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**LEGAL REQUIREMENTS  
FOR POOL IMPLEMENTATION**

**NIS Institutional Based Services Under the Energy  
Efficiency and Market Reform Project  
Contract No CCN-Q-11-93-00152-00**

**CAR Regional Energy Trade,  
Electricity Contracting and Pricing Reform  
Delivery Order No 11**

*Final Report*

*Prepared for*

U S Agency for International Development  
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## Report on Legal Requirements for Pool Implementation

The regional market for electricity in Central Asia is currently plagued by non-payments, continuous disputes, uneconomic investment and operating decisions, and conflicts of interest. In order to form a regional Power Pool, as the five countries of Central Asia have been discussing, it will be necessary to establish a legal framework in a series of documents which set forth a pool governance structure that

- 1) provides for open, transparent, and flexible administration of the pool in the context of industry reform and evolution,
- 2) meets several design criteria (listed below), and
- 3) is eventually found acceptable by all five Governments, despite their very different stages of democratic development, economic potential, and commitment to reform of their electric sectors, and despite each country's individual pursuit of "energy independence" by attempting to be net energy exporters

The Central Asian states are already well interconnected technically, and they operated rather like a "tight pool" during Soviet times. So unlike other areas where international power pools are in the formative stage, the threshold issues in Central Asia are political and economic, not technical/physical.

The key to creating a regional power pool in Central Asia is to design and work out with our counterparts a governance structure which will overcome their deep skepticism -- born of decades of zero-sum thinking -- that all five countries could be made better off through cooperating and increasing energy trading, that the power pool can be a net plus for all without creating a net minus for any.

Hence the importance of the design criteria for the governance structure of the pool. Having culled these criteria from both our formal and informal discussions with counterparts during the last two years, they can be stated as follows:

The legal framework and governance structure of the Central Asia Power Pool must

- meet the needs of all five Governments as they perceive them, especially the need to not diminish sovereignty or the perquisites of their new independence,
- satisfy all legal requirements of the country (or countries) in which the power pool and the dispatch center are established,
- be Pareto optimal, and be perceived as such,
- establish the dispatch center as a legally separate entity, truly independent from undue influence of the Uzbekistan Ministry,

-create a supervisory structure for the independent dispatch center which all five countries believe will be equitable and responsive,

-find a realistic and believable way to resolve the no-payments problems and the resulting "loop openings",

-develop a fair (and perceived to be fair) process for resolving the myriad commercial disputes that plague the current system of trading,

-accommodate new players as unbundling, privatization and wholesale market development proceeds,

-give comfort to the Governments and their technical experts that the results of creating a power pool will not be "loss of control" but will be improved system reliability at lower cost together with the equitable sharing of additional benefits that accrue from increased cooperation and energy trading,

-provide for development and enforcement of appropriate checks and balances and mechanisms for the pool to act as a "self-regulating organization" in the absence of any regional apparatus that could fulfill the role of an international, independent regulatory agency (This is because the existing regional "oversight" Power Council --in reality a coordinating body that operates on a consensus basis and therefore can't operate effectively or resolve major disputes between exporters, importers and wheelers, all to the detriment of system reliability and system cost --) is composed of the five state-owned power systems and power companies, and is unlikely ever to be converted into an independent international regulatory body

Designing a legal framework and governance structure for the pool that meets these design criteria is critical to the success of this project

Although we have not yet completed our legal research on the laws of all five countries related to the formation of a power pool as a non-profit association, a closed joint stock company, or some other legal form, our preliminary assessment is that the pool is probably best created as a voluntary non-profit association. The laws in all five countries on non-profits are very sketchy and, at this point, undeveloped, having been applied mostly to trade unions. This means there is considerable flexibility, but there may also be insufficient protection for the Pool.

On the other hand, it appears at this point that creation of the Dispatch Center as a closed joint stock company is the preferable legal structure because of the protections that the various local laws "On Companies" afford, even though all these laws envisage only profit-making entities as "companies". Ordinarily a pool dispatch center would be set up on a "non-profit" basis, but the issue of profits and what to do with them (or with losses) is not much different, conceptually, from the issue of cost underrun (or cost overrun) of a non-profit budget approved by the non-profit's Board of Directors.

Therefore, our working premise is that the set of linking documents that would create a **feasible** governance structure of a regional power pool must be drafted so as to

-Allow the Governments to delegate to their state-owned power systems or power companies the authority to enter into an international agreement to create a Central Asia Power Pool (Setting up an intergovernmental agreement in this manner is intended to avoid the issue of "who signs" on behalf of the Government when the power sectors of the five countries are at different stages of restructuring and privatization )

-Relate appropriately to existing intergovernmental power sector coordination and "control" structures (such as the Interstate Electric Power Council) in order to give comfort to the Governments that they are still able to set and enforce policy for the power sectors' development and international activities

-Require the founding members of the Pool (the state owned power systems and companies) to agree on organizational structure, decision methods, and budgets, among other knotty topics

-Establish the system operator as a closed joint stock company, with the appropriate incentive structure so that it acts independently, and is perceived to be acting independently, from all power systems and power companies

The following seven documents comprise the set of basic governance documents that would establish the legal framework for the Central Asia Power Pool. This set of linked documents will be presented in tandem to the counterparts so that they can see "the whole picture" at one time. If their redrafting (primarily in the SubGroups) and policy review (primarily in the Working Group) results in substantial agreement as to the fundamental design of the legal framework and governance structure of the pool, then additional documents (such as the more voluminous Members' Agreement and the Pool's Operating Guidelines) would be drafted. The Wheeling Agreement, which would be reviewed as part of this set of documents, would eventually be incorporated into the lengthier Members' Agreement.

## HIERARCHY OF LEGAL DOCUMENTS NECESSARY TO ESTABLISH THE CENTRAL ASIA POWER POOL, USING A JOINT STOCK COMPANY APPROACH

I Intergovernmental Agreement (which would become an international treaty if ratified by the five Parliaments and thus take precedence over individual national laws governing the five energy sectors in those matters it specifically addresses)

This Agreement would be entered into by the Governments that decide to create the power pool, and would go into effect upon the third signature

This Agreement would

1 Contain recitals that the Government of each signatory country desires to create and participate in a regional power pool in order to increase system reliability and lower costs through increased energy trading, and to share equitably in its benefits,

2 State the basis for and the mission, goals and functions of the Central Asia Power Pool,

3 State each Government's commitments

-to obligate their power sectors to create and participate in the power pool under the aegis of a Memorandum of Understanding Among Power Systems and Power Companies,

-to assist its power system or power companies fulfill their obligations as members of the pool and to refrain from passing laws or making decisions that would impede their fulfilling their obligations,

4 Specify the forums in which disputes about the interpretation of the Agreement would be resolved,

5 Allow for a Government to withdraw from the Agreement upon at least a year's notice, and

6 Clarify that nothing in the Agreement is intended to impair the exercise of a state's sovereignty

## II Memorandum of Understanding Among Power Systems and Power Companies

This MO would be originated by the power systems and power companies whose Governments signed the Intergovernmental Agreement. It would be joined later by a power system, a generator, transmission company or bulk power customer (regardless of ownership structure), who wished to join and meets the criteria for membership

This MOU would

1 Recite the reasons for creating and participating in the Central Asia Power Pool,

2 Recite the intentions to cooperate and operate the pool in an open and transparent manner, respecting the equal rights and equal obligations of all pool members to abide by agreed-upon pool rules,

3 State the basis for and the mission, goals and functions of the pool,

4 Set forth the governance structure and decision-making process of the pool,

5 Specify the qualifications for membership in the pool, different categories of membership, and the process for a member to withdraw from the pool,

6 State the policy of open access, consistent with the tenets of the Energy Charter Treaty to which all five countries are signatory, subject to technical/physical capabilities of the system,

7 Establish that System Operator will be selected by pool members and work under the terms of a contract worked out by the pool's governing bodies,

8 Specify the process of dispute resolution between pool members regarding matters related to the MO and other documents related to pool rules and operations, both commercial and technical

9 Specify sanctions for a member's failure to comply

### III Members Agreement

This Agreement would be originated by the power system and power companies that originally create the power pool, and would be later signed by all members of the power pool ad they join it

This Agreement would

1 Set forth detailed rules for coordinated planning and operation of the power system, for energy trading, for interconnection, and for access to the system,

2 Specify rules and procedures for process of dispute resolution set forth in the MO among Power Systems and Power Companies

3 Contain a "Multilateral Wheeling Agreement" which specifies the terms and conditions for wheeling in the power pool and the members rights and obligations This Wheeling Agreement would

- set forth the rates and charges for wheeling,
- specify how technical losses will be handled
- commit pool members to provide wheeling service except for force majeure or non-payment,
- specify billing and payment procedures, methods for resolving disputed bills, and remedies for failure to pay, and
- create a special Transmission Fund to handle receipts and disbursements of funds

#### IV Operating Guidelines

This document constitutes the detailed technical guidelines for coordinated operation of the pool. All members by joining the pool agree to abide by the provisions of this document.

#### V System Operator Contract

This contract would be executed between the Central Asia Power Pool and the legal entity that the Pool hires to operate the system for the pool, in this case the "Independent International Dispatch Center," which will be created as a joint stock company in related documents.

This contract would

1. Establish the qualifications criteria of the entity the pool is engaging to operate the system,

2. Set forth the Rights and Obligations of the system operator,

3. Set forth the rights and obligations of the pool and its members,

4. Define the procedures for setting the system operator's annual payment for services (its budget),

5. Specify the process for resolving disputes between the system operator and the pool regarding the interpretation or implementation of this contract,

6. Specify the terms and conditions under which this contract could be terminated and a new system operator be selected,

7. Set forth the terms and conditions

## Related Documents

### VI Founders' Agreement of Independent International Dispatch Center

This Agreement would be entered into by the power systems and power companies authorized to create the power pool by the Governments signing the Intergovernmental Agreement

This Agreement would

- 1 Create a closed joint stock company for the purpose of providing centralized dispatch of the regional high voltage transmission system,

- 2 Specify how the shares of the new closed JSC would be allocated among the founders,

- 3 Specify the sources of the new closed JSC's Charter Capital, and

- 4 Specify how dispute will be resolved between Founders regarding the interpretation of this Agreement

### VII Charter of the Independent International Dispatch Center

The Charter establishes the legal framework for the closed JSC created to act as the pool's system operator. It would be approved by the General Meeting of the new company's shareholders and legally registered

The Charter would

- 1 State the basis for the company's incorporation,

- 2 Enumerate the company's powers,

- 3 Recite the company's mission, goals and activities,

- 4 Specify the shareholders' rights and obligations,

- 5 State the initial amount of the company's Charter Capital and specify how it may be changed,

- 6 Set forth the types of securities the company may issue,

- 7 Set forth the company's management structure,

- 8 Specify voting rules for various decisions and the jurisdiction of the company's management bodies,

- 9 Provide for a Secretariat to the Board and an Audit Commission,



10 Specify how profits and reserve funds will be handled,

The following chart diagrams the governance structure of the power systems in Central Asia after the creation of the Central Asia Power Pool in accord with the legal requirements and framework discussed above

# Governance of the Power Complex in Central Asia (Second Step)

Sovereign Governments

Intergovernmental Agreement

KZ

KR

TJ

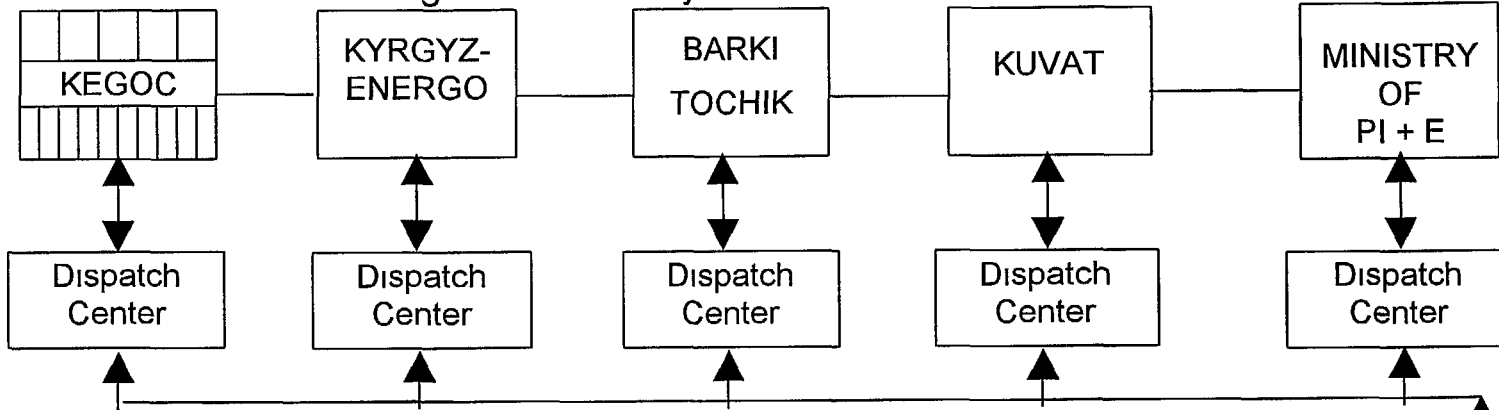
TK

UZ

Interstate Energy Power Council



Integrated Power System of Central Asia



Central Asia Power Pool

**Founders**  
Initial signatories to MOU among Power Systems and Companies (4 State-Owned Power Companies and the UZ Ministry of Power Industry)

**Members**  
Any qualified power system or company that joins by signing the

