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Project Complaint Mechanism
Attn: Ms. Anoush Begoyan
European Bank for Reconstruction and Development
One Exchange Square
London EC2A 2JN
United Kingdom
Fax: +44 20 7338 7633
Email: pcm@ebrd.com

Subject: Complaint on Rivne Kyiv High Voltage Line Project seeking project compliance review

Country: Ukraine
Project number: 37598
Business sector: Power and energy
Public/Private: Public

3rd January, 2012

Dear Ms. Begoyan,

The public sector Rivne Kyiv High Voltage Line Project¹ was approved for financing by the EBRD in 2007; the loan agreement between the EBRD and Ukraine was signed on 28th February 2008 and ratified by the Parliament of Ukraine on 29th October 2008. The co-financing of the project was approved by the European Investment Bank (EIB) and signed on 20th October 2008 and ratified by Ukrainian Parliament on 1st April 2009.

According to the EBRD's 2003 Environmental Policy that was effective at the time of project appraisal and approval it was screened as a Category A project and therefore was subject to a comprehensive Environmental Impact Assessment, disclosure and public consultations. The full text of the ESIA² was published by the project sponsor Ukrenergo, a state-owned energy company, distributed to interested NGOs on CD and also posted on EBRD's web site where it is still accessible (except the detailed maps of the project sites).

Section 2.2 of the ESIA defines the scope of the loan application and study boundaries³:

"The scope of the present ESIA comprises the following developments:

- *The 750 kV Rivne NPP – Kyiv transmission line, of total length 353km.*
- *The 135km long diversion of 750 kV transmission line Khmelnytsk NPP – Chernobyl to Kyiv substation.*
- *Additional projects will be undertaken to achieve the project objectives, but are outside the scope of this ESIA:*
- *The modernization of the 750 kV Kyiv substation, which requires upgrading works in order to be able to accommodate the new transmission line*
- *Three maintenance stations to be built along the proposed transmission line route"*

However, the loan agreement between EBRD and Ukraine includes other significant parts of the project that were not assessed. According to the Annex 1, paragraph 2 of the Loan Agreement ("Construction of the Rivne – Kyiv 750 kV Transmission Line" Project) between Ukraine and European Bank for Reconstruction and Development⁴:

¹ <http://www.ebrd.com/pages/project/psd/2007/37598.shtml>

² "The ESIA has been prepared for meeting environmental requirements of the European Bank for Reconstruction and Development (EBRD) and European Investment Bank (EIB) that are considering the opportunity to finance the Project. The ESIA report is the main document with the help of which the EBRD and EIB will implement environmental assessment of the Project" – page 1 of the report. <http://www.ebrd.com/pages/project/eia/37598.pdf>

³ ESIA report, page 28. <http://www.ebrd.com/pages/project/eia/37598.pdf>

⁴ http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=985_014

"The project consists of the parts listed below that can be further changed according to agreements between the Bank and Borrower:

- *Part A that is called "Construction of 750 kV overhead transmission line between Rivne NPP and new 750/330 kV substation Kyivska";*
- *Part B that is called "Construction of diversion from the existing 750 kV overhead transmission line Khmelnytsky NPP – Chornobyl NPP to 750/330 kV substation Kyivska";*
- *Part C that is called "Upgrade and modernising of 750/330 kV substation Kyivska by installing the second 750/330 kV auto transformer;*
- *Part D that is called "Construction of two 60-km long 330 kV lines from the 750/330 kV substation Kyivska aimed for securing electricity supply of Borrower's central regions"⁵.*

Thus two significant parts of the project (Part C and Part D⁶) were not assessed prior to the project approval and relevant information was not disclosed to the public for consultations.

We see such an approach as a serious violation of the Bank's Environmental Policy. While the installation of an (1000 kVA) auto transformer could be considered as not being subject to environmental impact assessment, and its omission in the ESIA is not particularly alarming (although raising concerns on the overall quality of the documentation), the complete silence regarding two 60-km long 330 kV lines clearly contradicts with the requirements of the EBRD's 2003 Environmental Policy.

Paragraph 21 of Annex 1 to the 2003 Environmental Policy lists *"Construction of overhead electrical power lines"* as category A projects. The same policy (paragraph 26) says: *"The EBRD believes that meaningful public consultation is a way of improving the quality of projects. The EBRD will foster the principles of public consultation within its region of operations. In the case of projects which have been classified as Category A and thus require an Environmental Impact Assessment, those people potentially affected will have the opportunity to express their concerns and views about issues such as project design, including location, technological choice and timing, before a financing decision is made by the EBRD. At a minimum, sponsors must ensure that national requirements for public consultation are met. In addition, sponsors will have to follow the EBRD's own public consultation requirements, which are set out in Annex 2. The EBRD's Board of Directors will take into account the comments and opinions expressed by consultees, and the way these issues are being addressed by sponsors, when considering whether to approve investment by the EBRD in a project."*

Unfortunately this has not happened in the given case: the financing of two 60-km long 330 kV lines was approved by the EBRD without ANY assessment or public consultations.

Other issues related to the project: As it was discovered recently the ESIA even for the assessed parts of the project contains number of important deficiencies. We have already communicated our findings to the Environmental Department (Annex 1) and are waiting for measures that will address them and hopefully will solve the problem. However by mentioning these we would like to emphasise the gap in quality assessment of the project documentation that was submitted by the project sponsor.

Description of the harm caused, or likely to be caused, by the Project: Despite being projected in 2007-2008 the physical project implementation on-site has not started yet. Therefore no material harm was so far caused, however in 2011 the Accounting Chamber of Ukraine in its report "On the Results of the Audit of the Efficiency of Use of State Budget Funds Provided for the Ministry of Energy and Coal Industry of Ukraine for the Construction of Transmission Lines"⁷ indicates that the project Rivne – Kyiv TL has been poorly developed and that this has led to an almost doubling of the initial cost (from UAH 739 396 000 to UAH 1 219 370 000), the deadline has been shifted several times, but the works have not even started.

The Project is already causing direct financial harm to Ukrainian tax payers. According to the finding of Accounting Chamber in 2008-20108 the EBRD loan has **not been directly used for the construction of the project**, but only for bank charges, the fee for opening of the account and the fee for the consulting company. At the same time debt service payments already constitute EURO 1,624,500. All these expenses are included into the tariff on electricity paid by the citizens of Ukraine. The Accounting Chamber concludes that it is the unlawful actions of Ukrenergo that have led to the cost increases of the project and that they will cause the ineffective use of public funds in the future.

⁵ Unofficial translation from the Ukrainian language.

⁶ The estimated in 2007 cost of Part D was Euro 25 million, out of Euro 300 million total EBRD+EIB project cost.

⁷ www.ac-rada.gov.ua/img/files/Bulet_energet.pdf (p. 18)

⁸ www.ac-rada.gov.ua/img/files/Bulet_energet.pdf (p.26)

Among Ukrenergo's unlawful actions, it has used violent attempts to resolve the conflict that it itself created with the local public during the implementation of another EBRD financed project by diverting the routing of the transmission lines in contravention of the previously approved project. In the case of the Rivne – Kyiv project the described gaps in the project assessment combined with the sponsor's far from ideal performance so far and its frivolous approach to project implementation may lead to potential harm as to environment as well as to the local population. Predicting, preventing or mitigating such harm is rendered impossible by the missing assessment of the project components.

More serious is non-material harm that has been caused already by violating the bank's Environmental Policy. The demonstrated difference in what was appraised and approved from one side and what was agreed for financing from another might undermine the public trust in seriousness of EBRD fundamental commitments declared by Environmental Policy.

Good faith efforts to resolve the issues. NECU has approached the EBRD and co-financier of the project, EIB, several times regarding the issue of the missing parts of the ESIA and other related problems:

May 2010: A meeting was held with EBRD staff at the EBRD AGM in Zagreb where NECU expressed its concerns regarding the ESIA.

September 13, 2010: A letter was sent to Mr. Alistair Clark, Corporate Director, Environmental and Sustainability Department of EBRD, regarding deficiencies of the ESIA and other project related problems. (Annex 1)

October 11, 2010: A letter regarding the problematic issues of the South Ukraine Transmission Project was sent to Mr. Thomas Mirow and the Board of Directors. Our concerns regarding this project were illustrated with examples of underperformance of Ukrenergo in previous projects financed by the EBRD - in particular we pointed to the fact that part of the Rivne - Kyiv project EIA is still missing. (Annex 2)

By seeking compliance review of the Rivne - Kyiv High Voltage Line Project we are expecting a proper investigation of the factors that led to the deviation from the bank's policies. The outcomes of such an investigation should help not only bringing the project into compliance with the policy as soon as possible and before it leads to any material harm, but also to prevent repeat of such flaws in the future.

Sincerely,

Yury Urbansky

Executive Director of the National Ecological Centre of Ukraine