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Kazakhstan: Power Sector Reform

Charter of Closed Type Joint Stock Company
Power POOL of Kazakhstan

Prepared for

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CHARTER OF CLOSED TYPE JOINT STOCK COMPANY POWER POOL OF KAZAKSTAN

1 Name, Location and Term of Company

1 1 Name of Company Closed Type Joint Stock Company Power Pool of Kazakstan ("POOL")

1 2 Address of Registered Company 142, Bogenbai-batyra, Almalynski, Almaty, 4800091, Republic of Kazakstan

1 3 Term of the POOL Unlimited

2 Objectives and Types of Activities of the Pool

2 1 Principal Objectives of POOL

2 1 1 Do anything which the holder of the Pool License (the "License") is authorized, empowered or required to do by virtue of, or under the authorization granted under, all relevant legislation, other laws and this License and to abide by all restrictions and obligations imposed by those documents

2 1 2 Operate and develop the Wholesale Electricity Market of Kazakstan in accordance with the Pool Members' Agreements, the Pool License, the Market Rules and the technical requirements of the Pool

2 2 POOL shall not engage in any business other than that specified in the above documents

2 3 Types of Activities of POOL

2 3 1 Provide the rules and procedures (the Market Rules) for the operation of a system for the trading of electricity

2 3 2 Establish and maintain a register of all current Pool Members

2 3 3 Operate and administer a wholesale market in accordance with the Market Rules of the POOL including

2 3 3 1 the provision of facilities for the receipt and processing of bids for the

dispatch of generation and for the dispatch of load for the wholesale market,

2 3 3 2 the management of information from the National Dispatch Center, including the publication of pre-dispatch schedules and wholesale price forecasts,

2 3 3 3 the determination and publication of wholesale market prices at each regional node for each trading interval,

2 3 3 4 the compilation and publication of wholesale market trading statistics,

2 3 3 5 the establishment and definition of regions and regional reference nodes for the wholesale price determination,

2 3 3 6 the determination and publication of inter-regional loss corrections, and

2 3 3 7 the collection and dissemination of information necessary to enable the market to operate efficiently

2 3 4 Establish procedures for consultation with the Members of the Pool with respect to the manner in which POOL fulfills its functions and obligations

2 3 5 Perform projected assessments of system adequacy, publish the details of these assessments and implement escalating market interventions in accordance with the Market Rules to maintain system security

2 3 6 Determine the market's requirements for ancillary services

2 3 7 Trade in ancillary services by negotiating and entering into contracts with Members to secure ancillary services

2 3 8 Trade in capacity reserves by negotiating and entering into contracts to secure the availability of reserve generation

2 3 9 Provide a financial settlements service, including billing and clearance for all Pool trading

3 Legal Status of POOL

3 1 POOL shall be a legal entity incorporated under the laws of the Republic of Kazakstan in the form of a Closed Type Joint Stock Company, Power Pool of Kazakstan, and duly registered with the Ministry of Justice of the Republic of Kazakstan or other appropriate bodies It shall obtain the rights and obligations of a legal entity from its date of registration

3 2 In its activities, POOL shall observe the applicable laws of the Republic of Kazakstan and its foundation documents

4 POOL Property and Charter Capital

4 1 The property of POOL consists of its basic funds and working assets and all other assets, indicated in POOL's balance sheet

4 2 POOL is the owner of

4 2 1 the property passed from to it from its owners at the time of formation,

4 2 2 received income,

4 2 3 products manufactured by POOL in the course of its operation, and

4 2 4 all other property obtained on the basis allowed by the present law

4 3 POOL undertakes the responsibility for risks of casual loss or damage of property passed into its ownership POOL owns, uses and disposes of its property in conformity with its goal of permitted activities

4 4 Any single expenditure greater than 1,000,000 Tenge, or any total expenditure in excess of 10,000,000 Tenge for the financial year, shall be subject to approval by the Executive Board

4 5 The Charter Capital of POOL is 3,000,000 Tenge The Charter Capital is comprised of monetary contributions from the Shareholders of POOL in proportion to their voting shares

4 6 The statutory fund is divided into 30,000 shares, each with a value of 100 Tenge

4 7 Each share is entitled to one vote

5 Rights and Obligations of POOL

5 1 POOL shall possess and may exercise all of the powers and privileges granted by law or this Charter, together with any powers and privileges incidental therefore, in so far as such powers and privileges are necessary or convenient to the conduct, promotion or attainment of the Company's corporate purposes set forth in Article 2 of this Charter

5 2 Subject to Section 2 of this Charter and the legislation of the Republic of Kazakstan, POOL shall have the power to

5 2 1 exist in perpetuity, unless and until the winding up and dissolution of the POOL pursuant to the terms of this Charter,

5 2 2 wind up and dissolve in the manner provided in this Charter,

5 2 3 have a corporate seal, trademark and logo registered with the Patent Office of the Ministry of Industry and Trade of the Republic of Kazakstan,

5 2 4 sue and defend itself in a court of law, arbitration proceedings, administrative proceedings (including but not limited to proceedings in front of the State Regulatory Commission and the State Committee on Anti-Monopoly and Pricing Policy),

5 2 5 enter into contracts and other legally binding agreements, including but not limited to, contracts for the sale and/or purchase of electricity, construction contracts, insurance contracts, storage contracts trade commission contracts and loan agreements,

5 2 6 acquire, own, hold, lease, improve, employ, use and otherwise deal in and with real estate and other property or any interest therein,

5 2 7 sell, convey, lease, exchange, transfer, mortgage, pledge or otherwise dispose of any property, real or personal, of the company, including but not limited to the means of production and other assets of material value,

5 2 8 maintain settlement and hard currency accounts,

5 2 9 appoint such officers and agents as the business of POOL requires, and provide pay to such officers with suitable compensation,

5 2 10 adopt, amend and repeal this Charter or any of its terms,

5 2 11 conduct its business (including the establishment of a budget and accounting procedures),carry on its operations and have offices and exercise its powers within [and outside of] the Republic of Kazakstan,

5 2 12 incur liabilities and obligations, including the borrowing of money and secure such obligations by mortgage, pledge or other encumbrance, and

5 2 13 to take any other lawful actions in furtherance of its stated corporate purpose

6 POOL's Membership and Voting Rights

6 1 The Shareholders of POOL will be the Pool Members

6 2 Shareholder (Membership) Voting Rights

6 2 1 The rules for voting are

6 2 1 1 There are three classes of voters Sellers, Buyers and Service Providers The Seller and Buyer Classes each have 40% share of the vote, and the Network Service Provider Class has 20% of the total votes,

6 2 1 2 The share holding of the Member Sellers will be equally divided among the Sellers, such that the total share holding of all Member Sellers is equal to 40% of the share holding of the POOL

6 2 1 3 The share holding of the Member Buyers will be equally divided among the Buyers such that the total share holding of all Buyers will equal 40% of the share holding of the POOL

6 2 1 4 If Buyers of Sellers enter or leave the POOL, then the share holding of those members which constitute the new total of Buyers or Sellers will be recalculated such that the total of the share holding of Buyers and Sellers will equal to 40% for Buyers and 40% for Sellers, with each Buyer or Seller having equal share holding to all other Buyers or Sellers

6 2 1 5 A majority of two-thirds of the Total Votes is required to pass any resolution in General Meetings which will change the Market Rules,

the Settlement Procedures or the Funds Administration All other resolutions shall require a simple majority to pass

6 3 The Shareholders' have the right, subject to the laws of Kazakstan

6 3 1 to participate and vote in person or by proxy in the Shareholders' General Meetings,

6 3 2 to cast votes only for their shareholding as defined in 6 2 1,

6 3 3 to elect by cumulative vote and to stand for election to the Executive Board, and to elect the Audit Commission and the other administrative bodies of POOL,

6 3 4 to participate in POOL's profit and dividend distributions, if any, in accordance with the terms of this Charter and the amount of shares which such Shareholder holds, in accordance with the established share holding,

6 3 5 to obtain information about POOL's activity, POOL must submit copies of its annual balance sheets and other officially reported documents, POOL's photocopies will be provided at the Shareholder's request without unreasonable delay and subject to the Shareholder paying no more than the actual cost of their reproduction,

6 3 6 to obtain a share of the residual property of the POOL proportional to the amount of shares held by each Shareholder in case of liquidation, but in accordance with the established share holding,

6 4 The Shareholders have the obligation

6 4 1 to adhere to the founding documents of POOL, this Charter and all other governing documents of the POOL,

6 4 2 to execute the decisions of POOL's General Meeting and its other management bodies,

6 4 3 to vote on candidates for Pool membership applications as directed by the Executive Board,

6 4 4 to fulfill any other obligations required of them pursuant to the laws of Kazakstan

6 5 The Shareholders are financially responsible for POOL's obligations within the limit of their shares, and they shall not bear any further financial responsibility for any for any financial losses, liabilities or obligations of POOL

7 Administrative Bodies of POOL

7 1 The institutions of POOL are

7 1 1 General Meetings,

7 1 2 The Executive Board, and

7 1 3 The Audit Commission

7 2 General Meetings

7 2 1 The Shareholders of POOL as constituted at a General Meeting, are the highest decision making body of POOL,

7 2 2 The Shareholders or their representatives and proxies select the Executive Board at the first General Meeting and at Annual or any special General Meeting,

7 2 3 A quorum at a General Meeting shall consist of votes representing 50% or more of aggregate numbers of weighted votes of each of the three classes of voters - Sellers, Buyers and Network Service Providers,

7 2 4 Decisions on election of Executive Board Members shall be on the basis of a simple majority of votes cast,

7 2 5 A General Meeting shall be presided over by the Chairman of the Executive Board or by his proxy In the case of their absence, the Chairman of the Meeting shall be elected from the represented Board Members

7 2 6 Other activities to be performed at a General Meeting are

7 2 6 1 Approval of the Annual Report prepared by the Executive Board reporting on operations of the Pool,

7 2 6 2 Review and approve changes to the Charter of POOL, Market Rules and other documents recommended by the Executive Board,

7 2 6 3 Review of recommendations for actions in the following year made by the Executive Board,

7 2 6 4 Review and approve recommendations for changes in the operation of the Pool,

7 2 6 5 Consideration and resolution of issues raised (with prior notice) by any Member

7 2 6 6 Approve the POOL Audit Commission

7 2 6 7 Select POOL's Independent Auditor,

7 2 6 8 Vote on the admission of new Members who have met the requirements as determined in Article 7 3 14 7 of this Charter Such approval must not unreasonably be withheld

7 2 6 9 Perform other activities as determined by this Charter

7 3 The Executive Board

7 3 1 The Executive Board will represent the Members in the supervision of the Pool,

7 3 2 The Executive Board shall have 11 members, each member having one vote in the Executive Board, and its makeup shall be as follows

7 3 2 1 Three (3) voting representative from the Network Service Providers,

7 3 2 2 Four (4) voting representatives of Sellers,

7 3 2 3 Three (3) voting representatives of the regional distribution companies who are Buyers,

7 3 2 4 One (1) voting representative of the Direct Access Customers

7 3 3 The terms of the Executive Board shall be

7 3 3 1 Individual members of the Executive Board are elected for a period of two years,

7 3 3 2 No Seller or Buyer Member can be represented on the Executive Board for more than two consecutive terms,

7 3 3 3 To provide continuity, half of the initial Executive Board who are representatives of Sellers or Buyers will have a one-year term

7 3 4 Each member of the Executive Board can resign from his membership upon the provision of a written notification to the Chairman of the Board, such notification to be submitted not later than 90 days before the resignation takes effect

7 3 5 If a member of the Executive Board resigns or is otherwise incapacitated before the end of his term, extra elections shall be conducted at a specially called General Meeting to select a new member of the Board The newly elected member shall be elected from the same voting class as the resigned member, and he will serve only until the end of the term of the resigned member

7 3 6 The Executive Board shall annually elect one of its Members as Board Chairman If the Chairman resigns or cannot serve because of some incapacity, the Executive Board shall immediately elect a new Chairman for the remaining term

7 3 7 Meetings of the Executive Board shall be conducted at least quarterly with written notice from the Chairman to be provided not later than 14 days before the meeting date For emergency meetings, the Chairman may waive the 14 day notification period If necessary, the Chairman can give notice orally This notice shall have communicated with it the agenda of the meeting A quorum for a meeting of the Executive Board will be no less than 2/3 of its members, and at least 50% of each class of members (Sellers, Buyers and Network Service Providers)

7 3 8 The decisions of the Executive Board are adopted by a simple majority of votes, unless the law or this Charter requires otherwise In the case of equality of votes, the Chairman of the Executive Board is entitled to a decisive vote

7 3 9 A member of the Executive Board may not participate in voting if this member has a financial or other personal interest in the issue under consideration

7 3 10 The Chairman is authorized to take such measures as are necessary for the

implementation of the decisions made

7 3 11 A member of the Executive Board can assign his authority to another member, but only one other member, in writing, allowing that member to represent him and to vote at the meeting of the Executive Board

7 3 12 Decisions of the meeting of the Executive Board shall be reflected in written minutes, to be signed by all members of the Board voting at the meeting The minutes shall indicate the time and place of the meeting, the participants, the agenda, the general provisions discussed and the decision of the Executive Board Issues not concluded with relevant decisions shall also be reflected in the minutes These minutes shall be submitted by the Chairman to the members of the Board immediately after the meeting for their signatures

7 3 13 Remuneration for the Executive Board shall be voted upon by the Shareholders at the General Meeting

7 3 14 Responsibilities of the Executive Board,

7 3 14 1 Control over the activity of POOL's Officers,

7 3 14 2 Appoint POOL's Officers for a term of one year,

7 3 14 3 Examine and approve the financial and accounting records of POOL To carry out this responsibility the Executive Board can delegate certain tasks to its members or to certain experts, however the members of the Board will remain personally responsible for negligence in the discharge of their duties in this regard,

7 3 14 4 Obtain from the Officers a written quarterly report on the activities of POOL, and obtain other specified written reports upon demand,

7 3 14 5 Examine the annual report and affirm all information about the business performance of the POOL for accuracy, and prepare a report for the General Meeting

7 3 14 6 Convene Special Meetings of Shareholders whenever required by law, this Charter or in order to protect the Shareholders' interests

7 3 14 7 Specify the process for membership application to the Pool in accordance with the requirements set out in the Market Rules

7 3 14 8 Within 30 days of receipt of all required information for application for Pool membership, administer vote at General Meeting and notify candidate of decision.

7 4 Audit Commission

7 4 1 Verification of the economic/financial activity of the company, its subsidiaries, affiliates and representative offices is exercised by the Audit Commission which is approved by the Shareholders at a General Meeting

7 4 2 Verifications are conducted annually or at the demand of the Audit Commission's own initiative or at the demand of the Shareholders who have not less than 10% of the weighted voting shares

7 4 3 The Audit Commission reports only to the Shareholders as constituted at a General Meeting The Commission submits verification documents to the Shareholders as constituted at a meeting of the Executive Board This Commission will consist of no less than three members, all of whom must be Shareholders

7 4 4 The Audit Commission has the right to invite experts and auditing companies to provide assistance The Commission and its duly appointed agents shall have unrestricted access to the premises of POOL, its books, records and correspondence

7 4 5 The Audit Commission completes conclusions on the basis of annual reports and balances The Executive Board can only approve the financial statements if the Audit Commission's conclusions are included

7 4 6 The Audit Commission shall demand an Executive Board meeting if its investigations reveal a threat to the interests of POOL, or if it has revealed abuses or misconduct on the part of POOL officials If this meeting does not sufficiently satisfy the Commission, it shall demand a Shareholder Meeting

8 Officers of POOL

8 1 The Officers of POOL will be the Chief Executive Officer (CEO), the Chief Financial Officer (CFO), deputies to the CEO (if any) and the heads of departments who report

to the CEO These Officers constitute the executive body that manages POOL

8 2 All powers of the Officers are delegated by the Shareholders through the Executive Board

8 3 The CEO (" President") and the CFO are appointed by the Executive Board subject to Shareholder veto by majority vote All other Officers are appointed by the CEO, subject to approval by the Executive Board

8 4 The President represents POOL, and is responsible for running the daily activity of POOL and implements the decisions of the Executive Board

8 5 Issues of authority, terms of activity and material maintenance of the President and the CFO are determined by contract which is completed between both the President and the CFO and the Executive Board, as agreed by the Shareholders

8 6 The President and other Officers will conduct the management of POOL according to the law and to the present Charter, or in specific cases, based on internal rules determined by the Executive Board Certain decisions will require decisions by the Executive Board, including

8 6 1 any purchase, assignment and legal encumbrances of real property,

8 6 2 participation in other companies, as well as establishment and/or termination of affiliations,

8 6 3 taking warranties and co-responsibilities in actions not related to ordinary business, including irregular warranties, as well as determination and expansion of the credit policies of POOL,

8 6 4 establishment of commitments for periods longer than 12 months, or taking financial obligations of amounts exceeding 10% of the annual budget,

8 6 5 determination of the annual budget for the following year including financing, expenses and investments, as well as general planning for following fiscal years,

8 6 6 approval of variances of greater than 10% in the annual budget for financing, expenses or investments,

8 6 7 issuing or invalidation of general trade letters or letters of credit,

8 6 8 negotiating or dealing with legal entities or with their representatives, in which Shareholders of POOL or their representatives have an interest, and

8 6 9 activity other than regular activity of POOL, which is similar to the above-listed activity

9 Accounting and Reporting

POOL keeps operation and accounting records as well as statistical accounting and submits them to the State Regulatory Commission in accordance with the procedures set up by the Government

9 1 POOL's fiscal year corresponds to the calendar year The period between the day of registration of POOL and December 31 of the year of registration is a partial calendar year of POOL

9 2 POOL's activity shall be exercised in conformity with the goal of POOL and any POOL plans developed by the Executive Board and/or the Officers of POOL

10 Procedure for Introducing Changes into POOL's Charter

10 1 The right to introduce any changes in POOL's Charter is within the exclusive competence and authority of the Shareholders

10 2 Any revisions to the Charter must be approved by Shareholders representing at least 67% of the voting shares present at a duly constituted Shareholders Meeting

11 Interruption of Activity of POOL

11 1 A decision to liquidate POOL can be made by approval of at least 75% of the voting shares present at a duly constituted Shareholders General Meeting

12 Disputes

12 1 Resolution of any disputes between counterparts of POOL, concerning the rights and responsibilities reflected in the Charter, or disputes concerning the definitions used shall be resolved through the POOL Dispute Resolution Procedures

13 Provisions in Part

13 1 If any provision of this Charter becomes invalid, this shall not affect the Charter as a whole, and the remainder of the Charter will remain valid The invalid provisions will be replaced with valid provisions pursuant to Article 10 2 above

THIS CHARTER WAS APPROVED BY THE FOUNDING MEMBERS OF THE POOL ON 17 JANUARY, 1997, AND WAS SIGNED BY THESE MEMBERS ON THAT DATE