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Position Paper Wind Sector Development

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Rationale

The WWG supports the long-term, sustainable and balanced development of the renewable energy (“**RE**”) sector in Ukraine. The WWG believes it important to find the right balance for the green electricity tariff rate (the “**GTR**”), as well as the right mix of different renewable energy sources and related legislation, including local content legislation, such that electricity rates remain affordable and sustainable for the Ukrainian electricity consumers and energy market participants, while not allowing current legislation to act as a barrier to entry into the sector for investors and developers.

At the same time, the WWG believes that the GTR needs to also act as a stimulus to the very large investments that are required in the renewable electricity generation and electricity grid transmission and distribution systems in Ukraine today. The WWG believes that international (in particular European) experience demonstrates that this balance between various stakeholders can be found, such that consumers, government, the private sector (both Ukrainian and international investors/developers/manufacturers) and the overall environment would all benefit.

While the WWG broadly supports the existing legislation related to the renewable energy sources as a solid basis to begin further development of this sector in Ukraine, there are certain barriers that make it difficult to implement large-scale investment projects for construction of wind farms. Therefore, the WWG proposes the below modifications to existing legislation, in order to continue the process of optimizing and refining the current legal framework, to further increase its efficiency and benefit to the Ukrainian society and to further stimulate private investment into this important business sector for the future of Ukraine.

Recommendations

1. **Local Content (“LC”) Requirement**

As a principal position, the WWG believes that a local content requirement hurts the Ukrainian wind sector, because it runs counter to the principle of free and fair trade, placing

international wind turbine manufacturers in a disadvantageous position compared to their Ukrainian counterparts and introduces inefficiencies into the wind turbine manufacturing process. The WWG also believes that the local content requirement is a violation of Ukraine's commitments according to international law, specifically Ukraine's obligations under the WTO and the European Energy Community Treaties.

1.1. As a practical compromise, the WWG proposes two distinct alternatives (described below as 1.1.a and 1.1.b), which we believe will support local manufacturers in Ukraine while allowing and facilitating entry to international companies, interested in the very promising Ukrainian wind sector.

1.1.a. *"Scaled" Approach to LC*

Link the percentage of the LC requirement to the GTR in the following manner:

- i. $LC \geq 30\%$ but less than 50%, GTR of EUR 0.1131/kWh (no change versus current rates envisaged by the Electricity Law)
- ii. $LC < 30\%$ but $\geq 15\%$, GTR of EUR 0.1017/kWh (10% decrease versus current rates envisaged by the Electricity Law)
- iii. $LC \geq 50\%$, GTR of EUR 0.1244/kWh (10% increase versus current rates envisaged by the Electricity Law)

The above rates would apply to all Wind Power Plants ("**WPP**") commissioned from July 1, 2014 onwards. The wind power plants commissioned before July 1 2014 would retain the GTR of EURO 0.1131/kWh with a $LC \geq 15\%$.

The WWG believes that a "scaled" approach to LC will create a positive incentive for WPP developers to invest into wind farms as opposed to creating a "barrier to entry" as is currently the case. Frequent changes in the legislation, related to LC, and the absence of sufficient normative documents explaining the calculation and the practical application of LC requirement, have already made it impossible for major manufacturers to act in this environment and for most of developers to comply with this requirement.

1.1.b. *Reduction of the LC Requirement to 30%*

Reduce the LC requirement to thirty percent (30.0%) and leave the GTR unchanged.

1.2. *Preliminary Calculation/Consultation Related to LC*

Ukrainian legislation should establish a proper legal framework for a preliminary consultation between a wind park developer and the National Electricity Regulatory Commission ("**NERC**")/International Chamber of Commerce and Industry regarding the local content calculation for a given WPP, prior to the start of WPP construction, in order to provide a sufficient level of clarity to a wind park developer that their proposed WPP will meet LC requirements.

2. Power Purchase Agreement (“PPA”)

2.1. *Bankable Format*

Revise the existing format of the standard PPA approved by the NERC and used by the Wholesale Electricity Market Operator (“**WEM Operator**”) in order to make it a “bankable document” accepted by major international financial institutions.

2.2. *Preliminary PPA*

Revise relevant legislation to allow for the signing of a preliminary PPA between the WEM Operator and a WPP in an agreed format that is “bankable”, according to international standards. The Preliminary PPA would be authorized for execution between the WEM Operator and the WPP, following the WPP’s receipt of a building permit, provided that construction commences within twelve (12) months following receipt of a building permit and execution of the Preliminary PPA. The term of the validity of the Preliminary PPA would reflect the actual proposed term of construction of the WPP plus an agreed “contingency time allowance” of, for example, 12 months.

2.3. *PPA Term*

Allow a PPA to remain valid for the entire term of the GTR.

3. Clarification/Simplification/Elaboration of Procedures

3.1. *Import VAT and Customs Duties/Procedures*

Simplify and clarify the procedure to qualify for import VAT and customs tax exemption for the import of alternative energy/energy efficiency equipment, by removing the requirement to approve the list of respective equipment at the Cabinet of Ministers level and the requirement that VAT exempted equipment not have an analogous product that is already produced in Ukraine. The WWG believes that simply because one turbine manufacturer is manufacturing turbines (or their parts) in Ukraine, that other turbine manufacturers’ products should not therefore be excluded from receiving an import VAT exemption. The WWG supports free and fair trade as well as measures that stimulate the overall development of the alternative energy sector in Ukraine. The WWG believes that import VAT and customs tax exemptions should apply for the duration of the GTR.

3.2. *Clarification of the Complexity Degree of Construction*

Clarify at the level of normative and technical documents the complexity degree of construction related to design and construction of a WPP.

3.3. *Clarification of Procedure to Register Servitude Agreements*

According to Article 100, Part 2, par. 2 of the Land Code of Ukraine: “A landed servitude **agreement is subject to the state registration** in accordance with the procedure established for the state registration of immovable property rights”.

However, **the current procedure** of the state registration of immovable property rights **does not provide for the possibility to register a landed servitude agreement** (as a deed). Instead, under such procedure it is only possible to register a **right** of landed servitude. In view of the aforesaid, we propose to bring Article 100, Part 2, par. 2 of the Land Code of Ukraine into conformity with the current legislation and revise this provision as follows: “A right to use (a landed servitude) **is subject to the state registration** in accordance with the procedure established for the state registration of immovable property rights”.

The WWG would be pleased to participate in and support the process of developing the specific legislative amendments needed to properly and legally implement the above recommendations, including the preparation of specific Draft Laws, by agreed deadlines, for consideration and review by the relevant authorities and stakeholders.