UKRAINE’S ELECTRICITY MARKET TRANSFORMATION
THE WAY FROM PRODUCER TO CONSUMER

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In order to implement its international legal commitments in the energy reform sphere, the Verkhovna Rada of Ukraine on September 22, 2016, adopted the Law of Ukraine «On the National Energy and Public Utilities Regulatory Commission (NEURC)», and on April 13, 2017, it adopted the Law «On Electricity Market».

The latter Law sets forth legal, economic and organizational principles of functioning of the electricity market and regulates the relations pertaining to production, transmission, distribution, purchase and sale, supply of electricity to ensure its reliable and safe delivery to consumers taking into consideration the consumers' interests, development of market relations, minimization of the cost of electricity supply, as well as minimization of a negative impact on the environment.

The Law also provides for implementation of the Energy Community legislation in the field of energy, namely:

- Directive 2009/72/EC concerning common rules for the internal market in electricity and repealing of Directive 2003/54/EC,
- Regulation (EC) 714/2009 on conditions for access to the network for cross-border exchanges in electricity and repealing of Regulation (EC) 1228/2003,

The draft law was reconciled with the Energy Community Secretariat as well as the principal international partners and donors.

Functioning of a new electricity market is based on the principles of energy security of Ukraine and safety of electricity supply to the consumers, protection of their rights and interests.

The new market will preserve the integrity and reliability of the United Energy System of Ukraine, the unified dispatcher (operative and technological) management of the system, and the extended possibilities for development of cross-border interconnections with the energy systems of neighboring countries.

The market functioning should facilitate energy efficiency, development of renewable energy as well as protection of the environment.

An important component of the new market should be the principles of fair competition; equal rights to sell and buy electricity; free choice of supplier; non-discriminatory and transparent access to transmission and distribution systems; non-discriminatory participation in the electricity market; independent regulation; and non-discriminatory price- and tariff-setting which reflects actual costs.

As early as on October 29, 2015, the NEURC endorsed the Schedule of Implementation of New Model of Electricity Market and established a Coordination Group (CG) for monitoring its implementation. Members of the CG on implementation of the Schedule are representatives of the NEURC, the Ministry of Energy and Coal Industry, State-Owned Company Energorynok, National Energy Company Ukrenergo, National Nuclear Energy Generating Company Energoatom, and others. Volodymyr Yevdokymov, a member of the NEURC, was appointed the chairman of the group. Секретаріат Енергетичного Співтовариства надає КГ допомогу у розробці нормативно-правових актів для нового ринку. The Energy Community Secretariat supports the CG in drafting normative legal acts for the new market. As of the date of adoption of the law, according to S. Masevych, a member of the group, more than 50% of draft documents had been finalized, and the work continues.

1 http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_17?pf3511=58829
2 http://www.nerc.gov.ua/data/filearch/Plan-hrafik_model_elektro.pdf
TRANSITION'S FEATURES

According to the new market model, a balancing market and an ancillary services market, a day-ahead market and an intra-day market as well as bilateral contract become effective starting July 1, 2019. At the same time, the balancing, day-ahead and intra-day market as well as bilateral agreements are introduced simultaneously whereas the maximum period of validity of bilateral agreements signed from the date of introduction of the new electricity market to December 31, 2020 may not exceed one year, except for the agreements signed with the feed-in tariff producers.

An important element of the transition stage to the new market is price regulation and restriction of the growth of prices. Therefore, in order to restrict the impact of support of the feed-in tariff producers and the TPPs on the electricity prices for households and small non-household consumers, public service obligations (PSO) will be introduced in Ukraine. Starting from January 1, 2019, NNEGC Energoatom and PJSC Ukrhydroenergo will fulfill the public service obligation concerning the sales of electricity to the guaranteed buyer at regulated prices and in the amount specified by the NEURC.

The volumes and the price of PSO fulfillment will be calculated according to the methodology that is approved by the NEURC after the consultations with the Energy Community Secretariat. According to the law, the respective volumes have to meet the such requirements:

- they should not exceed 75% of the NPP capacity;
- they should not exceed every year 40% of the average annual volume of PJSC Ukrhydroenergo electricity production during the last three years.

The NEURC will gradually decrease these volumes and, after consultations with the Energy Community Secretariat, it will approve the procedure for purchase and sale of electricity to the guaranteed buyer during the transition period of the new market functioning, which should be in line with the principles of transparency, non-discrimination, competition and free trade in the market.

Starting from January 1, 2019, the guaranteed buyer will receive compensation for electricity purchased from the feed-in tariff producers and TPPs as provided for in part 6 of the Article 65 of the Law.

In order to introduce the new electricity market model, from the day of the Law enactment, several measures should be taken which can be divided into four groups: legislative, organizational, financial, and technical (technological).

LEGISLATIVE MEASURES

Within 2 months: The NEURC has to adopt the Procedure for certification of the transmission system operator.

Within 6 months:

- The NEURC has to adopt the Procedure for purchase and sale of electricity to the guaranteed buyer for PSO fulfillment during the transition period of the new market functioning; the Terms and Rules of exercising licensed activities for performing the functions of a market operator, the guaranteed buyer, electricity producer, trading activities; and normative legal acts necessary to ensure separation of activities related to distribution and supply of electricity (unbundling);

- State-Owned Company (SC) Energorynok has to develop and submit to the Regulator the draft Rules for the day-ahead market and the intra-day market;

- NEC Ukrenergo has to:
  

  develop and submit to the Regulator for approval a program for prevention of the conflict of interests provided for in the Article 33 of the Law;

  draft normative legal acts necessary for introduction of ancillary services.

Within 9 months: The NEURC has to adopt the Market Rules, the Day-Ahead Market Rules, the Rules on Capacity Allocation and Congestion Management, the Procedure for Capacity
Allocation on Cross-Border Interconnections, the Code of commercial accounting, the Transmission System Code, the Distribution System Code, the Code of Commercial Metering, the Methodology (Procedure) of Pricing for Connection to Transmission and Distribution Systems, and the Rules of Retail Market.

Within 12 months: The NEURC should ensure adoption and approval of other normative legal acts provided for by the Law.

ORGANIZATIONAL MEASURES

Establishment of the Coordination Center, as a consultation and advisory body of the Cabinet of Ministers of Ukraine, the main tasks of which include but are not limited to:

- coordination of activity of the government authorities, institutions, organizations and economic actors with regard to implementation of the new electricity market model;
- preparation of proposals and recommendations on activities related to implementation of the new electricity market model;
- control of the implementation status of activities related to implementation of the new electricity market model.

The Cabinet of Ministers of Ukraine has to:

Within 6-24 months
- reorganize the State-Owned Company Energorynok, by separating from it structural units (subsidiaries) of the market operator (MO) and the guaranteed buyer (GB), and within 24 months to create on their basis enterprises that will perform the respective functions. At the same time, from July 1, 2019, the guaranteed buyer is a legal successor of SC Energorynok under the contracts of purchase and sale of electricity under feed-in tariff.
- corporatize NEC Ukrenergo taking into consideration the requirements of the Law concerning unbundling of the transmission system operator, and 9 months later – ensure submission of a request for certification to the Regulator.
- reorganize the State Inspectorate on Operations of Electric Power Stations and Networks and the State Inspectorate on Energy Oversight of the Consumption Regimes of Electric and Heat Energy by establishing a central executive body responsible for the state oversight (control) in the electricity sphere.

Within 7-18 months regional power distribution companies should be reorganized – unbundling of the distribution system operator from production, transfer and supply of electricity by creating respective economic actors.

According to the Law, this should be done within 18 months, but already after 7 months after the Law enactment, the NEURC has to receive information about the actions taken to unbuckle distribution system operators (in vertically integrated companies), where the number of consumers connected exceeds 100,000. The newly created economic actor supplying electricity to consumers shall, not later than within 12 months after the Law enactment, receive the license for electricity supply pursuant to the established procedure.

After 6 months the Articles 32-36 of the Law come into force on unbundling the transmission system operator, its certification, and monitoring of this process. A certificate should be issued to an economic actor that is controlled by an individual (individuals) from the state (states) that is not a member of the Energy Community, or by the state (states) that is not a member of the Energy Community.

The NEURC makes a decision concerning the volume of partial introduction of electricity purchase and sale under bilateral agreements outside the wholesale electricity market on the basis of the feasibility study of the impact on market functioning.

Within 12 months the Articles 62-64 of the Law are implemented on public service obligations in the process of the electricity market functioning; regarding universal services and the definition of the “last resort” supplier.

The NEURC organizes a competition for the “last resort” suppliers and selects them.

After 18 months the Articles 47, 48, 56 (part 2) of the Law come into force on unbundling and ensuring independence of distribution system operators, compliance programs as well as the compliance officers; and sale of electricity under agreements on electricity supply to consumers in the amount totaling the actual consumption volume by a single electricity supplier.

By January 1, 2019 the Cabinet of Ministers has
to conduct a competition for selecting providers of universal services.

By July 1, 2019:

According to the Cabinet of Ministers decision, not later than after 2 years, trading activities in the electricity market are introduced.

Balancing market, day-ahead market, and intra-day market as well as bilateral agreements (hereinafter – the new electricity market) are introduced. It should be noted that the balancing market, the day-ahead market, intra-day market and bilateral agreements are introduced simultaneously.

The Cabinet of Ministers decides on the date on which the new electricity market becomes effective.

FINANCIAL MEASURES AND SPECIAL CONDITIONS FOR ENSURING FUNCTIONING OF THE NEW MARKET

- The NEURC before the day the new electricity market starts functioning has to ensure the absence of cross subsidies among various categories of consumers.

- The special obligations related to ensuring the increase in the share of producing electricity from renewable sources are vested in the guaranteed buyer (regional power distribution companies) and the NNEGC Energoatom.

- The Cabinet of Ministers may decide to provide temporary support to some producers that co-generate electricity for their reconstruction or modernization.

Within 3 months the Cabinet of Ministers has to:

- approve the procedure for providing support to producers that co-generate electric and heat energy at combined heat and power plants.

Within 12 months the Cabinet of Ministers has to develop and submit to the Verkhovna Rada for consideration a draft law on:

- specific aspects of repaying debts for electricity currently present at the wholesale electricity market,

- amendments to the Tax Code of Ukraine necessary to ensure functioning of the new electricity market.

TECHNICAL AND TECHNOLOGICAL MEASURES

Within 18 months after enactment of the Law, SC Energorynok and NEC Ukrenergo should procure and commission software and hardware, goods and services required for the functioning of the day-ahead market, intra-day market, and balancing market, functioning of the transmission system operator, the administrator of payments, the administrator of commercial accounting, and the guaranteed buyer.

Not later than within 18 months, test operations should be initiated on the purchase and sale of electricity to the respective segments of the new electricity market.
1. **Security of Energy Supply.**

The threat of repeated announcing of emergency regime is still present in the market.

2. **Insufficient proactivity and the future controlled nature of the Coordination Group (CG) on monitoring implementation of the Schedule of Implementation of New Model of Electricity Market.**

The CG is chaired by Volodymyr Yevdokymov, a member of the NEURC, who was dismissed according to the Presidential Decree No. 145/2017 on May 26, 2017, in accordance with the requirements of transitional provisions of the NEURC Law and the approved rotation plan. At the same time, the Competition Commission for selecting new candidates for the positions of the NEURC members has not been created yet. After dismissal of V. Yevdokymov and Yu. Golliak, the NEURC currently works with the minimum legitimate composition of 4 persons.

3. **The lack of coordination in the activity of the government authorities, institutions, organizations and economic actors with regard to introduction of the new electricity market model as well as control of the implementation status of the measures related to introduction of the new market model.**

So far, the procedure for establishment of the Coordination Center and its location (the Cabinet of Ministers, the Ministry of Energy and Coal Industry, the NEURC, Ukrenergo) has not been determined.

4. **Respective instruments have not been developed, and the institution for consumer rights protection has not been created.**

Directive 2009/72/EC requires that the institution for protection of consumers’ rights should be strengthened. The NEURC Law on (item 5 of the Transitional Provisions) requires that the Cabinet of Ministers by July 1, 2017, should submit to the Verkhovna Rada a draft Law on Energy Ombudsman. The Law on Electricity Market (Article 76) provides as follows: «Complaints of household and small non-household consumers concerning action or inaction of electricity suppliers and distribution system operators as well as disputes between them are also resolved by the energy ombudsperson. The legal status, procedure and conditions of activities of the energy ombudsperson are determined by law».

The responsible entity is the Ministry of Energy and Coal Industry, and the work on the draft law started on May 17 involving the limited resources of the Ministry secretariat.

5. **Continued presence of cross subsidies in the electricity market.**

The Law on Electricity Market provides that the Regulator, before the date of the new market starts functioning, should ensure the absence of cross subsidies among various categories of consumers. The Cabinet of Ministers should, within three months after enactment of the Law, develop and submit to the Verkhovna Rada for consideration a draft law on the specific aspects of repaying debts for electricity currently present at the wholesale electricity market. This activity area in the NEURC was coordinated by V. Yevdokymov, and after his dismissal the development of the draft law may be delayed.

6. **Insufficient provision of information to consumers and participants of the market.**

Training for the market participants should be provided as well as ongoing seminars. In particular, this applies to traders and large consumers. As a separate activity, information and awareness-raising work with consumers should be initiated.