Cabinet of Ministers of Ukraine of November 14, 2018, № 1001-r, the Ministry of Finance of Ukraine by order of January 4, 2019, № 3 established a commission on the transfer of the entire property complex of the state enterprise National Power Company Ukrenergo from the Ministry of Energy and Coal industry to the sphere of management of the Ministry of Finance of Ukraine, as a result of which the act of acceptance-transfer of the integral property complex of NPC UKRENERGO dated February 4, 2019, was drawn up.

In accordance with the order of the Ministry of Finance of Ukraine dated July 29, 2019, № 321, NPC UKRENERGO was transferred the electricity transmission system on the right of economic management.

At the same time, 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.

It should be noted that according to part eight of article 141 of the Commercial Code of Ukraine, the objects of the state property used in the course of carrying out activity on transmission of electric energy, on the basis of the decision of the subject of management and the corresponding contract are fixed on the right of economic management to the subject of management, in the authorized capital of which 100 percent of corporate rights belong to the state or an entity in the authorized capital of which 100 percent of corporate rights belong to the state, or, solely for the purpose of separating natural gas transportation activities, by the business entity in the authorized capital of which 100 percent belong to the entities specified in this part.

In pursuance of the legislation, the Ministry of Finance of Ukraine and NPC UKRENERGO concluded an Agreement on Economic Management, according to which the Ministry of Finance of Ukraine on behalf of the property owner exercises sole control over the use and preservation of property without interfering with NPC UKRENERGO's economic activities, and carries out other obligations provided by law.

At the same time, Order № 833 envisages determining 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.

According to the information available at the NEURC, a commission for the acceptance and transfer of state property is currently being set up, as a result of which the Ministry of Energy must approve the act of acceptance-transfer of objects of state property used in the process of electricity transmission activities.

In addition, it is planned to conclude an additional agreement between NPC UKRENERGO and the Ministry of Energy to the Business Management Agreement regarding the change of the authorized body of state property management used in the process of electricity transmission activities.

Thus, the adoption of a final decision on certification is possible provided that the NEURC provides a copy of the additional agreement to the Agreement on economic management in terms of changing the authorized body of state property management used in the transmission of electricity.

We also note that according to the information available at the NEURC, 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 owns corporate rights.

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

According to the declaration of April 6, 2021, V.Kushnirov holds the position of Director General of the Directorate of Strategic Planning and European Integration of the Ministry of Energy of Ukraine.

Thus, the concurrent holding by V.Kushnirov of position as Director General of the Directorate for Strategic Planning and European Integration of the Ministry of Energy of Ukraine and a member of the Supervisory Board of Ukrhydroenergo may indicate a violation of the Law and the Directive regarding the independence of the transmission system operator.

In addition, according to the information provided by the Ministry of Energy, at this time O.Havva has no employment relationship with the Ministry of Energy.

At the same time, the NEURC did not provide information on the current place of work of O.Havva.

Thus, the appointment of O.Havva as a member of the Supervisory Board of the private joint-stock company Ukrhydroenergo as a representative of the state may contradict the requirements of the Law on unbundling and independence of the Transmission System Operator.

Thus, the final decision on certification is possible provided that the NEURC provides information and documents confirming the current place of work of O.Havva and there is no risk of violating the requirements of the Law and Directive on unbundling and independence of the TSO in terms of concurrent holding by V.Kushnirov of the positions of the General Director of the Directorate for Strategic Planning and European Integration of the Ministry of Energy of Ukraine and a member of the Supervisory Board of the private joint-stock company Ukrhydroenergo.

We also inform you that 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).

At the same time, the Compliance Programme needs to be refined in terms of defining clearer measures to ensure the requirements of the Law on the independence of the transmission system owner and the body exercising control over the transmission system operator, in particular:

1) in paragraph 3 of section III of the Compliance Programme with the provisions on the obligation to comply with this programme should be included in the provisions on all structural units of the Ministry of Energy and their job descriptions;

2) the requirements of paragraph 4 of section III of the Compliance Programme of the Ministry of Energy shall apply to all officials and employees of the staff of the Ministry of Energy;

3) the procedure for interaction of officials and employees of structural subdivisions of the staff of the Ministry of Energy with an independent structural subdivision of the Ministry of Energy shall be established, which ensures the performance of functions for 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, which describes in detail the relevant procedures and which, inter alia, should provide for the Ministry of Energy to ensure the specifics of document management on issues related to the functions of state property management of the transmission system and gas transmission system and corporate rights management in the authorized capital of NPC UKRENERGO and JSC MGU, in terms of authority to review and sign correspondence on these issues, restrictions on access to relevant information of other departments and officials;

4) Measures to ensure compliance with the requirements for independence and unbundling of the transmission system operator and JSC MGU (the GTS Operator) in

the absence of the Deputy Minister of Energy of Ukraine, whose responsibilities and powers are related to the management of state property of the transmission system and gas transmission system and management of corporate rights of the state in the authorized capital of NPC UKRENERGO and JSC MGU;

5) In order to avoid discriminatory actions and influence the activities of the transmission system operator, in Section IV of the Compliance Programme, it is expedient to more clearly define issues on which the Ministry of Energy does not interfere in the transmission system operator's decisions and does not give relevant instructions:

- provision of electricity transmission services, implementation of dispatch (operational and technological) control of the IPS of Ukraine operating modes, ensuring operational safety of the IPS of Ukraine, planning of the IPS of Ukraine operating modes;

- capacity management and allocation and investment planning;

- use, operation, maintenance, planning, development and financing of state-owned objects transferred to the transmission system operator on the right of economic management and used by it in the process of electricity transmission activities;

- preparation of a plan for the development of the transmission system for the next 10 years, a report on the assessment of sufficiency (adequacy) of generating capacities to cover the projected demand for electricity and provide the necessary reserve;

- access and connection to the transmission system;

- performing balancing functions and purchasing ancillary services;

- operational activities of the transmission system operator;

- activities of the transmission system operator on personnel management;

- ensuring the allocation of cross-border transmission capacity;

- ensuring the management of the modes of parallel operation of the IPS of Ukraine with the power systems of neighbouring countries;

- performing other functions of the transmission system operator, defined by the Law of Ukraine "On Electricity Market", the TSC, the Market Rules and other regulations governing the functioning of the electricity market.

6) it should be provided that in order to ensure comprehensive monitoring of relations between the Ministry of Energy and operators, the Authorized person for compliance of the Ministry of Energy, in particular, shall:

- attend all meetings of the Ministry of Energy with the participation of NPC UKRENERGO and JSC MGU (the GTS Operator);

- attend all meetings with the participation of the Minister and the Deputy Minister, who coordinates the work of NPC UKRENERGO and JSC MGU;

- receive and analyze for compliance with the requirements for unbundling and independence of all letters/instructions, etc. of the Ministry of Energy, addressed to NPC UKRENERGO and JSC MGU (the GTS Operator);

7) it should be stipulated that officials of the Ministry of Energy should refrain from comments and public statements on issues of development (including specific construction/reconstruction projects), operation of economic entities engaged in the production (extraction) of electricity (natural gas) and electricity/natural gas supply;

8) The provisions of the Ministry of Energy's Compliance Programme should apply to all officials, employees of the Ministry of Energy, persons holding positions of patronage service of the Ministry of Energy, assistants (advisers), etc., regardless of whether they hold such positions on a voluntary basis or relevant positions included in the staff list of the Ministry of Energy.

Therefore, the adoption of a final decision on certification is possible provided that the NEURC is provided with documents confirming the elimination of the above comments to the Compliance Programme.

Also, 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 36³ 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).

Please note that paragraph 4 of Section VII of the Compliance Programme of the Ministry of Energy provides that the Authorized person for compliance is determined from among the civil servants of the Ministry of Energy by the State Secretary of the Ministry of Energy in consultation with the Minister of Energy of Ukraine after prior consultation with the Regulator.

At the same time, the Ministry of Energy did not carry out a preliminary consultation with the NEURC on the determination of the authorized person for compliance.

5. Conclusions

Taking into account the documents, data and information provided by the Applicant for certification, other interested persons and organizations, the NEURC has established the possibility of making a preliminary decision on the certification of NPC UKRENERGO.

In order to make a final decision on the certification of the transmission system operator, NPC UKRENERGO shall provide:

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

2) information and documents confirming the compliance of the transfer of the single property complex of the state enterprise "Market Operator" to the sphere of

management of the Ministry of Energy with the requirements for unbundling and independence of the transmission system operator;

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 management of SE Energoatom to the transfer to the Ministry of Energy of electricity distribution system operators;

4) documents confirming the revision of the Regulations on the Unit for Coordination of Activities and Interaction of FEC 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) in accordance with the comments provided;

5) documents confirming compliance of the provisions on structural subdivisions of the Ministry of Energy and job descriptions of their employees with the requirements for unbundling and independence of the TSO and the transmission system owner, the Compliance Programme of the Ministry of Energy and the Regulations on the Ministry of Energy;

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

7) 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);

8) 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 for the production of electricity;

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

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

11) a copy of the additional agreement to the Agreement on economic management regarding the change of the authorized subject of state property management used in the process of electricity transmission activities;

12) information and documents confirming the current place of work of O.Havva and the absence of risk of violation of the Law and Directive on unbundling and independence of the TSO in terms of concurrent holding by V.Kushnirov of positions of Director General of the Directorate for Strategic Planning and European Integration of the Ministry of Energy of Ukraine and the member of the Supervisory Board of the private joint-stock company Ukrhydroenergo;

13) documents confirming the elimination of NEURC's remarks to the Ministry of Energy's Compliance Programme and 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 provides state property management of transmission system and gas transmission system and management of corporate rights of the state in the authorized capital of NPC UKRENERGO and JSC MGU.