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To: **Pidlisetskyi L.T.**
Chairman
Subcommittee on electric power and energy transportation
Vekhovna Rada Committee on Fuel and Energy Complex, Nuclear Policy and Nuclear Safety

20.03.2018

Dear Lev Teofilovych,

On behalf of Public Union "Ukrainian Wind and Energy Association", I would like to take this opportunity to extend our compliments to you and kindly request you to consider our comments to the new concept of amendments to applicable law and transition to the auction model (the "Concept").

On 13 April 2017, the Ukrainian Parliament passed the new Law of Ukraine "On the electricity market", No. 2019-VIII (the " Law") upon extensive negotiations and approval by all market players. Numerous companies and other market participants had to make concessions and compromises for the Law to yield the intended results as quickly as practicable.

Unfortunately, while there is a need in drafting and/or approval of some additional regulations for proper operation of this Law, an array of fundamental changes to it has been already articulated. It is fair to say that 2017 was the year of *green-energy* sector recovery from stagnation. After two-year investment lethargy and hesitancy demonstrated by international financial institutions and other foreign investors as potential funders of new renewable energy projects, 2017 has inspired hope for implementation of new and more powerful renewable energy projects within the next 2-3 years. We would like to bring to your attention that continuous legislative changes have extremely negative impact on the investment climate in Ukraine.

Specifically, a proposed introduction of full liability for power unbalances immediately upon creation of the intraday market – when the defaulting parties will be liable for imbalances with effect from the first anniversary of such market launch – conflicts the

Law of Ukraine "On the electricity market" and, in case of its approval, would reduce to nothing the enormous efforts, time and resources contributed to the drafting and approval of the Law, and would undermine the predictability and trust to this industry in terms of investors' expectations. Since, contrary to Europe, Ukraine does not have in place a state wind forecasting system, new wind-power generation projects in this country are at risk. To avoid such risks, the Law provides for a gradual increase of liability for power unbalances during the period from 2021 to 2030.

In 2020, Europe will reconsider its Renewable Energy (RE) Directives and set new targets for increase of RE share in the EU power balance; consequently, Ukraine will have to amend its laws and regulations accordingly. It is important to keep in mind that, within its commitments to the European Energy Community, Ukraine undertook to ramp up RE share to 11% as a part of the 2020 National Renewable Energy Action Plan (the "RE Plan"). However, today the RE Plan is exposed to risk, while the Ukrainian government will take the consequences if it fails to perform its obligations under it.

We understand that a transition to the auction model is the latest world trend. It is a new form of competition between the traditional and renewable energy. The success of such competition depends on the content and form respective rules, in particular the language of respective provisions of the energy-specific regulations; the manner and time of transition to the new system; the impact of such transition on the projects commenced or implemented by the investors in reliance on the currently available incentives for development of renewable energy, which the Law sets out and guarantees. The market players and regulatory authorities that implement the respective procedures have not discussed the issue up to date; and the time offered for drafting the Concept-related proposals does not suffice to do this work scrupulously. Ill-advised and half-baked changes to the Concept and the renewable energy support principles coupled with continuous legislative changes would destroy, in the first place, the wind energy sector. For this reason, the issue of transition to the auction model should be discussed by an ad hoc task group.

Transition to the auctions is expected to create the conditions under which the investor will be willing to participate in them. For example, the government should guarantee connection to the power grid, allocation of land parcels with sufficient wind resources, etc. Virtually, that is what we see today in some European countries. The proposed Concept seems to be an artificial reduction of the green tariff (the "GT"), while in Europe they treat the auctions as a method for creating new and investor-friendly environment enabling the investors to implement the projects by to pressing the price downwards.

In addition, power capping for all 10MW and more powerful wind power plants (the "WPP") as potential participants of auctions would freeze operations in this sector, since 50 WH or less powerful WPPs are treated as unprofitable and participation in auctions will expose them to enormous risks.

Such qualification requirement for participation in the auction as procurement of a bank guarantee also requires more detailed consideration by the task group(s). To provide for more flexible approach to establishing the conditions and terms of the bank guarantee, we would propose to establish them for each individual auction on a case-by-case basis.

The proposed Concept provides that Solar Power Plants (the "SPs") and WPSs will participate in the auctions. However, according to section 109 of the Principles of

Government Aid in protection of environment and energy in 2014-2020, such market mechanisms as auction sales or competitive bidding are offered to all generating companies that produce energy from renewable sources. With this in mind, we would propose introducing the auction model for all renewable energy producers.

With regard to reducing the financial load on the market/consumers by pressing the GT for the wind power sector downwards, the Law provides for a gradual reduction of the GT: once every five years by 10%. The GT for wind power sector is the lowest than for other renewable source energy sectors and does not affect significantly the energy price on the market overall. Now, it is time to demask all energy costs related to energy generation from traditional sources, including the cost of procurement of import energy producing materials, and the negative environmental impact.

With regard to the Concept provisions prescribing that as of the date of auction (and not the commissioning date) the price should not exceed the GT, we would like to bring to your attention that auctions provide for the market price formation mechanism for renewable energy. However, for the purpose of auctions it is important to take into account the unique features of each energy source and the location of the potential renewable energy project. Specifically, we cannot exclude that the total project cost for Chernobyl area may differ significantly from the construction costs in other regions of this country. For this reason, the issue of price cap requires additional analysis and discussions within the task group.

It is important to note that the existing GT system will be in effect until 31.12.2029. That is, its attractiveness is reducing automatically with every passing month, since the GT period is getting shorter, and a shorter period suggests a lower return on investment (ROI). In addition, in the end the GT will no longer be fixed in Euros and will no longer be attractive for most investors. Consequently, if the government further maintains the GT system, relatively soon the total additional costs associated with green energy will reduce for Ukrainian consumers. Thus, we do not find it reasonable to stop using the existing system: it may operate concurrently with a new one, and investors are sure to elect the new system (with a longer term) once its mechanism becomes more transparent and easy-to-understand.

Your proposal regarding entering into Pre-PPA with the effective period of 2 years for SPPs and 3 years for WPPs conflicts the principles specified in draft law No. 6081 "On amendments to Article 30 of the Law of Ukraine "On regulation of urban development activities" with regard to creating better investment opportunities in the sphere of generation of electricity from alternative energy sources" (available at: http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=61140), which on 28 February 2018 the Ukrainian parliamentarians, members of the Verkhovna Rada Housing and Communal Services Committee unanimously approved for consideration at the second reading. According to the said draft and in general, the effective term for technical specification for connection to the electric grid is 5 years for all renewable sources. Such decision is dictated by the need to take into account the period required for individual projects, subject to the renewable energy source for it. In particular, for WPPs the total period will include time for wind potential measurement (+1 year) and mandatory ornithological research (+1 year) plus the period for environmental assessment (since the mechanism is absolutely new it does not seem feasible to realistically assess the actual time at this stage). Consequently, the effective period of PrePPA should conform to the effective period to be established for the technical specification for connection to the electricity grid for the renewable energy facilities, that is 5 years.

Also, it is important to note that the Concept contains conflicting provisions with regard to the PrePPA effective term. Some provisions establish that PrePPA is concluded in accordance with provisions of law that is in force as of the date of the agreement, even if the facilities is commissioned within 3 years from the PrePPA data. However, other provisions specify that PrePPA is concluded for 2 years for solar power plants, and for 3 years for wind power plants. For this reason, the Concept provisions related to the effective term of PrePPA require clarification and polishing.

Since wind power generation projects require significant time for implementation, in particular for wind potential measurements, mandatory ornithological research, environmental assessment, obtaining funds for WPP construction, feasibility study and technical specification for connection to the electricity grid, it is an unprecedented unfairness to deprive the projects, which as of the date of transition to the auction model have invested substantial resources and efforts into development (have obtained and documented their rights to the land required for wind potential measurement and WPP construction or the technical specification for connection to the electricity grid), of their entitlements to the GT and require that they participant in the auction. Consequently, with regard to implementation of the auction model the new draft law should provide that WPP projects that have obtained land rights and/or technical specification for connection to the electricity grid prior to the date of transition to the auction model, or have signed a pre-PPA (irrespective of the date on which it takes effect), have the right to get the GT before the date of mandatory commissioning of new facilities according to the results of auction without participating in it, with the GT value established by the current version of the Law, subject to the commissioning date. Such approach is consistent with the commitment to protect rights of foreign and national investors, as provided by the applicable law and international treaties, in particular the European Energy Charter.

In view of the foregoing, we would kindly request that you consider comments proposed by the Ukrainian Wind Power Association and discuss further legislative changes with all players of the renewable energy market. It would be reasonable to create an expert panel that would elaborate on these issues taking into account their challenges and consequences for development of the industry and investment climate in this country overall. In any case, any changes, in particular any reduction of the green tariff, should be implemented in 2020 at earliest, subject to the above-mentioned comments, in order to enable construction of new and commissioning of current WPP projects, and, by doing so, to provide for reliable regulatory environment in accordance with the industry-specific incentive mechanisms that have been recently approved by the government and guaranteed by the Law.

Respectfully yours,

A. Konechenkov,
Chairman,
Ukrainian Wind Energy Association.
Vice-President,
World Wind Energy Association