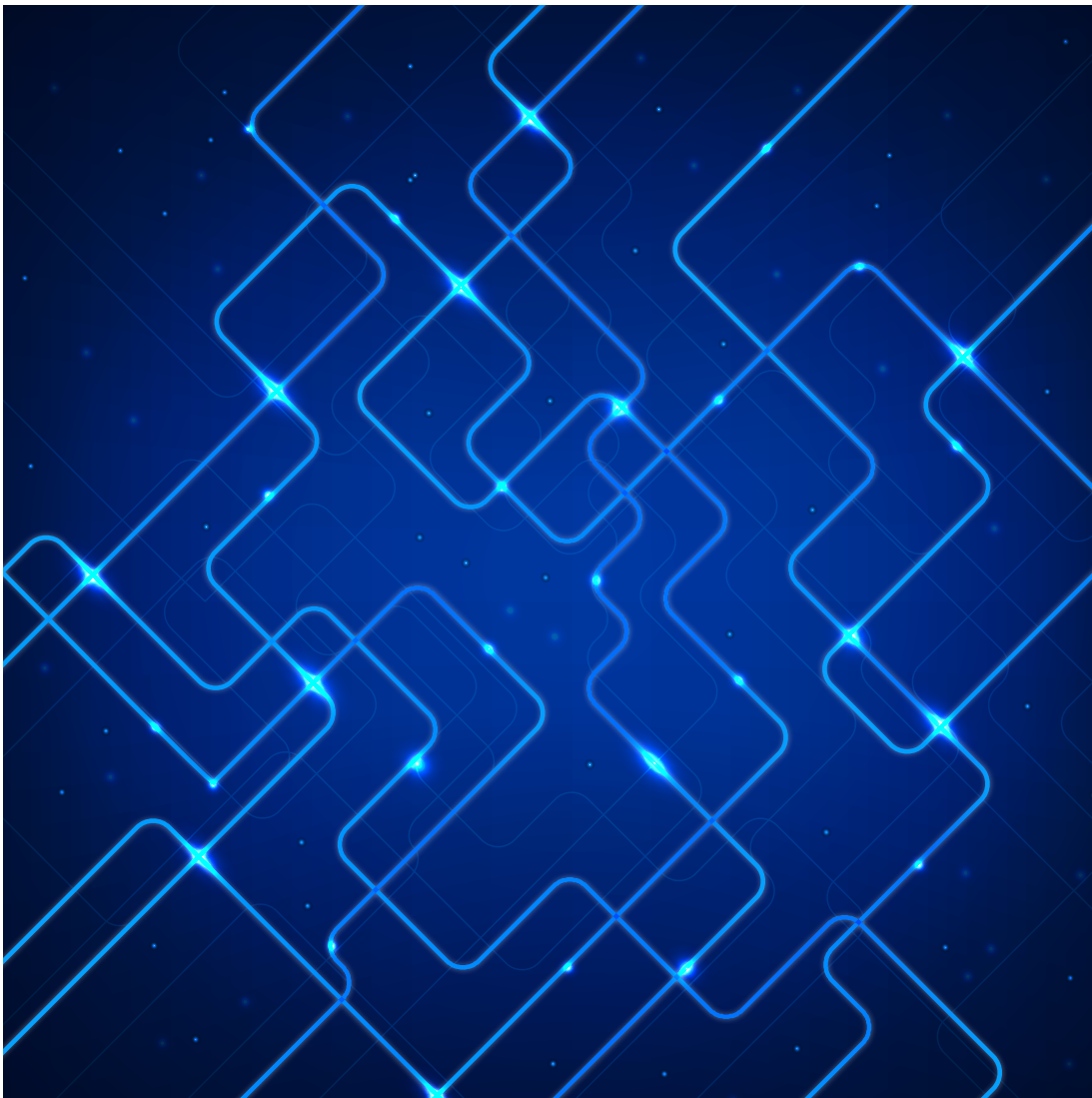


SYSTEMIC REPORT

Getting access
to electricity



July 2015

Contents

1.	FOREWORD	5
2.	ANALYSIS OF UKRAINE'S RANKING IN DOING BUSINESS AGAINST THE EXISTING LEGAL FRAMEWORK	8
2.1.	Basic assumptions for "Getting Electricity" indicator in Doing Business index	8
2.2.	Analysis of Ukraine's ranking in Doing Business 2015 against legal framework as at mid-July 2015	10
	Procedure #1 in Doing Business 2015	10
	Procedure #2 in Doing Business 2015	11
	Procedure #3 in Doing Business 2015	12
	Procedure #4 in Doing Business 2015	13
	Procedure #5 in Doing Business 2015	14
	Procedure #6 in Doing Business 2015	15
	Procedure #7 in Doing Business 2015	15
	Procedure #8 in Doing Business 2015	15
	Procedure #9 in Doing Business 2015	16
	Procedure #10 in Doing Business 2015	17
	Conclusions to the chapter	18
3.	RECOMMENDATIONS FOR FURTHER REFORMS WITH GETTING ACCESS TO ELECTRICITY	21
3.1.	On applying for hook-ups and the list of required documents	
	3.1.1. Option to file a hook-up application in electronic form	21
	3.1.2. Documenting the site of the customer's power unit	22
	3.1.3. Confirming the customer's legal rights to its object or a respective land plot	24
3.2.	Shifting to a fixed rate for getting hooked-up	24
3.3.	Design documentation is prepared by the power utility without issuance of technical conditions to the customer	24

3.4.	Simplifying approval of design documentation by establishing fixed timeframes and using “silent (implied) consent” mechanism	25
3.5.	Improving procedure of land plots allotment required for constructing and operating power networks by using land servitude mechanism	26
3.6.	Hooking up a customer’s power unit to power network pursuant to contract only (without filing a separate application)	27
3.7.	Signing a supply contract	28
3.8.	Arranging building plans (comprehensive construction)	28
3.9.	Streamlining tender procedures for power utilities	28
3.10.	Conclusions to the chapter	29
	3.10.1. Regarding number of “procedures” pursuant to Doing Business methodology	29
	3.10.2. Regarding overall duration of hook-up service	29
	3.10.3. Regarding actual costs of hook-up service	30

1. FOREWORD

This report was prepared to reflect one of the main objectives of the Business Ombudsman Council (the “BOC”) - to provide state bodies with recommendations on how to improve the development and implementation of state policy related to commercial activities and to improve the conditions for doing business.¹

To reach this objective, the BOC is entitled, *inter alia*, to submit proposals and recommendations to the Cabinet of Ministers of Ukraine setting forth ways to removing systemic grounds causing violation of lawful interests of businesses.²

Due to strong public interest and political impact, the BOC’s first systemic report was devoted to the topic of connecting businesses to power networks, a problem known to be one of the main obstacles to doing business in Ukraine. The magnitude of the problem is, among others, evidenced by Ukraine’s 185th place in “Getting Electricity” index in the World Bank’s Doing Business 2015 report.

In the first section of the report we analyze the correlation between the number and duration of procedures used in assigning Ukraine’s ranking in Doing Business 2015, and the state of Ukrainian legislation as of mid-July 2015. We hence noted that some deficiencies related to

the number and duration of procedures had somewhat been mitigated. In particular, from the standpoint of methodology employed in Doing Business, the number of procedure should, in our view, be 5 rather than 10, whereas their overall duration should be in the range of 77–117 days³, not 277 days.

We arrived to such conclusion taking into account revised approach employed in the Rules for Connecting Power Units to Electric Power Networks (approved by NCRECS Resolution #32, dated January 17, 2013), whereby the entire scope of construction and commissioning works, related to external connection of the customer’s power unit to electrical networks (including bringing it on line), shall be carried out by the power utility company (licensee) rather than the customer.

This relieves the customer of the need to seek approval from the State Energy Supervision Authority (Derzhenergonahliad), the selection committee of the State Architectural and Construction Agency, various departments in the Kyiv City Administration, and Kyivenergo (the local power utility). Thus, we have reasonable grounds to anticipate that, as far as “Getting Electricity” index is concerned, Ukraine’s rating in Doing Business 2016 will be markedly higher.

¹ See subsection 3, Para. 4, Regulations “On the Business Ombudsman Council” (“Regulations”), approved by the Resolution of the Cabinet of Ministers of Ukraine #691 dated November 26, 2014 (“Resolution #691”).

² See subsection 6, Para. 6 of the Regulations.

³ This depends on whether construction and commissioning works carried out by the power company (including bringing the object on line), are to be considered a separate procedure from the standpoint of the methodology employed in Doing Business.

In the [second section](#), we elaborate several recommendations that, in our view, will not only make the procedure of connecting to electricity faster and cheaper, but also minimize the corruption component, which currently manifest itself at various stages of providing service to ensure a power connection. This will also help improve Ukraine's international rating.

[These recommendations include, among others, a series of steps to be implemented within the context of a comprehensive reform strategy in this field:](#)

1. to move towards fixed rates for getting hooked up to electricity, with the cost calculation to be based on the quantity of power capacity declared by the customer. This transfers the requirement to prepare a project design to the power utility, which relieves the customer from the obligation to seek technical conditions for getting hooked-up to electricity from the utility company;
2. to simplify the process of approving project documentation by power utility with various third parties by establishing fixed terms for securing such approvals (with the cost calculated based upon the power capacity declared by the customer and implementation of a "silent (implied) consent" mechanism, including the liability of the power utility for any failure to observe such terms, calculated as a percentage of the total cost of getting hooked up, which should be reimbursed to the customer.
3. to improve the current practice of allotting land plots required for constructing and operating power networks through wider use of a land servitude mechanism;
4. to connect customer's power unit to electricity network solely on the basis of the respective power supply contract (no need for the customer to file a separate application);
5. to develop new and improve existing plans for the construction (development) of

territories - often non-existent in practice-, which would make it possible to provide a certain number of land plots on this territory with an external power supply by the time a customer applies to be hooked up;

6. to streamline tender procedures conducted by natural monopolies through wider use of framework contracts.

Put together, the cumulative effect of instituting the propositions presented in this section can be summed up as follows.

[As far as the number of "procedures" in the meaning of the terminology employed by Doing Business is concerned, we expect the total number of procedures to be decreased by 2 \(two\), namely:](#)

1. Due to transition towards fixed rates for getting hooked up to electricity, the customer will no longer be obliged to prepare and approve project documentation;
2. To the extent customer's power unit will be connected to the electricity network solely on the basis of the electricity supply (use) agreement, it will prevent the customer from the need to file a separate application for bringing its unit on line.

[We also anticipate a major reduction in the number of days within which customers can expect their power units to be connected to the network. The following summarizes six main factors contributing to such outcome:](#)

1. the option to file application for getting hooked up to electricity in electronic form;
2. no need to wait for the issuance of a so-called "technical conditions" by the power utility;
3. no need to draw up and/or prepare project documentation;
4. fixed timeframes during which the power company must approve the project documents with third parties, including by

using “silent consent” mechanism in certain circumstances;

5. wider use of the land servitude mechanism, including in relations with local governments, when signatures of respective officials will suffice to have a valid contract, without waiting for a specific decision to be made at a council session;
6. streamlined tender procedures at power utilities by extending the practice of signing framework agreements for supply of goods and/or works (services).

We also anticipate that if our recommendations are implemented, **the factor of corruption** – being quite widespread in this field today – **will be substantially mitigated**. This will make it possible to **significantly reduce the real cost of getting electricity**. What’s more, the switch to fixed fees for getting hooked-up will make it possible for customers to know the real cost of such service from the outset.

This report has been prepared by **Deputy Business Ombudsman Mr. Iaroslav Gregirchak** in cooperation with the Electric Energy Retail Market Division of the National Commission Conducting State Regulation in the Spheres of Energy and Communal Services (NCRECS), PJSC «Kyivenergo», PJSC «Prykarpattiaoblenergo» as well as with the program of the United States Agency for International Development «Leadership in Economic Governance» (USAID LEG).

2 ANALYSIS OF UKRAINE'S RANKING IN DOING BUSINESS AGAINST THE EXISTING LEGAL FRAMEWORK

To make it easier to understand the core of the problem, this section starts with a brief outline of the basic assumptions underlying the rankings in the Doing Business study for the indicator "Getting Electricity".

Next, we analyze the correlation between the quantity and duration of procedures⁴ that were used to determine Ukraine's ranking for "Getting

Electricity" index in the 2015 Doing Business study against the state of domestic legislation as at mid-July 2015.

This section ends with our expectation that, as far as this indicator is concerned, Ukraine's ranking in Doing Business 2016 will be notably higher than it was in 2015.

2.1. Basic assumptions for "Getting Electricity" indicator in Doing Business

The ranking of countries according to the "Getting electricity" indicator in the Doing Business index is based, *inter alia*, on the following assumptions⁵:

Warehouse:

- Property belongs to a local entrepreneur
- Located in Kyiv
- In a district where similar warehouses are located and new hook-ups are not eligible for special investment incentives such as subsidies or faster service.
- In a district where there are no physical obstacles to being hooked up, such as the warehouse being next to a railway line.
- A new building that is being hooked up for the first time
- Two above-ground stories with nearly 1,300 sq m (14,000 sq ft) total floor area. The lot is 929 sq m or 10,000 sq ft.
- Used to store refrigerated products.

⁴ In this section, such criteria for country rankings as the cost of hooking up was not taken into account. For this particular indicator, Doing Business 2015 states that the cost is 165.5% of the average wage per capita for Ukraine.

The average for Europe and Central Asia is 471.1%; the average for OECD countries is 73.2%

⁵ The "Getting electricity" indicator reflects all the procedures that a company must go through for its warehouse to be permanently hooked up to power and have a continuous power supply. Such procedures include requesting to be hooked up, signing a contract with the power company, getting all the necessary permits, completing all external works to be hooked up, having the works and services signed off, and actually getting power. See <http://www.doingbusiness.org/methodology/getting-electricity>.

Connection:

- Uninterrupted.
Three-phase, four-wire, standard power rating of **140 kVA**.
Note: For countries where the network voltage is 120/208 V, the current will be around 400 amps. For a voltage at 230/400 V, the current will be nearly 200 amps.
- The line length is **150 meters**. This means either a **low or medium voltage** connection, either aerial or buried lines, depending on what form is more common in a given country and in the district where the warehouse is located. See diagram in survey.
- Work to establish the hook-up requires crossing a 10-meter wide road (in order to carry out ground works, hook up aerial cable, and so on), but all the land is community property. No other private land is crossed so the warehouse has an access road.
- The line length or section of it on the private land of the customer is not significant.

General:

- Monthly consumption of power averages **26,880 kWh**.
- The internal wiring system has been installed prior up to the location of the operating panel/customer distribution panel and meter input wiring.

2.2. Analysis of Ukraine's ranking in Doing Business 2015 against legal framework as at mid-July 2015

In this section, we analyze the correlation between the quantity and time (duration)⁶ of the procedures⁷ that were used to determine Ukraine's ranking in the Doing Business 2015 study against the Ukrainian legislation as at mid-July 2015.

Procedure #1: in Doing Business 2015

Filing an application for getting hooked up with the Department for Technical Connections at the Kyiv Electrical Networks Division of Kyivenergo and awaiting for the issuance of the so-called "technical conditions".

The *substance* of this procedure remains the same as in Doing Business 2015. The Rules for Connecting Power Units to Electric Power Networks, approved by NERC Resolution #32 dated January 17, 2013 (the "Rules") describe this procedure as follows:

*Filing by a customer of an application for getting hooked up a power unit of a specific capacity with a power company ... along with all necessary documents.*⁸

As for *timeframe*, as of September 1, 2015 the Law of Ukraine "On the Regulating Urban Development" will be amended to provide that technical conditions must be issued within 10 working days (not 15 as now)⁹ from the date of registration of the application. This will reduce the duration of the Procedure #1 in Doing Business 2016 from 15 to 10 calendar days.¹⁰

⁶ "Time" spent is calculated in calendar days. This figure reflects the median time spent that, in the opinion of power supply companies and local power supply experts is required in practice, not required by law, for the completion of a particular procedure with minimum follow-up action and without additional charge. It is assumed that the completion of each procedure takes at least one calendar day.

While the procedures may be completed simultaneously, they cannot be started on the same day, that is, procedures conducted simultaneously begin subsequent days. The procedure is deemed completed at the time that the company receives the final document, such as technical specifications, a certificate of delineation of balance sheet attribution, or permission to operate. The assumption is that the entrepreneur will act without delay and wants to complete each of the remaining procedures as quickly as possible. Time spent by the entrepreneur to gather information is excluded. It is also assumed that the entrepreneur is aware, from the start, of all the requirements and sequences of the procedures for establishing a company, but has not yet met with officials. <http://www.doingbusiness.org/methodology/getting-electricity>.

⁷ "Procedure" means any interaction of the entrepreneur, employees of a private company or the company's chief electrician with third parties, such as power companies, state agencies, electrical installation contractors and electrical companies. The procedures do not include internal interactions among employees of the company and actions related to the installation of inside wiring, for example, drafting and carrying out plans for the installation of an internal electrical system. Even if some operations are conducted within one institution, but in different departments - at different "windows" -, such steps will be considered separate procedures. See <http://www.doingbusiness.org/methodology/getting-electricity>.

⁸ Pursuant to Section 3.1.1 of the Rules.

⁹ See para. 1, Section 3.1.2 of the Rules.

¹⁰ See amendments to Article 30 of the Law "On Regulating Urban Development", introduced by the Law "On Amending Certain Legislative Acts on the Decentralization of Powers in the Field of Architectural and Construction Oversight and the Improvement of Urban Planning Legislation," #320-VIII, dated April 9, 2015.

Sources at NCRECS we sought opinion from confirmed that the Rules will be amended accordingly to reflect the foregoing reduction in the number days.

As for the scope of information to be specified in the technical conditions, Kyivenergo no longer reviews documents related to internal wiring, since only the State Architectural and Construction Inspectorate is authorized to check the readiness of a customer's object. Hence, to the extent technical conditions should not contain requirements related to the customer's internal wiring, the standard hook-up service contract, set forth in Annex 5 to the Rules, should be amended accordingly.

Procedure #2: in Doing Business 2015

Waiting for external hook-up project design to be drawn up by a private electrical engineering firm followed by its approval.

Although the nature and duration of the procedure (45 calendar days from the date the application is filed),¹¹ remains the same as in Doing Business 2015, the Rules provide a more precise description of this Procedure that should be taken into account in Doing Business 2016:

Development of project documentation on external power unit to be conducted by a customer and its [subsequent] approval by the power utility.¹²

Changes compared to Doing Business 2015:

No need to apply to the State Energy Supervision Authority (Derzhenergonahliad)

Previously, in the scenario when a substation was to be installed, customers had to apply to Derzhenergonahliad for approval prior to submitting their project design documentation for approval to Kyivenergo. However, according to the Letter issued by Derzhenergonahliad #09/720, dated April 11, 2014 this is no longer required. Now the procedure is simplified as Derzhenergonahliad no longer reviews and approves electricity supply projects.

No need to agree internal wiring plans with Kyivenergo

Whereas Doing Business scenario contemplates 140 kW capacity load, in the past to obtain approval for external hook-up plans from Kyivenergo, the documentation must have included project design for the internal wiring of the warehouse, which by that time should have already been approved as part of the master architectural plan for the premises. Since the owner of the facility is now solely responsible for the overall quality of the facility, this kind of document is no longer required.

¹¹ See paras. 8 and 9, Section 3.1.7 of the Rules.

¹² Pursuant to para. 1, Section 1.8 and Sections 3.1.4 - 3.1.5 of the Rules and para. 7, Section 3.1.7 of the Rules.

Approval is not obtained from an electrical engineering firm (error in Doing Business 2015) but from (1) Kyivenergo¹³ and (2) Chief Office of Architectural Planning under the Department of Urban Planning and Architecture of Kyiv City Administration.

Such approvals are required to confirm the entry point at which the substation will be hooked up to the power network or routes for laying down 10 kW and 0.4 kW cables.

At this stage, the customer should have already received the permit to operate a warehouse or a master plan (blueprint) that reflects the relief of the terrain. Obtaining the necessary approvals is the responsibility of the design firm, not the customer.

It is worth noting that starting in 2017, 140 kW will fall under the category of so-called “standard connection”.¹⁴ Accordingly, even without changing the existing Rules, Kyivenergo will be obliged to prepare the project design in the scenario employed in Doing Business. This will allow removing stage when a design documentation is being prepared as a “procedure” in the meaning of methodology employed in Doing Business.

Procedure #3:

in Doing Business 2015

Obtaining permit for excavation works from the Urban Development and Environmental Protection Department at Kyiv City Administration.

The substance of the procedure – excavation permit must be obtained to make a trench for laying cables.

Changes compared to Doing Business 2015:

The permit for excavation work must be obtained by Kyivenergo, not the customer

Under the existing Rules, hooking a facility up to the power network is to be carried out by Kyivenergo, not the customer. Accordingly, a permit for excavation works (including the cost of such a permit) is the responsibility of Kyivenergo, not the customer.

Conclusion

Insofar as the customer (or its subcontractor) no longer gets involved with the agency that issues permit, this step should not be considered a “procedure” within the meaning of the Doing Business. This is done by the utility company, which applies on its own to the Urban Development and Environmental Protection Department at Kyiv City Administration.

¹³ Pursuant to Section 3.1.5 of the Rules.

¹⁴ See Section 2 of Final Provisions in the Law of Ukraine #5021 dated June 22, 2012.

Procedure #4: in Doing Business 2015

Waiting for external
connection works to be
completed by installer.

Proposal for Doing Business 2015:

Given the content of the Rules, Procedure #3 in Doing Business 2016 should be worded as follows:

Paying the power utility for services rendered pursuant to the terms of the hook-up contract.¹⁵

In practice, the duration of this Procedure should not exceed 2 calendar days.

Changes compared to Doing Business 2015:

Pursuant to the Rules construction of power networks is conducted by the utility company (in this case Kyivenergo) not the customer, as it was before:

Carrying out construction, installation, pre-commissioning work, and bringing newly constructed or reconstructed electrical systems on line up to customer's hook-up point to be ensured by the utility company.¹⁶

Previously

Once preparation was complete and project design for external hook-up was approved, the customer had to conduct all works related to the external hook-up. This meant that, in order to install the necessary equipment, the customer had to engage a high-quality electrical contractor holding a license to conduct external hook-up works, to install, test and prepare 10/0.4 kW substations and lay down 10 kW and 0.4 kW cables along with a permit enabling it to carry out electrical measurements and test high voltage equipment issued by an electrical laboratory.

Now

The customer must pay for the hook-up service to be made after project design documentation has been prepared and an addendum to the hook-up service contract has been prepared by Kyivenergo specialists (see the revised interpretation of the Procedure #3 above).

The contractor to perform work on the external hook-up of the facility to the power network must be selected via tender by the utility company, in this case Kyivenergo, not by the customer. The customer is no longer obliged to seek approvals to lay cables from the Urban Planning and Architecture Department and Kyivenergo, as it was before. This is now the responsibility of Kyivenergo and its contractor. Moreover, to the extent the customer is relieved from the duty to bring power unit on line, it is no longer required

¹⁵ See Section 3.1.6 of the Rules.

¹⁶ Pursuant to Section 3.1.7 of the Rules.

to prepare a package of 7 to 20 documents, which previously had to be prepared by the contractor for the installation of electrical equipment after taking electrical measurement and testing cable networks, substations (transformers) and other electrical equipment (including internal wiring).

Conclusion

According to the Rules, hooking the customer up to transit networks is the function of the power utility. Hence, the construction of power networks is the responsibility of Kyivenergo, at the expense of the customer. Therefore, this step should not be treated as a “procedure” in the meaning of methodology employed in Doing Business.

Procedure #5: in Doing Business 2015

Inspection of completed works by the review commission of the State Architectural and Construction Oversight Agency.

Change compared to Doing Business 2015:

Previously

The customer had to directly engage in installation of external power networks and had to apply to the review commission of the State Architectural and Construction Oversight Agency, which then issued a so-called “Act on Operation”.

Now

Pursuant to the Rules, all documents related to bringing a customer’s power unit on line shall be prepared by the utility company. It is no longer the responsibility of the customer.

Following completion of the external hook-up works, the utility company must file all necessary documentation with the State Architectural and Construction Oversight Agency, which then issues a document certifying that the facility is ready for operation.

Conclusion

Whereas under the Rules the customer is not involved in commissioning external power networks and all documents related to bringing power unit on line are prepared by Kyivenergo (as the utility company), this step should not be treated as a “procedure” in the meaning of methodology employed in Doing Business.

Procedure #6:

in Doing Business 2015

Inspection of metering units by “Kyiv Electrical Networks” Division of Kyivenergo.

Change compared to Doing Business 2015:**Previously**

The customer had to approach Kyiv Electrical Networks Division of Kyivenergo with the request to inspect metering units.

Now

According to the Rules, Kyivenergo installs metering units for customers and inspects them by itself.

Conclusion

Since Kyivenergo is required to install and to inspect the metering units by itself, this step should not be treated as a “procedure” in the meaning of methodology employed in Doing Business.

Procedure #7:

in Doing Business 2015

Inspection of completed works by the State Labor Protection Inspection.

The substance of the procedure – the State Labor Protection Inspection inspects completed external hook-up works.

Change compared to Doing Business 2015:

Since commissioning of external networks is now the sole responsibility of Kyivenergo (and neither the customer nor its representative is required to be present), this step should not be treated as a “procedure” in the meaning of methodology employed in Doing Business.

Procedure #8:

in Doing Business 2015

Signing a power supply contract with “Energozbut” Division of Kyivenergo **and a technical maintenance agreement with respect to the installed substation.**

Change compared to Doing Business 2015:**Previously**

In order to obtain permits required for power supply (used to be Procedure #9 in Doing Business 2015), the customer first had to sign a supply contract with Kyivenergo (“Energozbut” Division), which could be executed provided that all permits, mentioned in steps enlisted in Doing Business 2015, were received.

The documents needed to sign a contract could have been sent by mail. The list included a number of documents related to internal wiring, including the testing certificate that was supposed to be issued after the electrical engineer finished the installation.

Now

Pursuant to the new Rules hooking-up customer's power unit is the function of the power utility (Kyivenergo). Hence, the power utility is obliged to provide the customer with a signed contract for the use of electricity (when the customer is an individual entrepreneur) or a contract on the supply of electricity (when the customer is a legal entity) – to be done not later than 5 days after external power unit has been commissioned.¹⁷

New term – In Doing Business 2015 20 calendar days were required. Now, a contract on the use or supply of electrical power has to be signed with the customer no later than 5 days after external power unit has been commissioned.¹⁸

Kyivenergo no longer reviews documents related to internal wiring.

As power units are being built by Kyivenergo itself, a contract for technical maintenance of power units is no longer executed between the customer and Kyivenergo.

Conclusion

In Doing Business 2016, the name of this procedure should be shortened to “signing a contract for the supply of electricity”, with no reference to the need to execute maintenance contract with regard to the substation.

Procedure #9: in Doing Business 2015

Seeking permits from various departments of Kyivenergo required for obtaining power supply (occurs simultaneously with previous procedures)

Change compared to Doing Business 2015:

Previously

Following execution of the power supply contract, the customer had to get a set of documents that included a certificate with all substation specifications, its project design, permits from all the necessary agencies, and a form that had to be signed from 6 to 15 departments of Kyivenergo, required to get permission for commissioning and hooking up the substation to a 10 kW power transmission line.

This procedure mainly applied prior to 2013, when networks were often built by the customers themselves, while the regional power companies demanded a variety of documentation for the networks to be properly transferred to their balance sheet (ownership) - that is, documents that mainly involved settling ownership issues. As

¹⁷ Section 3.1.8 of the Rules.

¹⁸ *Ibid.*

this was actually a very cumbersome phase, in Doing Business 2015 it was specified to last for 150 calendar days (although not taken into account that it used to occur simultaneously with previous procedures).

Now

Pursuant to the new Rules, hooking-up customer's power unit is the function of the power utility (Kyivenergo). Hence:

- The customer no longer bears the duty to prepare any documentation, which used to be required to ensure supply of power capacity.
- As the power unit is built by Kyivenergo, the certificate listing all parameters of the substation is prepared by Kyivenergo itself, without any involvement at the part of the customer.
- Since the metering unit is checked by Kyivenergo itself, Procedure #6 as specified in Doing Business 2015 shall no longer be accounted for.
- Power capacity is supplied as soon as Kyivenergo's employee checks the metering unit and contact on use or supply of power is signed with the customer.

Conclusion

This step should not be accounted for as the "procedure" in the meaning of methodology employed in Doing Business.

For the purposes of Doing Business 2016, the number of calendar days should be reduced from 150 to 0.

Procedure #10: in Doing Business 2015

Filing application with Kyivenergo for the supply of electricity and receiving electrical power.

Change compared to Doing Business 2015:

Previously

As soon as the form, envisaged under Procedure #9 in Doing Business 2015, was signed by both the customer and various Kyivenergo departments, the customer had to submit the respective permits and forms with the controller's office at Kyivenergo. The controller's office was supposed to issue an order to proceed with the change of 0.4 kW scheme, followed by the so-called "hook-up order" to be issued by Energozbut's inspector.

Now

Pursuant to the new Rules, hooking-up customer's power unit is the function of the power utility (Kyivenergo). Hence:

- The customer's power unit is now connected to the power company's transmission lines on the basis of the customer's

application,¹⁹ to be conducted within 5 days (if hooking up does not require power to the other consumers to be interrupted) or within 10 days after customer's power unit is commissioned in accordance with the procedure, specified in urban development legislation (if the hook up does require interrupting power to other customers).²⁰

Conclusion

Under the new Rules, this step shall remain to be accounted for as a separate "procedure" in Doing Business 2016. Duration - 10 calendar days.

2.3. Conclusions to the section

Having compared the "Getting Electricity" indicator in Doing Business 2015 with the legal framework at the time when this report was written, we have come up with reasonable expectation that Ukraine's ranking in 2016 should be based on 5 (rather than 10) procedures, and the total number of days should be reduced from 277 to 77 days (or 117 days, if we were to take into account duration of construction and commissioning works (including bringing the power unit on line)).

The logic of our conclusion is illustrated in the following Table 1.

TABLE 1.
COMPARING PROCEDURES AND TIMES IN UKRAINE'S DUING BUSINESS 2015
RANKING AGAINST CURRENT STATE OF THE LEGISLATION

DOING BUSINESS 2015	DOING BUSINESS 2016	DOING BUSINESS 2015	DOING BUSINESS 2016
1			
Filing an application for getting hooked-up with the Department for Technical Connections at the Kyiv Electrical Networks Division of Kyivenergo and awaiting for the issuance of the so-called "technical conditions".		15 calendar days	
2			
Waiting for external hook-up project design to be drawn up by private electrical engineering firm followed by its approval		45 calendar days	

¹⁹ Section 3.1.11 of the Rules.

²⁰ Some regional power companies properly follow the practice of warning third parties in advance, which makes it possible to reduce the time needed for this procedure.

DOING BUSINESS 2015	DOING BUSINESS 2016	DOING BUSINESS 2015	DOING BUSINESS 2016
3			
Obtaining permit for excavation works from the Urban Development and Environmental Protection Department at Kyiv City Administration.	Since it is no longer the customer (or its contractors) but rather the power company itself that interact with the agency issuing excavation permit, this step should not be treated as a “procedure” in the meaning of methodology employed in Doing Business.	3 calendar days	0 days
3			
	Given the substance of the Rules, Procedure #3 should be worded as follows: Paying the power company for rendered services pursuant to the terms of the hook-up contract		2 calendar days
4			
Waiting for external connection works to be completed by installer	According to the Rules, hooking the customer up to transit grids is the function of the power company. Hence, the construction of power grids (networks) is the responsibility of Kyivenergo, at the expense of the customer. Therefore, this step should not be treated as a “procedure” in the meaning of methodology employed in Doing Business.	40 calendar days	0 calendar days
5			
Inspection of completed works by the review commission of the State Architectural and Construction Oversight Agency.	Whereas under the Rules the customer is not involved in commissioning external power networks and all documents related to bringing power unit on line are prepared by Kyivenergo (as the power company), this step should not be treated as a “procedure” in the meaning of methodology employed in Doing Business.	11 calendar days	0 calendar days

DOING BUSINESS 2015	DOING BUSINESS 2016	DOING BUSINESS 2015	DOING BUSINESS 2016
6			
Inspection of metering units by "Kyiv Electrical Networks" Division of Kyivenergo.	Whereas under the Rules Kyivenergo is required to install and inspect the metering units by itself, this step should not be treated as the procedure in the meaning of methodology employed in Doing Business.	5 calendar days	0 calendar days
7			
Inspection of completed works by the State Labor Protection Inspection.	Whereas under the Rules, Kyivenergo commissioning of external networks is the sole responsibility of Kyivenergo, this step should not be treated as a "procedure" in the meaning of methodology employed in Doing Business.	5 calendar days	0 calendar days
8			
Signing a power supply contract with "Energozbut" Division of Kyivenergo and a technical maintenance agreement with respect to the installed substation	Signing a power supply contract with "Energozbut" Division of Kyivenergo	20 calendar days	5 calendar days
9			
Seeking permits from various departments of Kyivenergo required for obtaining power supply (occurs simultaneously with previous procedures)	Pursuant to the Rules, hooking up the customer's power unit to power transmission networks is the function of the power company and the customer no longer bears the duty to prepare any documentation, which used to be required to ensure supply of power (capacity). This step should not be accounted for as the "procedure" in the meaning of methodology employed in Doing Business.	150 calendar days	0 calendar days
10			
Filing application with Kyivenergo for the supply of electricity and receiving electrical power.		3 calendar days	10 calendar days

3 RECOMMENDATIONS FOR FURTHER REFORMS WITH GETTING ACCESS TO ELECTRICITY

In this section, we present a series of additional recommendations that, in our opinion, will not only make the procedure of hooking up to electricity faster and cheaper than currently, but will also minimize the corruption component currently manifesting itself at various stages of rendering hook-up services. This, in its turn,

should further improve Ukraine's international ranking.

Hence, below we outline the set of steps that we believe should be implemented within the framework of an all-encompassing reform strategy in this area.

3.1. On applying for hook-up and the list of required documents

3.1.1. Option to file a hook-up application in electronic form

Countries such as Germany and Georgia offer customers the option of applying in electronic form, including via e-mail. Because the current Rules require applications to be submitted in person, nowadays this is not an option in Ukraine.

We suggest simplifying the process by allowing customers to submit applications in electronic form, for instance, via e-mail, regardless of whether the hook-up is "standard" or "non-standard" type.

To the extent Ukraine's regional power companies (or oblennergos) might be concerned about possible fraud in the submission of electronic documents, in our view such fears can be considerably offset by a properly functioning mechanism for electronic digital signatures; substantial statutory liability on the part of applicants for forging documents and submission of false information; and existence of a properly established system of communication between oblennergos and their current and future customers.

3.1.2. Documenting the site of the customer's power unit

According to the new Rules, the customer's application shall, among others, include:

*"a situational plan indicating the location of the power unit and an extract from the topographic and geodesic plan in 1:2000 scale, marking the location of the power unit, the land parcel, and the expected connection point."*²¹

An extract from the topographic and geodesic plan in 1:2000 scale is required in such a form only in Ukraine. In Poland, for example, all that

is necessary is a project plan, or even a sketch indicating the facility location.

It is known that with a standard connection Kyivenergo now accepts extracts from territorial plans printed from Google Maps or Yandex Maps. Clearly, this practice should be extended to all oblennergos.

Yet, any further streamlining of this requirement will only be possible with the introduction of a national geodesic information system ("NGIS")

²¹ Section 1.3 of the Rules.

covering all key networks and making it a requirement that all licensees update it in real time. Ideally, the NGIS should be incorporated as one of the information data components of the State Land Cadastre.²² However, given

the considerable scope and cost of this task, it appears that this can only be implemented in the medium or long term.

3.1.3. Confirming the customer's legal rights to its object or a respective land plot

Due to expanded access to electronic registries administered by the Ministry of Justice and in order to promote their wider use in practice, we suggest that a reference to the document confirming the customer's legal rights to its facility (or a respective land plot) be presented in the following adjusted wording of the respective paragraph of the Section 1.3 of the Rules:

"an extract from the Registry of Real Rights in Immovable Property, or copy of another document evidencing the right of ownership or use of the object or, if there is no object, the right of ownership or use of the land plot."

3.2. Shifting to a fixed rate for getting hooked-up

At present, in Ukraine the entire cost related to a non-standard hook-up is borne by the customer. Ideologically, this is a kind of a so-called "deep" hook-up, where the customer effectively has to pay in full for the expansion of the utility company's network.

Businesses justifiably complain about the unpredictability and the corrupt nature of this approach when (1) they actually cannot plan the cost of a hook-up; and (2) even engaging their own design organization does not rule out the need for a final approval to be sought from the utility company and other authorities.

In short, Ukraine urgently needs to find an approach to the calculation of hook-up service costs that not only balances the interests of utility companies and their customers, but also eliminates the corruption component.

Having analyzed the points of view on this issue of the representatives of the NCRECS, licensees and businesses, the BOC generally supports the approach discussed within the professional community, which advocates switch to a fixed hook-up rate, that is, a fixed price for every MW of power.

Such an approach would have three immediate benefits:

1. in most cases, the hook-up cost will depend solely on the amount of declared capacity;
2. the current division of connections into "standard" and "non-standard" will be dropped; and
3. the customer will finally have the opportunity to receive hook-up service on a "turnkey" basis.

²² See, for example, Article 15 of the Law of Ukraine "On the State Land Cadastre", which lists the information about a land plot that must be included to the State Land Cadastre.

We expect such an approach to make it possible to eliminate a number of drawbacks and corruption-engendering components inherent today, namely:

- 1.** The current Methodology for Calculating the Charge for Connection of Power Units to Power Networks, approved by the NERC Regulation #115, dated February 12, 2013 (the "Methodology") can be dropped. Notably, market players (both licensees and entrepreneurs - potential customers for hook-up services) have repeatedly pointed out that the Methodology is very subjective when different licensees can calculate the ultimate fee amount differently - even when the basic factors in the calculation are the same.
- 2.** Since the hook-up fee will depend solely on the declared capacity, the latter should be well known to the applicant (from, say, information on the customer's project design). Hence, the cost will be known from the outset and will not depend on such factors as the distance between the customer's power unit hook-up point and power utility's network. This will allow the customer to:
 - a) predict and fix its hook-up costs prior to commencing the hook-up process; and
 - b) in some cases, avoid abuse by third parties that own private electrical networks and which happened to be located closer to the customer's power unit but are not a power utility.
- 3.** With transparent pricing, oblenergos will draw less attention from the Anti-Monopoly Committee and law-enforcement agencies.
- 4.** Oblenergos will be able to better plan the expansion of their networks, especially when it comes to the procurement of a specific range of equipment (goods) and services, and the establishment of reserve transformer capacity.

It is worth noting, however, that a key obstacle that might adversely affect the prospects for shifting to a fixed hook-up fee lies in the disparity between actual costs incurred by oblenergo and the real volume of financing that could be received from a given customer.

This raises the very real question how oblenergos will finance the construction of new networks once the hook-up fee is fixed.

One such source could be a share of the profit generated from transmission rates, based on the cost/rate setting mechanism already used by the NCRECS. However, due to the lack of previous practice, the one cannot expect a clear and transparent approach to calculating an economically substantiated rate for the fixed hook-up fee to be elaborated by the regulator immediately.

Nevertheless, switching to a "turnkey" hook-up mechanism should, in its turn, facilitate the approach whereby transmission rate is incorporated into a user fee. By this, we mean applying the most widespread practice in advanced countries, where some part of the power utility's network development costs are covered not only by future customers (through a fixed hook-up fee) but also by existing ones (through user fees).

At the same time, the so-called "social" hook-ups (up to 16 KWh) and large installations (with a declared capacity of over 1000 kWh) would not be part of this financing mechanism, namely: (1) the cost of social hook-ups would be fully covered by the power utility; and (2) large hook-ups would be fully covered by the customer according to agreed-upon design documentation and cost estimate.

3.3. Design documentation is prepared by the power utility without issuance of technical conditions to the customer

Since the power utility is no longer responsible for the state of the customer's internal networks and constructs external networks on its own, we suggest that responsibility for preparation of design documentation for all types of hook-ups shall be borne by the power utility. At present, the licensee produces design documentation only for a "standard" connection.

Nevertheless, it is crucial to note that a simultaneous switch to a fixed hook-up fee is a key precondition for a successful implementation of this approach (see Section 3.2 above).

Provided that the foregoing conditions are met, the one may objectively expect the four main outcomes from implementing such a comprehensive approach:

- 1.** The customer will avoid waiting for technical conditions after filing a hook-up application. Hence:
 - a) technical conditions can be dropped from the list of mandatory annexes to a template hook-up contract (see Annex 5 to the current Rules);
 - b) the duration of Procedure #1 in Doing Business will be cut from 15 to 1 calendar day.
- 2.** The cost of producing project design documentation will be clear and remain unchanged up to the moment the hook-up is actually in place - say at the level of the currently envisaged 10% of the total hook-up cost.²³

- 3.** Arbitrariness on the part of some oblenergos with respect to the content and quantity of technical conditions will be eliminated, as these will no longer be issued for the customer.

- 4.** The customer will no longer risk dealing with unreliable firms licensed to produce project design documentation as this function is completely shifted to the power utility. Notably, there have been too many cases of duplicitous - even criminal - actions on the part of such firms, who took money from customers, never submitted the project documentation to the licensee, and/or just disappeared.

Meanwhile, the manner in which natural monopolies select such licensed contractors to produce design documentation should be strictly controlled by the appropriate branch regulators.

In the case of oblenergos, NCRECS could streamline this kind of activity by using a mechanism to set item-specific costs, which should avoid the practice of oblenergos declaring losses and demanding that the regulator indemnify them by raising regulated tariff.

²³ See, generally, the Rules for Calculating the Cost of Design and Survey Works and Expert Review of Design Documentation for Construction (DSTU B. D.1-1-7:2013).

3.4. Simplifying approval of design documentation by establishing fixed timeframes and using “silent (implied) consent” mechanism

The general rule is that the customer should approve project design documentation, that should be compliant with urban planning legislation.²⁴

Regardless of the type of hook-up, project design must be agreed upon with the owners of other networks, various institutions and organizations, and the owners of the respective land plots (including any local government), where the power facilities are to be located.²⁵

Such endorsements consume enormous amounts time and include a considerable corruption component. The total timeframe for providing hook-up services (between 15 and 45 days for a standard connection, depending on the power unit's capacity),²⁶ can, in practice, be too short to obtain all these approvals. With a non-standard hook-up, although the Rules say that the customer must have project design agreed upon by the power company within 15-30 working days,²⁷ the real timeframe, within which agreement from other agencies will be obtained cannot be realistically predicted.

Some oblenergos have been known to evade endorsements on project design documentation by extending the regime of a so-called “technical re-equipment” to new hook-ups as well.²⁸

Still, by applying a more systematic approach whose positive impact would equally affect the customer and the power utility, the total time actually required for approving project design documentation could be considerably reduced by:

1. setting fixed timeframes during which, in the case of a non-standard hook-up, project design must be agreed upon by owners of various utility networks (gas, water, communications) and the owners of related land plots; and
2. adopting the “silent (implied) consent” mechanism in relations with most (if not all) of these agencies, including local government bodies.

While the foregoing two steps should be implemented already now, as far as medium- or long-term perspective is concerned, it appears that the problems with approving project design could be resolved through widespread use of data from detailed territorial plans - where “red lines” mark so-called “network corridors”²⁹ – and/or with a full-scale NGIS, discussed in Section 3.1.2 above.

²⁴ In particular, Section 2.2 of the Rules for Using Electrical Power, approved by NERC Resolution #28 dated July 31, 1996, as reworded by NERC Resolution #928 of August 22, 2002.

²⁵ For example, in Kyiv, the power utility itself (for a standard hook-up) or the customer (for a non-standard hook-up) in addition to the Chief Office of Architectural Planning under the Department of Urban Planning and Architecture of Kyiv City Administration must have project design agreed upon by many other agencies, whose number can be as many as 12 (!!!), including the Kyiv Traffic Police Department, the Southwestern Railway, Kyivavtodor, Kyivgas, Ukrtelecom, Kyivvodokanal, the Kyiv City Administration Cultural Heritage Protection Bureau, and Kyiv Metropolitan.

²⁶ See Section 2.1.3 of the Rules.

²⁷ See Section. 3.1.7 of the Rules.

²⁸ See the Rules for Commissioning Technically Re-equipped and Replaced Components in Active Electrical Network Facilities, of 0.38 to 110 (150) kW capacity, approved by the Order of the Ministry of Energy #691, dated November 8, 2011.

²⁹ See Para. 4, Article 39 of the Law of Ukraine “On the Regulation of Urban Planning.”

3.5. Improving procedure of land plots allotment required for constructing and operating power networks by using land servitude mechanism

Sometimes the start of construction or operation of a power unit is delayed due to problems with the rights of the power utility to use the land plots on which the substations or supporting structures (such as overhead power lines) are to be located.

In practice, allocation of land plots is documented through land lease agreement or a servitude agreement executed with owners of the respective land plots.

Since the main purpose for power utilities is *to ensure access to their infrastructure* (i.e., right to have a restricted use of a land plot), in our view, the essence of these legal relationship are better conveyed through mechanism of land servitude rather than a land lease agreement.

Notably, a legal regime of land servitude enabling placement of power facilities and power transmission lines is already envisaged in Article 16 of the Law of Ukraine “On the Land Used for Electricity and Legal Regime of Special Zones for Power Facilities.” Hence, in addition to public awareness campaigns,³⁰ the following changes in the legislation should contribute to making land servitude mechanism to be more popular:

1. For land plots that are in communal ownership - not requiring a servitude agreement to involve a decision by vote during a session of the local council, but accepting as sufficient the signature of authorized officials, such as the mayor, the land department manager, and the council secretary. Since local government bodies tend to endlessly delay³¹ decisions on land allocation (or avoid making them altogether), it should allow to significantly reduce the time needed to allocate land plots that are in communal ownership.
2. Ensuring that general grounds for termination of land servitude agreement³² may, in certain cases, not apply to servitudes executed for the placement of electrical facilities.

As the implementation of these recommendations should streamline the allocation of land plots for construction and operation of the customer's power units, we expect this to not only reduce the overall duration of a hook-up service, but also eliminate the corruption component inherent to this phase.

³⁰ Some land owners believe, mistakenly, that land servitude agreements cannot be executed on a paid basis.

³¹ There have been many cases where the power utility turned to a local government body to agree to allocation of a land plot only to have to wait 2-3 months until the next council session.

³² See, among others, Para. 3 of Article 406 of the Civil Code of Ukraine: “The owner of a land plot is entitled to request termination of servitude if it interferes with the use of the land plot as designated.”

3.6. Hooking up a customer's power unit to power network pursuant to contract only (without filing a separate application)

According to the current Rules, a customer's power unit is hooked up to the power utility's networks on the basis of the customer's application.³³

Indeed, the previous practice was that, before entering into a contract for the supply or use of electricity, a customer had to submit an application to the power utility to inspect the metering unit. The utility's inspector would then prepare all the necessary documents at the facility site, in front of the customer.

Now, however, inspection of the metering unit is the obligation of the power utility. This means there is no longer a need for the customer to file a separate hook-up application after signing the contract.

Hence, we propose the basic (default) approach, whereby electricity should be made available within a few days after a supply contract is executed,³⁴ without requiring the customer to file a separate application. In those situations, where the customer does not want the hook-up to take place immediately after signing a supply (or use) contract, we propose using the existing approach, which involves filing a separate request.

If this recommendation is adopted, it will eliminate one of the "procedures" from the standpoint of methodology employed in Doing Business.

3.7. Signing a supply contract

A customer's power unit can be commissioned by the power utility before the customer's facility becomes operational.

Thus, as an extension of our proposition in Section 3.6 above, we suggest a slightly revised description of this procedure:

"The power utility provides the customer with a signed contract for the use or supply of electricity within 5 days after commissioning the outside power supply unit or the customer putting its facility into operation, whichever of these takes place later."

³³ See Section 3.1.11 of the Rules.

³⁴ The Rules currently are not clear about the point in time when the customer is supposed to sign the power supply/use contract.

3.8. Arranging building plans (comprehensive construction)

Under the general rule, development of power utility's networks, that involves provision of hook-up services, shall be carried out in conformity with local area development plans.³⁵

Moreover, decisions on planning and building a territory are taken by competent local authorities in compliance with urban planning documentation.³⁶

In practice, however, territories often have no such plans, which tends to delay the process.

This makes it quite critical that such detailed development plans become more common, at least in the medium term or, failing that, at the

level of pilot projects. This would help develop plans for the electrification of less developed territories, and provide that a certain share of income component of tariff may be allocated to finance implementation of such projects.

Ideally, this will also provide a certain portion of land plot in a given territory with connection to the external power networks by the time a customer applies for a hook-up.

3.9. Streamlining tender procedures for power utilities

Since the power companies are natural monopolies, they are subject to special requirements when procuring goods and services.³⁷

Specifically, if the value of the goods or services being procured is UAH 1 million or more, or of works is UAH 5million or more, the purchase must be carried out in the manner prescribed by the Law "On State Procurement." The law establishes the timeframe of procurements, which adds up to at least 70 days: 20 days for the submission of proposals, 20 days for review and acceptance, 30 days for signing a contract.³⁸

Here, we encourage power utilities to expand the practice of entering into framework agreements for the supply of works and/

or services. Some oblenergos have already successfully run tenders for the selection of contractors using framework agreements in various rayons (districts) of their oblasts.

Experience proves that such an approach can reduce the duration of the hook-up service (regardless of the type of hook-up) and optimizes costs of the power utility.

³⁵ See Section 1.3 of the Methodology.

³⁶ See Para. 3, Article 8 of the Law of Ukraine "On Regulating Urban Development."

³⁷ According to (1) Point 3, Section 4, Chapter XI of the Closing Provisions of the Law of Ukraine "On State Procurement"; and (2) Para. 1 and 3, Article 2 of the Law of Ukraine "On the Peculiarities of Procurement in Certain Areas of Economic Activity."

³⁸ See Par. 3 Article 21, para 9 Article 28 and para 2 Article 31 of the Law of Ukraine "On the Peculiarities of Procurement in Certain Areas of Economic Activity".

3.10. Conclusions to the section

Put together, the cumulative effect of instituting the propositions presented in this section can be summed up as follows.

3.10.1 Regarding number of “procedures” pursuant to Doing Business methodology

As far as the number of “procedures” in the meaning of the terminology employed by Doing Business is concerned, we expect the total number of procedures to be decreased by 2 (two), namely:

1. Due to transition towards fixed rates for getting hooked up to electricity, the customer will no longer be obliged to prepare and approve project documentation; and
2. To the extent customer’s power unit will be connected to the electricity network solely on the basis of the electricity supply (use) agreement, it will prevent the customer from the need to file a separate application for bringing its unit on line.

3.10.2. Regarding overall duration of hook-up service

We also anticipate a major reduction in the number of days within which customers can expect their power units to be connected to the network. The following summarizes six main factors contributing to such outcome:

1. the option to file application for getting hooked up to electricity in electronic form;
2. no need to wait for the issuance of a so-called “technical conditions” by the power utility;
3. no need to draw up and/or prepare project documentation;
4. fixed timeframes during which the power company must approve the project documents with third parties, including by using “silent consent” mechanism in certain circumstances;
5. wider use of the land servitude mechanism, including in relations with local governments, when signatures of respective officials will suffice to have a valid contract, without waiting for a specific decision to be made at a council session;
6. streamlined tender procedures at power companies by extending the practice of signing framework agreements for supply of goods and/or works (services).

3.10.3. Regarding actual costs of hook-up service

We also anticipate that if our recommendations are implemented, the factor of corruption – being quite widespread in this field today – will be substantially mitigated. This will make it possible to significantly reduce the real cost of getting electricity.

What's more, the switch to fixed fees for getting hooked-up will make it possible for customers to know the real cost of such service from the outset.



Podil Plaza Business Centre,
30A Spaska St.,
04070 Kyiv, Ukraine
(entrance from 19 Skovorody Str.)

Phone: +380 (44) 237-74-01
Fax: +380 (44) 237-74-25
E-mail: info@boi.org.ua

www.boi.org.ua

