



NATIONAL ENERGY AND UTILITIES REGULATORY COMMISSION

(NEURC)

RESOLUTION

_____ Kyiv

№ _____

About making a preliminary decision on certification of the transmission system operator

According to paragraph 7 of the first part of Article 17 of the Law of Ukraine "On the National Energy and Utilities Regulatory Commission", paragraph 3 of the third part of Article 6, Articles 31, 32, 33 and 34 of the Law of Ukraine "On Electricity Market", Article 1 of the Law of Ukraine "On Ratification of the Protocol on Ukraine's Accession to the Treaty establishing the Energy Community", Procedure for certification of transmission system operator approved by the National Energy and Utilities Regulatory Commission dated August 10, 2017, № 1016, National Energy and Utilities Regulatory Commission

RESOLVES:

1. Make preliminary decision on the certification of PRIVATE JOINT-STOCK COMPANY NATIONAL POWER COMPANY UKRENERGO (EDRPOU code 00100227) on the basis of justification to the previous decision on certification of a private joint-stock company National Power Company Ukrenergo attached.

2. The final decision on the certification of the PRIVATE JOINT-STOCK COMPANY NATIONAL POWER COMPANY UKRENERGO shall be made subject to the implementation of the measures provided in the justification for the previous decision on the certification of the PRIVATE JOINT-STOCK COMPANY NATIONAL POWER COMPANY UKRENERGO.

3. Report to the Energy Community Secretariat about preliminary decision on the certification of the PRIVATE JOINT-STOCK COMPANY NATIONAL

POWER COMPANY UKRENERGO and consult with the Secretariat of the Energy Community in the event of any changes in the control of the PRIVATE JOINT-STOCK COMPANY NATIONAL POWER COMPANY UKRENERGO before the final certification decision.

Chairman of the National Energy and
Utilities Regulatory Commission

V. Tarasiuk

Annex
to the Resolution of the National
Energy and Utilities Regulatory
Commission

_____ № _____

**JUSTIFICATION
TO THE PRELIMINARY DECISION ON CERTIFICATION OF
THE PRIVATE JOINT-STOCK COMPANY NATIONAL POWER
COMPANY UKRENERGO**

1. Introductory part

Articles 9 and 10 of Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 on common rules for the internal electricity market and repealing Directive 2003/54/EC (hereinafter – the Directive) and Article 3 of Regulation 714/2009 of the European Parliament and of the Council of 13 July 2009 on the conditions of access to the network for cross-border exchange of electricity (hereinafter – the EU Regulation) sets out the requirements for the designation of the transmission system operator as an economic entity that has received a decision on certification in accordance with the Directive and the EU Regulation. In order to implement these requirements of the Directive and the EU Regulation into national law, which is one of Ukraine's international obligations under the Association Agreement between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community and their Member States on the other hand (the Agreement ratified by the Law of Ukraine "On Ratification of the Association Agreement between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community and their Member States, on the other hand"), the Energy Community Treaty, signed on September 24, 2010 in the city of Skopje (Macedonia) and ratified by the Law of Ukraine "On Ratification of the Protocol of Accession of Ukraine to the Treaty establishing the Energy Community", the Law of Ukraine "On Electricity Market" (hereinafter – the Law) was adopted.

According to the second part 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, the validity of the decision on certification are approved by the Regulator.

By the resolution of August 10, 2017, № 1016, the NEURC confirmed the Procedure for certification of the electricity transmission system

operator (hereinafter – the Certification Procedure). Pursuant to the Certification Procedure, the Regulator (NEURC) resolves on certification (or refusal of certification) of the transmission system operator (hereinafter – the TSO) based on the results of compliance of the Applicant's request with requirements for unbundling and independence of the TSO provided by law, and the criteria set out in paragraph 3.1 of the Certification Procedure.

On May 17, 2021, the NEURC received a request from NPC UKRENERGO (EDRPOU code 00100227) for certification of the transmission system operator according to the ISO model together with the documents, data and information required by the Certification Procedure.

2. Applicable law

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 provisions of the Directive: general requirements for the unbundling and independence of the transmission system operator (OU unbundling model) (Article 32 of the Law) and special requirements for unbundling and independence of the transmission system operator (ISO unbundling model) (Articles 36¹, 36², 36³, 36³ of the Law).

In order to ensure the implementation of the requirements for unbundling and independence of the transmission system operator according to the ISO model in accordance with the Law, the Verkhovna Rada of Ukraine adopted the Law of Ukraine of October 31, 2019, № 264-IX "On Amendments to Certain Legislative Acts of Ukraine in Connection with Unbundling of Natural Gas Transportation Activities" (hereinafter – the Law № 364) and of April 15, 2021, № 1396-IX "On Amendments to Some Legislative Acts of Ukraine Concerning the Certification of the Transmission System Operator" (hereinafter – the Law № 1396) that regulate the issues of current legislation, in particular:

the Commercial Code of Ukraine has been amended to:

eliminate indirect control over the transmission system operator by the Government by eliminating the requirement for the Cabinet of Ministers of Ukraine to approve the financial plan;

the Cabinet of Ministers of Ukraine or the relevant authorized subject of property management has been given the opportunity to transfer state-owned objects (electricity transmission system) to the economic management of the TSO;

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

amendments have been made to the Land Code of Ukraine, which provide for the possibility of providing on the right of permanent use the land plots to the TSO;

the Law of Ukraine “On Management of State-Owned Objects” has been amended to ensure the scope of the TSO rights required for certification according to the selected ISO unbundling model;

the Law of Ukraine "On the Cabinet of Ministers of Ukraine" has been amended to eliminate the possibility of influence of the Prime Minister of Ukraine or the Cabinet of Ministers of Ukraine decisions in the management of state corporate rights in the TSO and thus simultaneously exercise indirect control over producers (extractors)/suppliers of electricity or natural gas;

The Law of Ukraine “On the National Energy and Utilities Regulatory Commission” has been 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.

According to the third part of Article 31 of the Law, the organizational and legal form of the transmission system operator is a joint-stock company. The state owns 100 percent of the shares (stakes) in the authorized capital of the transmission system operator, which are not subject to privatization 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 entity, which carries economic activity independent of activities for the production, distribution, supply of electricity and trading activities. The transmission system operator shall not have the right to conduct electricity generation, distribution, supply and trading. The transmission system operator may be exclusively the owner of the transmission system or an entity whose 100 percent of the corporate rights in the authorized capital belong to the state or the business entity, 100 percent of corporate rights in the authorized capital of which belong to the state, which on the basis of the decision of the subject of management and the relevant agreement transferred on the right of economic management of state property used for electricity transmission activities, except as provided in part one of Article 36¹ of this Law.

In order to ensure the independence of the transmission system operator, any natural or legal person shall not have the right at the same time to:

- 1) directly or indirectly exercise sole or indirect control over at least one business entity (including a foreign one) that carries out activities for the production (extraction) 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 using any right in relation to the transmission system operator (including any rights in relation to the transmission system);

- 2) directly or indirectly exercise sole or indirect control 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 with production (extraction) and/or supply of

electricity (natural gas), or use any right in respect of at least one business entity (including foreign one), which carries out activities for the production (extraction) and/or supply of electricity (natural gas);

3) 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 for the production and/or supply of electricity, or use any the right over at least one business entity engaged in the production and/or supply of electricity;

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

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

The term "right" means:

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

According to Article 36¹ of the Law, in case of choosing the ISO unbundling model, the transmission system operator is obliged to:

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

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

3) develop and submit for agreement/approval to the Regulator a plan for the development of the transmission system for the next 10 years, a report on the assessment of the adequacy of generating capacities 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 two of Article 36³ of the Law.

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

Thus, the second part of Article 36² of the Law establishes that the owner of the transmission system, where the independent transmission system operator is appointed, is obliged to:

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

2) to finance investments envisaged by the transmission system development plan for the next 10 years and approved by the Regulator, or to consent to the financing of such investment by any interested party, including an independent transmission system operator;

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

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

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

3. Information on the Applicant for certification (NPC Ukrenergo) and other interested persons

SE National Power Company Ukrenergo was established in accordance with the order of the Ministry of Energy of Ukraine of April 15, 1998, № 54 on the basis of state enterprises “National Electricity Dispatch Center of Ukraine” (EDPROU code 00100227) and State Electric Company “Ukrelectroperedacha” (EDPROU code 22946373) in order to perform the functions of centralized dispatch (operational and technological) control of the integrated power system of Ukraine and the organization of parallel work with the power systems of other states.

On October 28, 1998, NPC Ukrenergo received a license to conduct electricity transmission activities through trunk and cross-border electricity networks on the territory of Ukraine (NEURC’s Resolution of October 28, 1998, № 1366). Ukrenergo did not receive any other licenses for the right to conduct business in the electricity market.

According to the laws of Ukraine "On Electricity" (which expired on June 11, 2017, and certain provisions – on July 1, 2019) and "On Electricity Market" (entered into force on June 11, 2017) economic activity for the production, transmission, distribution of electricity, supply of electricity to the consumer, trading activities, the implementation of the functions of the market operator and the guaranteed buyer is carried out in the electricity market subject to obtaining the appropriate license 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 attributed to the powers of the NEURC. According to the license registry NEURC license to conduct activities of production, distribution, delivery, resale (trader activity) of electricity SE NPC Ukrenergo and NPC Ukrenergo as its successor did not receive and, accordingly, do not carry out these activities.

From the moment of its establishment until February 4, 2019, NPC Ukrenergo belonged to the management of a vertically integrated business entity – the Ministry of Energy and Coal Industry of Ukraine (whose successor is the Ministry of Energy of Ukraine – the Ministry of Energy), to whose management also belonged, in particular, legal entities engaged in the production, distribution and supply of electricity (Fig. 1).

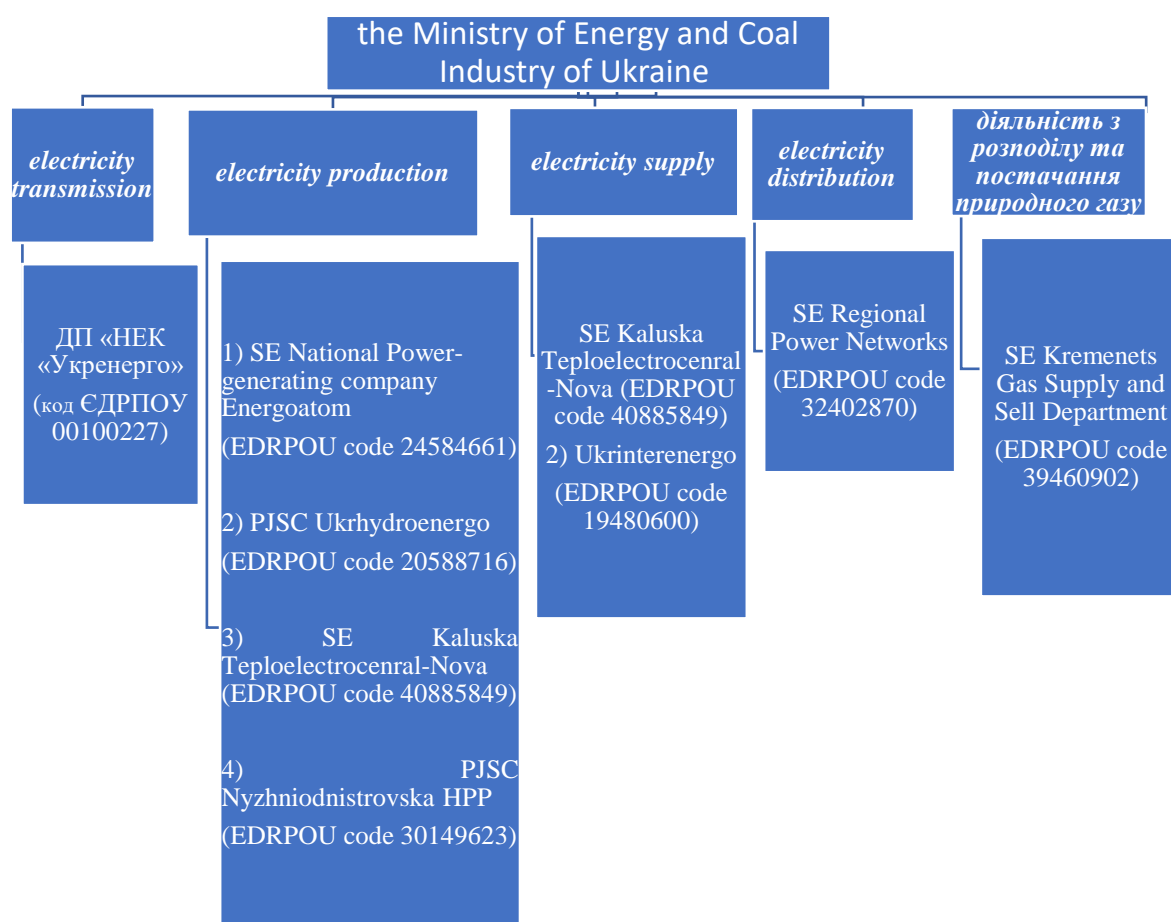


Fig. 1. List of economic entities for transmission, production, supply and distribution of electricity, which are within the scope of management of the Ministry of Energy and Coal Industry of Ukraine (as of February 3, 2019)

According to the provisions of Section XVII “Final and Transitional Provisions” of the Law, a state-owned enterprise carrying out centralized dispatch (operational and technological) control of the IPS of Ukraine (SE NPC Ukrenergo) had to be corporatized.

According to the third part of Article 32 of the Law, the organizational and legal form of the transmission system operator shall be a joint-stock company.

In pursuance of the provisions of the Law, on November 22, 2017, the Cabinet of Ministers of Ukraine adopted a decision (Order № 829-r) to transform the state enterprise National Power Company Ukrenergo into a private joint stock company, 100 percent of the shares of which belong to the state, in connection with which the Ministry of Energy and Coal Industry of Ukraine began the transformation of NPC Ukrenergo into a private joint stock company by adopting orders dated December 5, 2017, № 728 “On the establishment of a reorganization commission for reorganization (transformation) of SE NPC Ukrenergo and dated December 29, 2017 “On approval of the Action Plan for reorganization (transformation) of SE NPC Ukrenergo.

By the order of the Cabinet of Ministers of Ukraine dated November 14, 2018, № 1001-r integral property complex of the state enterprise National Power Company Ukrenergo was transferred from the Ministry of Energy and Coal Industry of Ukraine to the Ministry of Finance of Ukraine.

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

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

According to the Unified State Register of Legal Entities, Individual Entrepreneurs and Public Associations, as well as information provided by the letter of the Ministry of Finance of Ukraine dated May 5, 2021, the Ministry of Finance of Ukraine includes 29 business entities whose activities are directed and coordinated by the Cabinet of Ministers of Ukraine through the Minister of Finance and which are not engaged in activities of production, distribution, electricity supply (natural gas) and resale activity (trader activity) of electricity/natural gas. In addition, the Ministry of Finance of Ukraine manages the corporate rights of the state in the authorized capital and owns shares of three banks (Fig. 2).

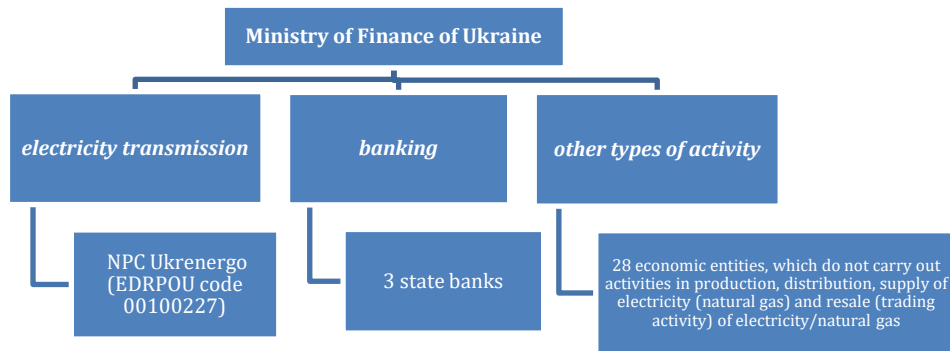


Fig. 2 . Enterprises and institutions belonging to the sphere of management of the Ministry of Finance of Ukraine (as of the date of submission of the request for certification)

Given that the corporate rights of NPC UKRENERGO belong to the Ministry of Finance of Ukraine, according to the order of the the order of the Ministry of Finance of Ukraine dated October 21, 2019 № 437, the Charter of NPC UKRENERGO was approved (hereinafter – the Charter).

The Charter provides that NPC Ukrenergo is a legal entity formed as a joint stock company, 100 percent of the shares of which are fixed as the state property. 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 authorized 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 is 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 management bodies of NPC Ukrenergo are the General Meeting, the Supervisory Board, and the Management Board.

In part of the management of public enterprises, the Ministry of Finance of Ukraine and other ministries are separate state agencies that are not subordinated to each other, and the scope of their activities are divided by the Cabinet of Ministers of Ukraine and fixed in the relevant provisions of the Ministry.

Article 6 of the Constitution of Ukraine provides for the division of state power (competence) between 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 the exercise of executive functions. In accordance with Article 6 of the Constitution of Ukraine, bodies, in particular the executive branch, exercise their powers within the limits established by the Constitution and in accordance with the laws of Ukraine. According to Article 19 of the Constitution of Ukraine, public authorities and local governments, their officials are obliged to act only on the basis, within the powers and in the manner prescribed by the Constitution and laws of Ukraine.

Article 113 of the Constitution of Ukraine stipulates 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, 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, and directs, coordinates and controls these bodies.

According to 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.

According to paragraphs 1 and 2 of paragraph 21 of Chapter 2 of Section III of the Rules of Procedure of the Cabinet of Ministers of Ukraine, approved by the Cabinet of Ministers of Ukraine on July 18, 2007, № 950, decisions of the Cabinet of Ministers are taken by majority vote of the Cabinet of Ministers. If a draft decision has the support of half of the Cabinet of Ministers and the Prime Minister has voted in favor of the draft, the decision shall be deemed adopted.

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 two of Article 19 of the Law of Ukraine "On the Cabinet of Ministers of Ukraine").

According to part six 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 extend to the decisions of ministries and other central executive bodies issued by them in the exercise of corporate rights management rights owned by the state in the authorized capital of economic entities operating on the basis of a license to transport natural gas, electricity transmission, as well as legal entities with corporate rights in such entities.

Article 44 of the Law of Ukraine "On the Cabinet of Ministers of Ukraine" stipulates that the Ministry exercising direct or indirect control over economic entities operating on the basis of a license to conduct electricity transmission activities shall

exercise the authority to manage corporate rights owned by the state in respect of such entities or business organizations that have corporate rights in respect of such entities, 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 belongs to the competence of economic entities engaged in the transmission of electricity.

Decisions on the management of corporate rights belonging to the state and relating to the state are made exclusively in agreement with the Cabinet of Ministers of Ukraine:

- reorganization (merger, acquisition, division, unbundling) or liquidation of such business entities or business organizations;

- transactions, the consequence of which may be the termination of the right of economic management of the property used in the process of carrying out electricity transmission activities, such economic entities or economic organizations;

- making changes to the charter of such business entities or economic organizations concerning the purpose, subject, main directions of their activity;

- approval of the part of the net profit of such business entities or business organizations, which should be used for the payment of dividends.

In the exercise of its powers, the Ministry (which exercises direct or indirect control over economic entities operating on the basis of a license to conduct electricity transmission activities, exercises powers to manage corporate rights owned by the state in respect of such economic entities or organizations that have corporate rights in respect of such entities) is prohibited.

The Cabinet of Ministers of Ukraine, the Prime Minister of Ukraine, the Minister who heads the ministry that controls the production or supply of electricity and natural gas in accordance with the statutory requirements for the unbundling and independence of the transmission system operator and the gas transportation system operator, cannot coordinate and control economic entities operating on the basis of a license to conduct electricity transmission or transportation of natural gas, and cannot appoint members of the governing bodies of such economic entities.

Thus, none of the officials of the Government of Ukraine is empowered to make individual decisions on issues within the competence of the Cabinet of Ministers of Ukraine, which is an additional guarantee of limiting their influence on central executive bodies, in particular on corporate rights management in the share capital of companies whose sole shareholder is the state. There are also conditions created as a result of amending the Law of Ukraine "On the Cabinet of Ministers of Ukraine" for the prevention of conflicts between private interests and public duties of employees and officials.

It should also be noted that in accordance with the order of the Cabinet of Ministers of Ukraine dated January 20, 2021, № 50-r (hereinafter – the Order), the Ministry of Economy together with the Ministry of Energy and the Ministry of Finance shall submit draft decisions to the Cabinet of Ministers:

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

2) regarding the determination of the Ministry of Energy as the authorized body of state property management:

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

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

3) on the transfer of a single property complex of the state enterprise "Market Operator" (EDRPOU code 43064445) to the Ministry of Energy .

The main requirement of the legislation on the independence of the gas transportation system operator and the transmission system operator is the lack of direct or indirect control over these operators (including ownership of the gas transportation system) by any legal entity (including public authorities), which simultaneously directly or indirectly exercises control over at least one business entity (including a foreign one), which carries out activities on production (extraction) and/or supply of natural gas and/or electricity, or enjoys any right to at least one business entity (including foreign one), which carries out activities on the production (extraction) and/or supply of natural gas and/or electricity.

According to the Order of the function on management of corporate rights owned by the state in the authorized capital of the private joint-stock company Ukrhydroenergo (EDRPOU code 20588716) and private joint-stock company Nyzhniednistrovska HPP (EDRPOU code 30149623), and the sole property of the state energy complex of Energoatom company (EDRPOU code 24584661), State Enterprise Teploelectrocentral-2 ESKHAR (EDRPOU code 30034023), State Enterprise Kaluska Teploelektrocentral-Nova (EDRPOU code 40885849), State Enterprise Lysychanska Teploelectrocentral (EDRPOU code 00131067) shall be transferred to the Cabinet of Ministers of Ukraine.

In addition, the Order provides for the transfer of a single 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.

At the same time, according to the information available to NEURC, except for business entities in respect of which the functions of corporate rights and single property complexes have been transferred (or should be transferred) to the Cabinet of Ministers of Ukraine and the Ministry of Economy, business entities that have licenses for the production of electricity and/or supply of electricity (natural gas) and are in the

management or use of state-owned objects under the management of the Ministry of Energy.

In addition, SE Market Operator organizes the purchase and sale of electricity in the day-ahead and intraday market, which may increase the influence of the Ministry of Energy on market participants, in particular on entities engaged in the production and supply of electricity (including trading activity).

We also note that according to the Regulation on the Ministry of Energy of Ukraine, approved by the Cabinet of Ministers of Ukraine dated June 17, 2020, № 507, the Ministry of Energy is the main body in the system of central executive bodies, which provides:

formation and implementation of state policy in the electricity, nuclear industry, coal industry, peat production, oil and gas and oil and gas refining complex (hereinafter – fuel and energy complex);

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

At the same time, orders of the Ministry of Energy issued within the powers provided by law are binding on central executive bodies, enterprises, institutions and organizations, regardless of the form of ownership.

Thus, in case of transfer of powers to manage corporate rights owned by the state in the authorized capital of NPC UKRENERGO to the Ministry of Energy as the authorized body of state property, assigned to NPC UKRENERGO on the right of economic management, and the only property complex of the state enterprise market, the preliminary decision on certification of NPC UKRENERGO should be canceled and a new certification process should be started, which should be notified to the Secretariat of the Energy Community.

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

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 legislation of Ukraine, are exercised solely by the sole shareholder of the Company – the state represented by the Ministry of Finance of Ukraine. The decision of the single shareholder of the Company – the state represented by the Ministry of Finance of Ukraine on matters within the competence of the General Meeting shall be in writing (in the form of order), and such decision has the status of the minutes of the General Meeting of the Company. The election of the composition of the Supervisory Board is carried out without the use of cumulative voting (paragraph 10.7 of the Charter).

According to sub-paragraph 10.9.13 of paragraph 10.9 of the Charter, the exclusive competence of the General Meeting includes appointment and (or) election of members of the Supervisory Board, decision-making on termination of powers of members of the Supervisory Board, except as provided by law.

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

According to the Resolution of the Verkhovna Rada of Ukraine of March 30, 2020, № 549-IX, Serhii Marchenko was appointed Minister of Finance of Ukraine.

According to the Order of the Cabinet of Ministers of Ukraine dated April 2, 2020, № 380-r Denys Uliutin was appointed First Deputy Minister of Finance of Ukraine.

In addition, in accordance with the division of responsibilities between the Minister of Finance of Ukraine and the Deputy Ministers (Order of the Ministry of Finance of Ukraine of April 24, 2020, № 176), ensuring the direction of activity and management of the integral property complex of NPC UKRENERGO is assigned to the Deputy Minister of Finance of Ukraine for European Integration Yurii Drahanchuk.

According to the annual declarations for 2020, Serhii Marchenko, Denys Uliutin and Yurii Drahanchuk and their family members do not own securities and/or corporate rights in the authorized capital of business 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 this Charter, manages the Company and controls and regulates the activities of the Management Board. Issues that fall within the exclusive competence of the Supervisory Board of a joint-stock company cannot be resolved by other bodies of the Company, except for the General Meeting, except as provided by law. The Supervisory Board operates on the basis of the legislation of Ukraine, this Charter and its provisions. Each member of the Supervisory Board acts in the interests of the Company and the shareholder in order to prevent conflicts of interest, ensure a balance of goals (objectives) of the Company and the shareholder. The Supervisory Board of the Company consists of seven members, four of which shall meet the criteria and requirements for an independent member of the Supervisory Board (hereinafter - the independent member) established by the legislation of Ukraine.

In accordance with sub-paragraph 10.9.13 of paragraph 10.9 of the Charter, 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, falls within the competence of the General Meeting.

In accordance with sub-paragraph 11.13.23 of paragraph 11.13 of the Charter, election and termination of powers of the Chairman and Deputy Chairman of the Supervisory Board, chairmen and members of committees of the Supervisory Board,

approval of regulations on committees of the Supervisory Board belongs to 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 Tokarskyi.

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

JSC Ukrzaliznytsia (EDRPOU code 40075815) carries out economic activities for the distribution of electricity on the basis of a license for the right to conduct economic activities for the distribution of electricity (Resolution of the NEURC dated November 8, 2018, № 1395).

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

a license for the supply of electricity to the consumer in accordance with the resolution of the NEURC of November 27, 2018, № 1539;

a license to supply natural gas in accordance with the resolution of the NEURC of April 22, 2020, № 838.

Therefore, there is a risk of violating the requirements of the legislation to ensure unbundling and independence of the TSO 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 Article 32 (4) of the Law and Directive.

In addition, Luigi de Francisci is a member of the Supervisory Board of NPC UKRENERGO and a manager of ACEA SPA, whose activities, according to information from the company's website (<https://www.gruppo.acea.it/en>), include, among others, electricity generation, electricity and natural gas supply, and distribution of electricity.

Pursuant to part four of Article 32 of the Law, in order to ensure the independence of the transmission system operator, any natural or legal person shall not have the right to be an official of the transmission system operator and at least one business entity (including a foreign one) that carries out activities of the production and/or supply of electricity.

According to Article 2 of the Law of Ukraine "On Joint Stock Companies" officials of the company – individuals – chairman and members of the Supervisory Board, executive body, audit committee, auditor of the company, as well as chairman and members of another body of the company, if such a body the company's charter. Thus, a member of the Supervisory Board Luigi de Francisci is an official of NPC UKRENERGO.

In this case, according to Article 9 of the Directive, the same person may not be a member of the Supervisory Board, the Management Board or the bodies legally representing the company, both in the production or supply and the transmission system operator or the transmission system itself.

According to the information available at the NEURC, ACEA SPA does not currently operate in the electricity market of Ukraine. At the same time, part of the IPS of Ukraine "Burshtyn TPP Island" works in synchronous mode with the power systems of the European Union member states. In addition, according to the order of the Cabinet of Ministers of Ukraine dated December 27, 2018, № 1097-r "On approval of the action plan for synchronization of the integrated power system of Ukraine with the power systems of EU member states" synchronization of the IPS of Ukraine with ENTSO-E is expected. In the context of the integration of the electricity markets of Ukraine with the electricity markets of the member states of the Energy Community, there is a risk of violation of the requirements for independence and unbundling of the transmission system operator.

Thus, in order to assess the possible risks of violating the requirements of the legislation on unbundling and independence of the TSO, NPC UKRENERGO should provide additional information on the activities carried out by ACEA SPA in the electricity market (indicating the country of such activities, taking into account the need to obtain the relevant permits (licenses), the organizational and corporate structure of the ACEA SPA Group, the authority of Luigi de Francisci in ACEA SPA, as well as the officials of the companies engaged in the production and supply of electricity controlled over by ACEA SPA.

In view of the above, the final decision on certification is possible provided that the NEURC is provided with documents and information confirming the absence of risk of violation of the law on unbundling and independence of the TSO in the part of implementation by Sevki Acuner, a member of the Supervisory Board of NPC UKRENERGO, control over economic entities (including foreign ones) engaged in the production (extraction) and/or supply of electricity (natural gas), within the meaning of part four of Article 32 of the Law and the Directive, as well as documents and information confirming that the member of the Supervisory Board Luigi de Francisci, who is a member of the Supervisory Board of NPC UKRENERGO, is not an official of an economic entity (including a foreign one) that carries out activities in the production and/or supply of electricity.

In accordance with the Charter, current activity management of NPC UKRENERGO is carried out by the Management Board, which is a collegial executive body of the Company. The Management Board of the Company is formed of not less than three and not more than five members, including the Chairman of the Management Board.

The Management Board is headed by the Chairman, who is elected and (or) appointed and dismissed by the Supervisory Board of the Company in accordance with the legislation of Ukraine and the Charter. Election and (or) appointment of other members of the Management Board and termination of their powers shall be carried

out by the Supervisory Board at the proposal of the Chairman of the Management Board of the Company.

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

Volodymyr Kudrytskyi (Chairman of the Management Board);
Maryna Bezrukova;
Andrii Nemyrovskyi;
Maksym Yurkov;
Oleksii 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 business 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, which defines measures to ensure the prevention of discriminatory actions and monitor the implementation of such measures. The compliance programme should define clear responsibilities of the transmission system operator's employees to achieve these objectives and be approved by the Regulator. Monitoring the implementation of the compliance programme is carried out by the compliance officer of the transmission system operator in the manner prescribed by the Regulator. The candidacy of the compliance officer of the transmission system operator shall be subject to prior approval by the Regulator.

In addition, in accordance with Article 36⁴ of the Law of Ukraine "On Electricity Market", the compliance officer 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.

It should be noted that NPC UKRENERGO submitted the draft Compliance Programme, the Terms of the Agreement between the compliance officer and the transmission system operator and the Procedure for selection of the compliance officer to the request for certification.

The candidacy of the compliance officer for the approval of the NEURC was not submitted. The Company's Charter does not currently provide for the powers of the Supervisory Board and the Management Board to appoint compliance officer for the TSO.

However, according to sub-paragraph 16 of paragraph 3.1 of the Certification Procedure, if the Applicant has not appointed compliance officer 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 compliance officer and sign a contract with him/her in the wording agreed with the NEURC.

Thus, before making a final decision on the certification of NPC UKRENERGO, it should submit the candidacy of the compliance officer to the NEURC and after its approval the Regulator, it should appoint the compliance officer and sign a contract with him/her in the wording agreed with the NEURC..

We also note that the Charter of NPC UKRENERGO was approved in October 2019, and therefore, some of its provisions do not comply with current legislation of Ukraine, in particular the provisions of 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, in connection with which, there is a need for its revision, in particular, paragraphs 2.2.84, 2.2.98, 3.7, 10.8, 10.9, 11.2, 11.20, 12.4, 12.5, 12.10.15, and 12.16 of the Charter.

Therefore, in order to make a final decision on certification, the Company's Charter shall be brought into line with the Law, the Law of Ukraine "On the Cabinet of Ministers of Ukraine", the Commercial Code of Ukraine, in particular, in the part of the subject of the activity of the Company, functions and powers of the General Meeting, requirements for members of the Supervisory Board, the Management Board, taking into account the requirements for unbundling and independence of the transmission system operator according to the ISO model.

4.2. Compliance of NPC UKRENERGO with the requirements of sub-paragraph 2 of part three of Article 36¹ of the Law regarding the availability of financial, technical, material and human resources necessary to perform the functions assigned 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 act 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 act of transfer), all liabilities of SE NPC Ukrenergo to creditors, all rights and obligations, as well as all assets and liabilities pass to the legal 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 act.

According to the explanatory note to the transfer act, other information and data provided by NPC UKRENERGO, the structure of NPC UKRENERGO is based on the

territorial principle and combines the central office and 7 power systems (PS) with the functions of operational and dispatch control covering the entire territory of Ukraine, namely: Dniprovskya PS, Zakhidna PS, Pivdenna PS, Pivdenno-Zakhidna PS, Pivnichna PS, Tsentralna PS, Krymska PS (located in the temporarily occupied territory).

On the balance sheet and under economic management of NPC Ukrenergo, there are, in particular:

Number of substations, units								
Total	Including per voltage, kV							
	750	500	400	330	220	110		
141	9	3	2	88	33	6		
The length of overhead power lines along the route, ths km								
Total	including per voltage, kV							
	800	750	500	400	330	220	110	35
21.86	0.10	4.40	0.38	0.34	13.01	3.04	0.46	0.13

NPC UKRENERGO was also provided with an Agreement on the transfer of state-owned facilities used in the process of conducting 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, attached to the order of the Ministry of Finance of Ukraine 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 December 28, 2019, № 584 (taking into account changes in fixed assets and intangible assets as of March 31, 2021). The composition of other property, which will be further transferred under the contract on the right of economic management, is indicated in the relevant acts of acceptance-transfer of property, which were also provided to the NEURC.

The financial and economic activity of NPC UKRENERGO, which is a subject of a natural monopoly, is carried out in accordance with the financial plan subject to approval by the Ministry of Finance of Ukraine.

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, 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 in 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 approved by the subjects of management of state-owned objects used in the process of carrying out activities for 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 services for dispatch (operational and technological) control (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).

Pursuant to Article 19 of the Law, the transmission system operator annually develops a Report on 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 NEURC No. 309 of March 14, 2018, (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 integrated power systems, etc.

On March 13, 2020, by Resolution № 605, the NEURC approved the Report, which passed all the necessary procedures of public discussions and consultations.

On the basis of this Report, in pursuance of the provisions of the Law and the requirements of the Code, NPC UKRENERGO developed a draft Transmission System Development Plan for 2021-2030, which was approved by the resolution of the NEURC of January 20, 2021, № 57.

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.

Tariff for dispatching (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 comprises 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 established;

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

The main factor for determining the level of tariff for electricity transmission services is compliance with the requirements of the Law, taking into account the article "Expenses for special responsibilities to ensure public interest to increase the share of electricity production from alternative sources" (according to part eight of Article 33 of the Law of Ukraine "On Electricity Market", the TSO performs functions related to special responsibilities to ensure the public interest in increasing the share of electricity production from alternative sources, improving the efficiency of combined heat and power generation, and other special responsibilities).

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

operating expenses;

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

estimated costs and profits, 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 return credit funds and other costs from profit.

In addition, in accordance with sub-paragraph 15 of paragraph 2.3 of section 2 of the License Conditions for Conducting Electricity Transmission Activities, 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 tariff structure established by the NEURC for electricity transmission services and dispatch (operational and technological) control services and not allow cross-subsidization.

Balancing market is also one of the main market segments and a tool for the Company for balancing the power system. In the the balancing market, there is buying/selling of electricity to ensure a real-time balance of production, imports, exports, electricity consumption and imbalances. The mechanism of balancing market and pricing is 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 the balance responsible parties (BRPs) – buy/sell imbalances.

To balance supply/demand and resolve imbalances, the TSO buys/sells balancing electricity (loading/unloading) from/to producers and sells/buys imbalances from BRPs that create 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 to the TSO for the 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 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 Forming Investment Programmes of Licensees for Electricity Transmission by Trunk and Cross-Border Electric Networks, approved by the Resolution of NEURC of June 30, 2015, № 1972, which reflects the sources of investment, the plan for directing the licensee's reconstruction, technical re-equipment and development of fixed assets and other assets of the Company. The amount of investment is 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 services and electricity transmission between state and main electricity networks.

The investment programme of NPC UKRENERGO for 2021 was approved by the resolution of the NEURC of 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 be able to attract credit funds to finance these projects, as a result of which international financial institutions (hereinafter – IFIs) express 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 organizations, approved by the Cabinet of Ministers of Ukraine dated January 27, 2016, № 70 (hereinafter – the Procedure), according to the first paragraph of clause 6 of the Procedure 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 preparation of an investment project.

Taking into account the first and fifth paragraphs of clause 15 of the Procedure and sub-paragraph 1 of paragraph 1 of Annex 5 to the Procedure, IFI funds are raised in coordination with central executive bodies, namely: Ministry of Finance of Ukraine, Ministry of Economic Development and Trade of Ukraine, Ministry of Foreign Affairs of Ukraine, Ministry of Justice of Ukraine and the NEURC, in particular by adopting an act of the Cabinet of Ministers of Ukraine on attracting a loan from a certain IFI to finance the relevant investment project.

In order to implement economic and social development projects of Ukraine supported by international financial organizations, NPC UKRENERGO has currently concluded a number of agreements with IFIs to provide sub-loans and to repay debts to the state for the fulfillment of guarantee obligations. Credit resources are provided under state guarantees for 15 - 20 years or more 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 imposes 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 personnel 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 April 1, 2021, is about 8.4 thousand people, of which 5.6 thousand are engaged in the operation and repair of equipment and facilities of electrical networks and 455 are involved in the implementation of the TSO dispatching functions.

In order to create opportunities for the personnel 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, appropriate electrical laboratories, and 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 shall be 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. The relationship between the Applicant and the owner of the electricity transmission system

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 of Ukraine 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 SE 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 another interested person of investments agreed with the NEURC. When agreeing such investments, the NEURC is guided, in particular, by the need to ensure the security of electricity transmission and operational security of the Integrated Power System of Ukraine.

Thus, the relations between the owner (the state represented by the authorized body – the Ministry of Finance of Ukraine) and the business entity to which the state property, which is part of the electricity transmission system, is provided on the right of economic management (NPC UKRENERGO), are regulated by the Commercial Code of Ukraine and the Law, so the Ministry of Finance (represented by the head, the deputies and other officials representing the Ministry) as the owner has no right to interfere in the economic activities and economic relations of NPC UKRENERGO, except as provided by Ukrainian legislation property rights, 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 of transmission of electric energy, on the basis of the decision of the subject of management and the corresponding contract are vested on the right of economic management to the economic entity, 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, the business entity, in 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 performs other duties provided by the Law.

In addition, 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 deputies of the head of the transmission system owner, persons performing management functions on behalf of the transmission system owner cannot 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 it owns corporate rights;

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

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

In addition, the order of the Ministry of Finance of Ukraine dated May 21, 2021, № 283 approved the Compliance Programme of the Ministry of Finance of Ukraine with the requirements of Article 36³ of the Law.

At the same time, the NEURC was not provided with information on the appointment of compliance officer of the owner of the transmission system.

Thus, the adoption of the final decision on certification is possible provided that the NEURC is provided with a copy of the decision of the Ministry of Finance of Ukraine on the appointment of compliance officer.

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 and information confirming the absence of risk of violation of the law on unbundling and independence of the TSO in terms of Sevki Acuner's, who is a member of the Supervisory Board of NPC UKRENERGO, control over business entities (including foreign ones) engaged in production (extraction) and/or supply of electricity (natural gas), within the meaning of part four of Article 32 of the Law and the Directive;

2) documents and information confirming that Luigi de Francisci, who is a member of the Supervisory Board of NPC UKRENERGO, is not an official of an economic entity (including a foreign one) engaged in the production and/or supply of electricity;

3) candidacy of the compliance officer for the approval by the NEURC; a copy of the decision on the appointment of compliance officer and a contract signed with him/her in the wording agreed with the NEURC;

4) the Charter brought into line with the provisions of the Law, the Law of Ukraine "On the Cabinet of Ministers of Ukraine", the Commercial Code of Ukraine, in particular in the subject matter of the company, functions and powers of the General Meeting, the Supervisory Board and the Management Board, requirements for members of the Supervisory Board and the Management Board, taking into account the requirements for unbundling and independence of the transmission system operator according to the ISO model;

5) a copy of the decision on the introduction of the program of compliance of the transmission system operator in the wording approved by the Regulator in accordance with the Law ;

6) a copy of the decision on implementation of the Compliance Programme of the transmission system operator in the wording approved by the Regulator in accordance with the Law.

At the same time, performing the functions of monitoring the fulfillment of the requirements on unbundling and independence of the transmission system operator and transmission system owner provided by the Law in case of change of circumstances on the basis of which the previous decision on certification of the transmission system operator was made, in particular, change of the transmission system owner or corporate rights management body of the state in the authorized capital of NPC UKRENERGO, the NEURC informs the Energy Community Secretariat and has the right to cancel the previous decision on certification of the transmission system operator and start a new certification process, including obtaining a new opinion from the Energy Community Secretariat, if the latter has given an opinion on this previous certification decision.