

Energy Community Secretariat

Am Hof 4, Level 5, 1010 Vienna, Austria

Phone	+43 (0)1 535 2222
Email	contact@energy-community.org
Web	www.energy-community.org

Vienna, 20 May 2020

UA-MC/O/jko/07/20-05-2020

EXCELLENCY,

I would hereby like to address you in relation to the Resolution No.483¹ from 5 June 2019, which the Cabinet of Ministers amended today, based on Your proposal.

The Resolution related to Public Service Obligations imposed to electricity undertakings in order to ensure affordable electricity supply to households.

This objective is legitimate but the process of adoption is not. It was not transparent and was not following the law. The Ukrainian Electricity Market Law in Article 62 stipulates that the PSO Act shall be proposed by the National Energy and Utilities Regulatory Commission ("NEURC") and previously shall be consulted with the Energy Community Secretariat. NEURC shall notify the Secretariat of any possible measures taken pursuant to Article 62, including possible effects on competition on the electricity market of Ukraine and wider in the Energy Community.

The previous Government was ignoring this provision and You are continuing with this. We incidentally noticed the draft PSO Act published publicly and substantially commented it. I sent you comments on 12 May. Your Ministry did not even reply and it ignored everything we said, including acquis compliance concerns. This amounts not only to a breach of the obligations of Ukraine with the Electricity Directive applicable to it under the Energy Community Treaty, but also to the Ukrainian Electricity Market Law. During the discussion on the status on electricity market, organised by Energy Committee in Verkhovna Rada You publicly announced that your Ministry will propose adoption of so called Financial PSO as proposed by the Secretariat and supported by USAID a year ago. The amendments to the PSO Act adopted today, have no track of any of our proposals.

We understood that an immediate switch to Financial PSO would be challenging. Therefore, we prepared some amendments to make the current PSO effective. We have redesigned the draft allowing for swift transformation into a financial PSO and have raised compliance concerns for some of the provisions. As already mentioned, all our efforts have been ignored. The PSO Act goes beyond what is necessary in pursuit of the general economic interest, i.e. securing affordable electricity supply for the households as a universal service supply, it is not proportionate and is lacking legal certainty.

**ATTN. H.E. MRS. OLHA BUSLAVETS
ACTING MINISTER OF ENERGY AND ENVIRONMENTAL PROTECTION
OF UKRAINE**

¹ "On approval of the Regulations on imposition of specific duties of ensuring availability of electricity for household consumers on electricity market entities to ensure general public interests in the course of the electricity market operation" as amended by Resolutions No.512 of 12 June 2019; No.803 of 21 August 2019; No.1003 of 9 December and latest today, 20 May 2020

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The obligation for *Energoatom* to sell to the Guaranteed Buyer has been varying from 90% to 80% (with today's changes). This large volume of electricity being sold for the PSO purposes does not allow *Energoatom* to participate with free sale on the market. Holding auctions in these cases is meaningless because the winner of the purchase of 80% of the nuclear (and 35% of the hydro-produced) electricity is known in advance – the Guaranteed Buyer, and the price for sale is also known in advance – the actual average weighted price in period April-May 2019 (including excise levy since 1 July 2019). The latter issue is also raising compliance concerns, because the generation prices for sale from NPP and HPP to the Guaranteed Buyer are still regulated, and this may well amount to not proportional PSO as regulation at wholesale level.

Furthermore, imposing obligation on two state owned companies might amount to discrimination, because if the objective is economic welfare re-distribution of windfall profits, this is to be assessed on objective criteria and may include targeting the profits of other dominant incumbent (private) generators that are expected to benefit extensively from market opening as well.

In addition, allowing the Guaranteed Buyer to purchase large volumes of “cheap” electricity, not only for satisfying the needs of the households, but also allowing it to sell at the organised markets, forecloses a lot the electricity market and prevents development of competition. Introducing the Guaranteed Buyer in the PSO scheme and maintaining its role as a single buyer, not making it clear at which kind of forward contracts the electricity is to be sold between the Guaranteed Buyer and the universal service suppliers, who takes the risks, who would be exposed to imbalances, and also imposing an obligation to the Guaranteed Buyer to compensate the universal service suppliers is posing a question on which risk do the later take and for what they shall be compensated, as well as where does the Guaranteed Buyer gets the money for such compensation.

Finally, while the PSOs is to have limited duration (between 1 July 2019 – 31 December 2020), the Regulation the Regulation does not address at all the necessity for elimination of cross-subsidies and raising household prices, thereby failing to address the reasons for which the PSO act has been adopted.

The Secretariat has supported Ukraine in its electricity market reform, and has proposed text of PSO act that would address the concerns and reach the objectives without jeopardising the functioning of the market. Universal service suppliers shall be given an opportunity to purchase electricity from the market, from generators and traders of their choice. This would be called market. The measure proposed by the Secretariat is meant to address and use the expected windfall profits of the incumbent undertakings for compensation of the costs for universal service supply.

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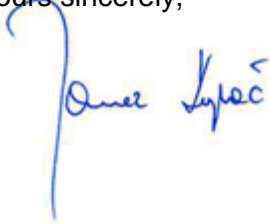
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I therefore would like to ask you to reconsider the approved Resolution No.483 as amended already several times and to propose amendments in line with the proposals of the Secretariat and USAID. They would also bring the act in compliance with the obligations of Ukraine under the Energy Community Treaty.

The Secretariat remains at your disposal for further support.

Yours sincerely,



Janez Kopač
Director
Energy Community Secretariat