

To:

Compliance Committee
of the UN ECE Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters

through the Secretary to the Aarhus Convention
United Nations Economic Commission for Europe
Environment and Human Settlement Division
Room 332, Palais des Nations
CH-1211 Geneva 10, Switzerland

From:

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With regard to communication ACCC/C/2014/118 concerning compliance by Ukraine with the provisions of the Convention in connection to production sharing agreements

In light of the Committee's questions to the Party concerned from July 27th 2018 and the Party's reply from November 08th 2018, EPL sends its regards along with additional information relevant to the communication.

Additional information to some Questions from the Committee to the Party concerned:

1. What is the current legal status of the Production Sharing Agreements (PSAs) agreed in 2013? If either Chevron or Shell reconsidered their position and decided to resume the contractual relationship, could the original PSAs be brought back into effect or would the entire tendering process have to begin again?

2. Is it possible to transfer the rights arising under the two PSAs agreed in 2013 to new investors to replace Chevron and Shell without initiating a new tendering process and developing a new PSA(s)?

On January 24, 2013 the Government of Ukraine, Shell Exploration and Production Investments B.V. and Nadra Yuzivska Ltd signed a Product and Sharing Agreement with respect to the Yuzivska field (Yuzivska PSA). Prior to that Shell won the official tender carried out by appropriate state institutions. The Government of Ukraine made it obligatory for any bidder to include a state associated company (Nadra Yuzivska) as co-investor.

In Yuzivska PSA, Shell and Nadra Yuzivska became equal investors (50/50%), yet Shell was named as operator – a party acting on behalf of all investors, responsible for all investment commitments and having exclusive rights to conduct extraction of hydrocarbons within the given field. From 2015 Nadra Yuzivska is 100% owned by the National JSC Nadra Ukrainy.

In September 2015, after two years of operations, Shell withdraw from the Agreement. Nadra Yuzivska became a sole investor in Yuzivska PSA. Yet being unable from both financial and technical points of view to develop the field, Nadra Yuzivska itself carried out a new tender to attract a new investor.

In July 2016, Nadra Ukrainy announced a winner - Yuzgas B.V. – a company registered in Netherland just a few days before the tender with the share capital 1000 euros. They also announced that the new technical operator would be a Slovak company Nafta.

According to their own web-page (<http://yuzgaz.com/en/>) Yuzgaz B.V. is a project management SPV established by the private equity fund Emerstone Energy SCSP for the purpose of the participation in the bid for the exploration and production of hydrocarbons in the Yuzivska field within the framework of the Product and Sharing Agreement with the Government of Ukraine.

Since August 2016 Nadra Yuzivska Ltd and Yuzgaz B.V. repeatedly submitted requests to the Cabinet of Ministers of Ukraine for obtaining the State's consent for the assignment of Participating Interests of Nadra Yuzivska Ltd in the rights and obligations of investor under Yuzivska PSA for the benefit of Yuzgaz B.V. From the bits and pieces in the press we know the Yuzivska PSA essentially was supposed to remain the same only with the new co-investor and the amendments to investment commitments.

The Government rejected the request. The investors filed a lawsuit alleging that the protocol decision of the Cabinet of Ministers of Ukraine dated 02.11.2016, wherein it rejected assignment of rights and obligations of investor under the Yuzivska PSA, is illegal and asked the court to cancel it and oblige CMU to proceed with the review of the investor's request to approve the assignment. Courts (including High Administrative Court of Ukraine in July 2017) agreed with the plaintiffs.

On August 9th 2018 the governmental Committee approved a draft of the Cabinet of Ministers' decree on the assignment of 90% of Nadra Yuzivska Ltd rights and obligations under Yuzivska PSA to Yuzgaz B.V.

On Dec 18th 2018 the Cabinet of Ministers issued its consent for the assignments of rights and obligations under Yuzivska PSA to Yuzgaz B.V, approved 2 draft addendum agreements to the Yuzivska PSA and authorized the Minister of Energy to sign them on behalf of the Government of Ukraine.

The investor plans to immediately begin works with the goal of producing 20-30 million cubic meters of gas in 2019, and 100 million cubic meters of gas the following year. Under the basic scenario, investors plan to produce 1 billion cubic meters of gas already in 2022, and in three or four years to increase production to 6-7 billion cubic meters of gas per year and keep it at this level for 20 years.

The explanatory note to the above-mentioned decision of the Cabinet of Ministers from Dec 18th 2018 says that in Ministry's opinion (Ministry of Energy) the State's consent and addendum agreements do not require state expertiza (assessment procedure) on financial, legal and other issues (including environmental); only new PSAs require that. It is also their opinion that amendments to the PSA law made by EIA law also concern only new PSAs, whereas the PSA in question was signed back in 2013.

3. Are the full texts of the two PSAs agreed in 2013 now available to the public?

(a) If not, please explain the legal basis on which they are not available to the public.

(b) If the full texts of the PSAs have not been publicly released, please explain how article 4, paragraph 6, of the Convention has been applied to ensure that all parts of the PSAs that are not explicitly within the scope of one of the exceptions in article 4 of the Convention have been made available to the public.

(c) If the PSAs have been publicly released, either in full or in part, please send a copy of these documents to the Committee, together with an English translation thereof.

None of the PSAs, including two PSAs agreed in 2013, are available to the public. None of the domestic litigation initiated for the purpose of lifting the limited access information status of the PSAs proved fruitful.

4. Are the mineral extraction permits for the Yuzivska and Olseka fields now available to the public?

(a) If not please explain the legal basis on which they are not available to the public.

(b) If the full texts of the permits have not been publicly released, please explain how article 4, paragraph 6, of the Convention has been applied to ensure that all parts of the permits that are not explicitly within the scope of one of the exceptions in article 4 of the Convention have been made available to the public.

(c) If the mineral extraction permits have been publicly released, either in full or in part, please send a copy of these documents to the Committee, together with an English translation thereof.

The mineral extraction permit for the Yuzivska field was issued to both Shell and Nadra Yuzivska (an original copy to each). It is valid until 2063 (50 years from signature in 2013). Shell paid over 3 million euro for that permit.

EPL gained access to the copy of the permit in the result of a lengthy litigation (*the copy in Ukrainian and its unofficial translation are attached*). As it seems from a three-page long document, it only contains information on its number and issue date, the coordinates of the given field, hydrocarbons allowed to be extracted, validity period of 50 years and two permit holders – Shell and Nadra Yuzivska. It is also stated in the permit that all of the terms of the planned extractive activities are included in the PSA itself.

Furthermore, for some time now many of the mineral extraction permits are available at the webpage of State Entity “Geoinform”. The permit for Uzivska field is available at http://geoappl.kiev.ua:8888/reports/rwservlet?us&report=lic_sp1.rdf&sequn=1052435

In accordance to Article 26.2 of the Law on PSAs once the addendum agreement on the assignments of rights and obligations under a PSA to a new investor is signed, all previously issued licenses and permits are reissued within 30 days.

Best regards,

Yelyzaveta Aleksyeyeva

