

PN-ACE-950
10/4/11

UKRAINE LEGAL AND POLICY SUPPORT
Instructions and Procedures for the Energomarket
Board and Secretariat (Task A1)
NIS Institutional Based Services Under the Energy
Efficiency and Market Reform Project
Contract No CCN-Q-00-93-00152-00

Ukraine Power Sector Reform
Delivery Order No 18

Final Report

Prepared for

U S Agency for International Development
Bureau for Europe and NIS
Office of Environment, Energy and Urban Development
Energy and Infrastructure Division

Prepared by

Hagler Bailly
1530 Wilson Boulevard
Suite 400
Arlington, VA 22209-2406
(703) 351-0300

September 10, 1998

A

CONTENTS

Table of Contents

Executive Summary

S-1

Appendix A

Draft Instruction on Preparation and Conducting
Procedure of Wholesale Electricity Market Board
Sessions

Appendix B

Extracts from the Wholesale Electricity Market
Members' Agreement (WEMMA)

Appendix C

Draft Voting procedure for the Wholesale Electricity
Market Annual Meeting

EXECUTIVE SUMMARY

The Agreement between Members of the Wholesale Electricity Market (Wholesale Market Members' Agreement, hereafter referred to as WEMMA) of Ukraine signed on November 15th 1996 envisaged creation of the Board of WEM consisting of ten Voting Directors, and also election of four Non-Voting Directors to the Board. With the objective to provide assistance to the WEM Board in its activity, and also to organize and conduct the General Meeting of the WEM Members, the Agreement stipulated to establish the Secretariat.

The Secretariat was formed as a separate structural division "Energorynok" (Energy Market) within the National Energy Company "Ukrenergo" (founded in August 1998 resulting from merger of the National Dispatcher Center of Ukraine (NDC) and the state-owned National Electricity Company "Ukrelectroperedacha" (Electricity Transmission). The Secretariat is chaired by the Head of Secretariat. The Head of Secretariat is subordinated and accountable to the Deputy Director of NDC, who is also the Executive Director of the separated division "Energorynok".

The Secretariat is functioning based on the Regulation on Secretariat, which was developed and adopted in 1997 by NDC. This Regulation outlined the major rights and responsibilities of the Head of Secretariat, functions of the Secretariat and its relations with other divisions within the "Energorynok". The Regulation represented a standard form used for sub-divisions of the state enterprises and suited the objectives of administrative subordination.

During the last year participants of the sessions of the Board many times criticized the organizational procedure of those sessions and complained about inadequate coordination work of the Secretariat. The Board itself many times experienced difficulties due to the lack either in the WEMMA or in its amendments of clear instructions and regulations on procedures of the sessions of the WEM Board, meetings of working groups and annual and/or extraordinary General Meetings. This situation caused the necessity for development of a draft Instruction on Preparation and Conducting Procedures of WEM Board Sessions. Provisions aimed at the improvement of the Secretariat activities should represent a considerable portion of that Instruction.

The Instruction on Preparation and Conducting Procedures of WEM Board Sessions shall represent an Annex to the WEMMA. This document includes procedures related to preparation and conducting of the WEM Board Sessions, and execution of documents reflecting these Sessions. (See Appendix 1)

The draft changes and amendments to the WEMMA prepared earlier had only mentioned the working procedures of the WEM Board, but contained no detailed description in order to facilitate understanding of the WEMMA. Besides that, according to the Draft WEMMA in a one-

year term after adoption of the mentioned changes and amendments to the WEMMA, the WEM Board should have the right to introduce changes and amendments to Annexes to the WEMMA (excluding the WEM Rules) independently, without their approval by the General Meeting. Compilation of procedures of work of the WEM Board in the Annexes to WEMMA will allow timely introduction of adjustments to the order of work of the Board, responding to changes in the environment.

It is feasible to draft two separate Instructions: the first On Preparation and Conducting Procedures of WEM Board Sessions and the second On Preparation and Conducting Procedures of the General WEM Meeting. The first one will be of the smaller volume and applicable to the WEM Board Sessions conducted on a monthly basis. The second Instruction will be applicable to organization and conducting of the General Meetings, which should be held annually. Two separate instructions will be easier to understand and use. The Instructions should also contain specific provisions regulating the issues related to establishment and operation of Working Groups.

The current Draft Instructions are based on the provisions of the WEMMA, changes and amendments to which have been developed by the Working Group consisting of representatives of Generator Companies, Oblenergos (distributors), Independent Energy Suppliers (IES), Ministry of Energy of Ukraine (Minenergo), National Electricity Regulatory Commission (NERC) and consultants from Hagler Bailly and PHB companies. The Draft Changes and Amendments to the WEMMA had been heard several times at the sessions of the WEM Board and approved as a "basis" for a Final Draft on September 2nd 1998. This Report includes an extract from the Draft Changes and Amendments to the WEMMA containing the information about rights and obligations of the Secretariat, and procedures of calling and conducting of the WEM Board Sessions, developed by the Working Group with the assistance of Hagler Bailly consultants, as Appendix 2.

The drafts should be submitted to the Secretariat for revision and preparation of appropriate comments and proposals. After that stage the revised Draft should be submitted for revision and approval to the WEM Board. The second Instruction related to preparation and conducting of the General Meeting and procedure of voting in the General Meeting will be drafted within the scope of the next task order. The draft voting procedure for the General Meeting developed by Hagler Bailly consultants, included in this Report as Appendix 3, will be a part of the above-mentioned second Instruction.

We believe that these procedures after their approval by the WEM Board and actual implementation will help to improve results of the Secretariat's work and assist to increase the efficiency of the WEM Board in its future activities.

APPENDIX A

DRAFT INSTRUCTION ON PREPARATION AND CONDUCTING PROCEDURE OF WHOLESALE ELECTRICITY MARKET BOARD SESSIONS

CONTENTS

- I INTRODUCTION

- II CALLING THE WEM BOARD SESSIONS

- III PREPARATION OF THE WEM BOARD SESSION
 - 1 Notice on the Board Session
 - 2 Formation of the Agenda
 - 3 Preparation of Draft Resolutions

- IV CONDUCTING THE WEM BOARD SESSION
 - 1 Registration of Participants of the WEM Board Session
 - 2 Opening the WEM Board Session
 - 3 Course of the WEM Board Session
 - 4 Decision Making Process
 - 5 Powers of the WEM Board

- V MINUTES OF THE WEM BOARD MEETINGS
RESOLUTIONS OF THE WEM BOARD

INTRODUCTION

- 1 This Instruction has been developed with the aim to adjust and to regulate relations arising in the process of the activity of the WEM Board and the Secretariat to meet the WEM Members' Agreement (Agreement)
- 2 The Instruction is a supplement to the Agreement and obligatory for use and compliance by all Parties to the Agreement
- 3 The WEM Board shall approve the Instruction
- 4 Changes and amendments to the Instruction shall be made by the WEM Board or by General Meetings
- 5 In compliance with this Instruction, under Section 6 of the Agreement, the WEM Board shall
 - hold its Sessions,
 - make decisions within its competence,
 - settle disputes which may arise between the Parties to the Agreement
- 6 The Instruction shall regulate the activity of the Secretariat in conformity with Item 6.9 of the Agreement by establishing procedures for execution of the Agreement provisions
- 7 The Instruction shall establish procedures with respect to documentary flows, distribution, and keeping of Minutes of Sessions and Resolutions of the WEM Board

CALLING THE WEM BOARD SESSIONS

- 1 The WEM Board's Sessions shall be held monthly
- 2 The date of holding the Session shall be determined by the General Meeting or the WEM Board
- 3 The WEM Board shall have right to schedule extraordinary meetings at its discretion
- 4 The Secretariat shall call the WEM Board Session and notify the Board Members and other parties concerned
- 5 The Secretariat shall call the WEM Board Session also at the request of at least three Voting Directors

- 5 1 This request shall be submitted to the Secretariat in writing
- 5 2 This may be both a joint statement of at least three Voting Directors and individual applications of Voting Directors

PREPARATION OF THE WEM BOARD SESSION

1 Notice of the WEM Board Session

- 1 1 The Secretariat shall, not later than 10 days before the WEM Board Session, notify its Members and other parties concerned of the place and time of the Session, as well as send the draft agenda and draft resolutions on issues of the agenda by fax or in writing. If necessary, other documents shall be sent to the address of the above participants
- 1 2 Notices and materials shall be sent to the address of each Voting Director and Non-Voting Director separately
- 1 3 According to the issues of the agenda subject to consideration, other parties, which are not the members of the WEM Board, shall be invited to the Board Sessions
- 1 4 Those who shall be obligatorily present at the WEM Board Session
 - Voting and Non-Voting Directors,
 - representatives of the Dispatch Operator, Market Funds Administrator, Settlement System Administrator, Banker, Lawyer, Auditor
- 1 5 Persons specified in Item 1 4 of this Section can invite specialists and experts in specific issues to attend the Board Sessions. In this case persons specified in item 1 4 shall send to the Secretariat a relevant notice and the Secretariat shall include such specialists and experts in the list of those invited
- 1 6 Such parties shall be also notified of the WEM Board Session in writing or by fax and be provided with the agenda and other materials

2 Formation of the Agenda

- 2 1 The Secretariat shall form the agenda based on
 - Resolutions of the General Meeting, and

- previous Resolutions of the WEM Board

2.2 The agenda shall include

- reports on execution of decisions of the WEM Board and/or the General Meeting to be presented by the Settlement System Administrator, Market Funds Administrator, Dispatch Operator, Secretariat, Banker, Lawyer,
- issues to be considered at the WEM Board Session,
- speakers on issues,
- time and duration of speeches,
- discussion order and duration

2.3 Proposals on inclusion of separate additional issues in the agenda may be made by

- Voting or Non-Voting Directors,
- Market Funds Administrator, Settlement System Administrator,
- Dispatch Operator, Banker, Lawyer, Auditor, consultants, advisers,
- Other persons to participate in the WEM Board Session

2.4 The Secretariat shall stop accepting proposals on changes and amendments to the agenda three days before the WEM Board Session

3 Preparation of Draft Resolutions

3.1 The Board shall prepare draft resolutions on issues included in the agenda on the basis of

- proposals of Voting Directors,
- proposals and comments of Working Groups which worked out issues,
- comments of Non-Voting Directors,
- proposals of other parties to participate in the WEM Board Session

- 3 2 Before the beginning of the WEM Board Session, its Members and other parties concerned can submit their comments and proposals on the draft resolutions in writing
- 3 3 While preparing draft resolutions of the Board, the Secretariat shall hold consultations with the Market Lawyer which also shall sign these drafts

CONDUCTING THE WEM BOARD SESSION

- 1 Registration of Participants at the WEM Board Meeting
 - 1 1 Prior to opening the WEM Board Session, the Secretariat shall register those persons who came to the meeting
 - 1 2 After registration the number of Voting Directors shall be counted and the number of Weighted Votes they hold shall be determined
 - 1 3 If the Voting Director cannot be present at the meeting in person he shall have the right to charge the other person to act for him at the meeting, but not more than three times in succession. The person who acts for such Voting Director shall evidence his/her authorization with appropriate documents (a power of attorney) to be kept by the Secretariat along with Minutes and Resolutions of the WEM Board
 - 1 4 The power of attorney shall state
 - date and place, it was issued,
 - validity period,
 - person in the name and on behalf of the power of attorney is issued,
 - essence of a commission
 - 1 5 Should the Voting Director be absent in person at the WEM Board Sessions more than three times, the Secretariat shall notify the Board of making a decision on removal of this Voting Director
- 2 Opening the WEM Board Session
 - 2 1 Based on the results of registration the Secretariat shall declare information on the presence of a quorum and read out the list of those present

- 2 2 A quorum shall be considered present if three Voting Directors from Generators and three Voting Directors from Suppliers are present in person at the meeting or are represented by their authorized representatives
- 2 3 If within half an hour of the time appointed for holding the meeting, a quorum is not present, the Board shall make a decision on adjournment of the meeting to another day, but not later than a week hence, and charge the Secretariat to notify all parties concerned of such an adjournment
- 2 4 If a quorum is present, the meeting shall be declared open
- 2 5 The Secretariat shall inform the Board Chairman of the number of those present at the meeting
- 3 Course of the WEM Board Session
 - 3 1 The Board Chairman shall read out the agenda and ask those present at the meeting for proposals on changes in the agenda. If proposals are submitted, the Board Chairman shall put them to the vote
 - 3 2 Voting Directors shall be entitled to one vote each
 - 3 3 If a proposal was voted for by a majority of Voting Directors it shall be included in the agenda
 - 3 4 The Secretariat shall prepare the final version of the draft agenda of the Session and submit it to the Chairman
 - 3 5 The Chairman shall read out the final version of the draft agenda and put it on the vote
 - 3 6 After approval of the agenda, the speaker on the first issue shall be given the floor
 - 3 7 At the request of speakers the order of issue consideration may be changed
 - 3 8 After a speech Voting Directors shall discuss the issue
 - 3 9 After discussion the Board Chairman shall read out a draft resolution on the issue
 - 3 10 The draft resolution shall be discussed
 - 3 11 Persons invited to participate in the WEM Board Session shall have the right to speak at the meeting and put questions to speakers or Members of the WEM Board

- 3 12 After discussion with due account of proposals made during the discussion, the final draft decision shall be read out and put to a vote
- 3 13 The Board shall take a vote and make a decision on the agenda solely in the presence of the draft resolution on this issue. If the draft resolution is not available, a vote on the agenda shall be deferred until preparation of the relevant draft
- 3 14 Voting shall be taken
- 3 15 If during voting it is found that the quorum is lacking, the Board shall not make a decision on this issue
- 3 16 The Secretariat shall count the results of the vote and declare them to those present
- 3 17 If the draft resolution was voted for by a majority of Voting Directors present at the meeting, it shall be considered adopted
- 3 18 Any Voting Directors shall have the right to put a particular issue on the vote by Weighted Votes
- 3 19 This proposal shall be voted on by members of the Board and be considered adopted if it was voted for by a simple majority of Voting Directors present at the meeting
- 3 20 If this proposal is rejected, voting shall be made on the basis of a simple majority of votes
- 3 21 The Secretariat shall have control over the time and duration of speeches and discussions and their compliance with the agenda

4 Decision Making Process

- 4 1 The Board shall make a decision on the agenda solely in the presence of the draft resolution on this issue. If the draft resolution is not available, a vote on the agenda shall be deferred until preparation of the relevant draft

5 Powers of the WEM Board

The Board shall have the right to make decisions only on the issues related to

- 5 1 control, on a regular basis, over the compliance with obligations related to each activities of the Secretariat, Dispatch Operator, Settlement System Administrator and Market Funds Administrator as specified in this Agreement,

- 5 2 establishment of Working Groups accountable to the Board Each Working Group shall be composed of such persons (whether or not Voting Directors) and shall discharge such responsibilities the Board considers to be necessary The Parties to the Agreement shall be obliged to promote the activity of such groups
- 5 3 consideration of applications for participation in the Wholesale Electricity Market and admission of new Members to the market pursuant to the rules established by this Agreement,
- 5 4 consideration of issues connected with the financing of the development of Integrated Power System of Ukraine, preparation of associated materials to be considered at General Meetings,
- 5 5 instructions to the Market Auditor on carrying out audits and control over the compliance with the Market Rules, development and submission of proposals on selection and removal of the Market Auditor at the General Meeting,
- 5 6 control over the compliance with the Metering Procedure,
- 5 7 prompt and efficient solution of any disputes arising from settlements or the procedure of making settlements (including those concerning data),
- 5 8 appointment, release and determination of conditions for remunerating lawyers, bankers, brokers, accountants and other professional and special advisers which assist the Board or working groups to perform their duties and responsibilities under this Agreement,
- 5 9 subject to any applicable confidentiality provisions monitoring any litigation, arbitration or other proceedings affecting or which may affect this Agreement,
- 5 10 appointment and replacement of the MFA and SSA as set out in Clauses 8 3 and 7 5, respectively, as well as the executor of the Secretariat functions in compliance with Clause 6 9 4,
- 5 11 adjustment of agreements between the Parties which limit future actions of the Board and which delegate the authority of the Board,
- 5 12 setting up of a permanent Working Group for improvement and revision of the Wholesale Electricity Market Members' Agreement,
- 5 13 development and making changes and amendments to Schedules to the Wholesale Electricity Market Members' Agreement,
- 5 14 determination and approval of the Arbitration Commission's composition,

5 15 development of the Agreed Procedures

MINUTES OF THE WEM BOARD MEETINGS RESOLUTIONS OF THE WEM BOARD

- 1 The Secretariat shall keep Minutes of the WEM Board Session from the moment of registration of Voting Directors
- 2 The minutes shall state
 - 2 1 Number
 - 2 2 Date of the WEM Board Session
 - 2 3 Place of the WEM Board Session
 - 2 4 Results of registration made
 - 2 5 Each issue on the agenda to be considered and speakers on this issue
 - 2 6 Names of speakers, names of enterprises, institutions, organizations the speakers represent, summary of speeches and comments made by those present during discussion
 - 2 7 Decision made on this issue
 - 2 8 Results of voting on issue considered
 - 2 9 Time and place of the next WEM Board Session
 - 2 10 Issues to be submitted for consideration by the Board at the next WEM Board Session
 - 2 11 The minutes shall be signed by the Board Chairman and the Secretariat Chairman
 - 2 12 After signing the Minutes, the Secretariat shall submit it for signing by each Voting Director, Non-Voting Director and the Lawyer of the wholesale market
 - 2 13 Each Voting and Non-Voting Director shall have the right to make their comments on the Minutes in writing
 - 2 14 The Secretariat shall send comments to the Board Members and adjust differences

- 2 15 Should differences be not settled between the Board Members which sent them, such Board Members shall have the right to raise questions at issue at the next WEM Board Session to revote
- 2 16 In the event of obtaining agreement on differences, the Secretariat shall settle a matter with the Board Chairman on making relevant changes in the Minutes
- 2 17 The Secretariat shall distribute the Minutes to all Voting and Non-Voting Directors within three days from holding the WEM Board Session. The Minutes shall be sent to the NERC within two days
- 2 18 The NERC's resolutions on issues considered at the WEM Board Session shall be sent to the Secretariat, which shall bring them to attention of all Board members and other parties concerned
- 2 19 The Secretariat shall keep Minutes and submit them, if necessary, to each Party to the Agreement for familiarization
- 3 The Secretariat shall document Resolutions of the WEM Board
 - 3 1 The Board's Resolutions are a separate document of the resolution section of the Minutes of the WEM Board Session made as a separate document
- 4 The Secretariat shall prepare draft decisions on the issues of the agenda on the basis of previous minutes of Sessions and decisions of the WEM Board, minutes and decisions of the General Meetings, conclusions of Working Groups and other recommendations coming from the parties concerned
- 5 The WEM Board's Resolution shall state
 - 5 1 Number
 - 5 2 Date
 - 5 3 Place of adoption
 - 5 4 Minutes of the WEM Board Session that adopted this Resolution
 - 5 5 Essence of the Resolution made
 - 5 6 The Board Chairman and the Secretariat Chairman shall sign the Resolution
 - 5 7 The Secretariat shall distribute the Resolution to all Board Members within three days after the WEM Board Session in hard and electronic copies

- 5 8 The Resolution shall be sent to the NERC within two days after the WEM Board Session in paper and electronic copies
- 5 9 The NERC's resolutions on the Board's Resolution shall be sent to the Secretariat, which shall bring them to notice of all Board members and other parties concerned
- 5 10 The Secretariat shall keep Resolutions and submit them, if necessary, to each Party to the Agreement for familiarization

APPENDIX B

EXTRACTS FROM THE DRAFT WHOLESALE ELECTRICITY MARKET MEMBERS' AGREEMENT RELATED TO CERTAIN PROCEDURES OF THE WEM BOARD SESSIONS AND THE COMPETENCE OF THE SECRETARIAT

6 2 6 In the event of withdrawal of a Voting Director from the Board, a new Voting Director shall be elected as follows

- a) The Secretariat shall conduct an election of a new Voting Director, for which purpose it shall send, within 5 days, voting bulletins of an appropriate Class form to those Market Members that constitute the Voting Group of a withdrawn Voting Director,
- b) Prior to elections, Members of the Voting Director Group to be withdrawn shall have the right to hold consultations on possible candidatures for a position of the new Voting Director,
- c) A Member of the Voting Director's Group shall fill in the Voting Bulletin to be then signed by the chief officer and stamped with a seal of the enterprise and, within 3 days from the date of receipt, shall send it to the Secretariat,
- d) The candidate receiving a majority of Weighted Votes shall be elected a new Voting Director,
- e) When calculating the Weighted Votes of the Voting Director Group, the Secretariat shall be guided by data on the Weighted Votes of the electors which have been known as of the date of holding the last General Meeting,
- f) To have control over the right calculation of votes, a Working Group of three persons shall be created as determined by the Market Board
- g) The Secretariat shall count the number of votes and inform about election results the Board and members of Voting Director's groups, as well as notify the parties concerned

6 3 1 The Board Chairman shall be elected from the number of Voting Directors for a period of one year by a simple majority at the first Board Meeting after the General Meeting and may be changed at any time in the same way In the event of a tie vote, the Non-Voting Directors from Minenergo, NERC and Antimonopoly Committee shall cast their vote

6 4 1 Minutes of Meetings

Each meeting of the Market Board shall be recorded in the minutes to be then signed by the Board Chairman and Secretary to the Meeting. The minutes shall be signed by Voting and Non-Voting Directors present at the meeting and the Market Lawyer. Voting and Non-Voting Directors shall have the right to make comments on the Minutes in writing.

The Minutes shall be permanently kept by the Secretary to the meeting. Each Party to this Agreement shall have the right to familiarize itself with any minutes.

6.4.2 Decisions

The Board shall make a Decision on issues being within its competence and under consideration at the Meeting. The Decision may contain a resolute paragraph of the Minutes. It shall be issued in the form of separate document to be signed by the Board Chairman of the WEM.

Decisions shall be permanently kept by the Secretary to the meeting. Each Party to this Agreement shall have the right to familiarize itself with any decision of the Board.

6.5.1 Meetings of the Board shall be held at least monthly. An Extraordinary Meeting of the Board as may be required from time to time, shall also be convened by the Secretariat at the request of any 3 Voting Directors. Directors may participate through technical communication facilities.

6.5.2 No business shall be transacted at a Meeting of the Board unless a quorum is present at the time the meeting proceeds to business. Three Voting Directors elected from Generators and three Voting Directors elected from Suppliers present in person or by their respective alternates shall constitute a quorum.

6.5.3 If, within half an hour of the time appointed for holding any meeting of the Board, a quorum is not present, the meeting shall be adjourned to a time set by the Chairman no later than one week hence.

6.5.4 Any question or matter arising at a meeting of the Board shall be decided by a simple majority of the votes cast at the meeting by Voting Directors. On any such question or matter each Voting Director shall be entitled to one vote.

6.9 WEM Secretariat

6.9.1 The WEM Secretariat is a body which shall perform its functions on a permanent basis. It shall consist of _____ persons. The Secretariat shall be directed by the Secretariat Head.

The Party to the Agreement which acts as the Secretariat shall set up a separate subdivision to perform solely these functions. This separate subdivision shall act under this Agreement and the Provisions to be obligatorily approved by the Market Board.

If the Parties to this Agreement are not satisfied by the way of performing the functions of the Secretariat, they may transfer these functions to another Party.

6.9.2 Competence of the Secretariat

The Market Secretariat shall

- a) prepare draft decisions of the Market Board and negotiate them with appropriate state administration bodies and parties concerned,
- b) by order of the Board arrange and coordinate the work of Working Groups, be responsible for contacts with Market Auditor, Banker, Lawyer, Dispute Committee and advisers of the Wholesale Electricity Market of Ukraine,
- c) hold consultations with authors of letters and appeals to General Meetings, heads of working groups and commissions, advisers,
- d) consider data on licensees of the NERC and their applications for participation in the WEM, prepare relevant draft decisions to be considered by the Board and General Meeting,
- e) promptly, within its competence, consider expediency and feasibility to make changes in and amendments to the Agreement and normative documents in force that related to the operation of the WEM, as well as prepare relevant draft decisions of the Board,
- f) be in charge of convening General Meetings, meetings of the Market Board and Working groups, preparing and distributing necessary papers, agenda and minutes, conducting elections of Voting Directors,
- g) bring the Board Decisions to notice of parties concerned, report to the Board on execution of its decisions and decisions of General Meetings,
- h) be in charge of record keeping (including keeping of the minutes) and other services required for the General Meetings and the Board,
- i) on the instructions of the Board or according to set plan analyze the operation of the WEM and prepare papers on these issues to be considered at the Board Meetings,
- j) safeguard the original Market Members Agreement and submit it to new Market Member for signature

- 6 9 3 The Secretariat shall be subordinated to the Board and execute instructions of the Board and General Meetings in compliance with the decision of the minutes
- 6 9 4 Taking into consideration comments of the Parties to this Agreement, the Board can appoint another Party to act as a Secretariat on the conditions specified by the Board and this Agreement, and this new Secretariat shall come into force after actual release of the former executor from its duties
- 6 9 5 Replacement of the executor of the Secretariat functions, irrespective of the reason for such replacement, shall not affect the rights and obligations of the Parties
- 6 9 6 After appointing the next executor of the Secretariat functions, the former executor shall be obliged to hand over to a new executor the original of this Agreement, all Minutes, Decisions, other documents and records he kept as an executor of the Secretariat functions,

The costs of such transfer shall be determined on a basis to be agreed between the outgoing and successor executor of the Secretariat's function and the Board. Such costs shall be based on the current net book value of the assets transferred to the executor of the Secretariat's function and the reasonable costs of personnel training, acquisition of licenses and the costs and expenses of, or directly associated, with this process

APPENDIX C

DRAFT VOTING PROCEDURE FOR ANNUAL MEETING OF THE WHOLESALE ELECTRICITY MARKET OF UKRAINE

1 Nomination of Candidates to the Voting Director's Post

- 1.1 Each WEM Member is entitled to the right to nominate candidates to the WEM Board
- 1.2 The nomination right shall extend within the Member's Class
- 1.3 The nomination may be preceded by any organizational or administrative events, meetings, consultations, etc at the nominees' discretion
- 1.4 The candidates are subject to registration with the Secretariat
- 1.5 The Voting List with the names of all candidates composed under the Member's Class principle shall be declared at the General Meeting

2 Types of Ballots and Procedure for Their Distribution

- 2.1 The Secretariat shall issue two separate types of Ballots for each respective Class and pass them out at the Meeting to the Counting Committee
- 2.2 For more convenience, the Ballots may be issued in two different colors
- 2.3 The Ballots must contain the following information
 - Full name of the voting WEM Member,
 - Number of votes possessed by the Member,
 - Name of the candidate to the Voting Director's position
- 2.4 Each Market Member possessing Weighted Votes within his class obtains a Ballot from the Counting Committee, and the corresponding entry is made in the Voting Register
- 2.5 Each Market Member who has a right to vote for both Classes obtains two separate Ballots one for each Class
- 2.6 When obtaining the Ballot, the Market Member must verify the accuracy of the data therein, i.e. Member's name and number of Weighted Votes possessed. Once an error is detected, the Market Member shall immediately inform the Counting Committee on that fact

3 Procedure for Filling out Ballots

3 1 Having obtained his Ballot, each Market Member who possesses at least one vote has to fill it out under the following pattern

- choose one candidate among all candidates to the Voting Director post listed on the Ballot

3 2 The Market Member shall cast his Weighted Votes en bloc for each candidate Under the present Procedure, no vote split is allowed

3 3 The Ballot filled out by each separate Members Class shall be cast into an adequate Ballot box

4 Procedure for Vote Calculation

4 1 The Counting Committee shall calculate the Votes

4 2 The ultimate number of the Voting Directors drawn to the Market Board shall be five from each Members Class, i e , the Generators and the Suppliers

4 3 The top five candidates per each Class shall be deemed elected Voting Directors for a period of one year

5 Tie Vote Clause

5 1 Should the voting result in a tie between two or more candidates, and, therefore, the number of those who can potentially qualify for the Board exceeds five, then the run off voting shall be taken among those who drew equal number of votes Should the vote result in less than five candidates qualified for the Board, then re-voting will be taken

5 2 The re-voting shall be taken under the same principles as the primary voting

Signed by Secretariat of the Annual Meeting
of the Wholesale Electricity Market Members