

Dniester Pumped Storage Plant in the context of international agreements and standards

The Dniester Pumped Storage Plant (PSP) project poses a number of serious technical, economic, and environmental problems and risks. Among these are the adverse geological, seismic and hydrological implications for the lower reaches of the Dniester River and Delta, the marshy and reedy banks of which are recognized as a World Natural Heritage site under the Ramsar convention.

In addition to the concerns raised in a letter to the World Bank on 15 December, 2007, as well as in the Bankwatch position paper “Dniester Pumped Storage Plant: project risks,” a number of problems are present related to the compliance of the Dniestr PSP with international agreements and standards.

Alternatively, better solutions exist to solve the lack of regulative capacities that afflict the Ukrainian energy system. These opportunities include the modernisation of energy systems management and the installation of capacities with high cyclic load capabilities, such as heat power plants and other forms of minor power plants including renewable energy sources.

Espoo Convention on EIA in a Transboundary Context

”The Espoo Convention on Environmental Impact Assessment (EIA) in a Transboundary Context” gives a clear definition for transboundary impacts:

- *““Transboundary impact” means any impact, not exclusively of a global nature, within an area under the jurisdiction of a Party caused by a proposed activity the physical origin of which is situated wholly or in part within the area under the jurisdiction of another Party”.*

The Dniester PSP project sponsor Ukrhydroenergo denies the possibility of transboundary impacts in Moldova despite that its border crosses the territory of the PSP hydraulic complex. The “Scientific-Environmental Expert Assesment of the Dniester PSP Completion Project documentation” from the Ukrainian Institute of Environmental Geochemistry states that “There is no impact of Dniester PSP construction on the territory of Moldova.”

- Paragraph 3 of the Convention Provisions states: *“The Party of origin shall ensure that in accordance with the provisions of this Convention an environmental impact assessment is undertaken prior to a decision to authorize or undertake a proposed activity listed in Appendix I that is likely to cause a significant adverse transboundary impact”.*

Nevertheless, the Ukrainian government, to our knowledge, did not notify Moldova about a project decision prior to its authorization to undertake activities on Dniester PSP. Espoo convention focal point in the Ministry of environment of Ukraine was not able to confirm that such notification has been sent.

- Paragraph 6 of the Convention Provisions state: *“The Party of origin shall provide, in accordance with the provisions of this Convention, an opportunity to the public in the areas likely to be affected to participate in relevant environmental impact assessment procedures regarding proposed activities and shall ensure that the opportunity provided to the public of the affected Party is equivalent to that provided to the public of the Party of origin.”*

However Ukraine has not provided an opportunity for the Moldavian public in areas likely to be affected to participate in the public consultations on the PSP project.

Intergovernmental agreement between Moldova and Ukraine on transboundary waters

- Article 2 of the “Intergovernmental agreement between Moldova and Ukraine on transboundary waters” suggests that: *“Pursuant to this Agreement, either Contracting Party shall not take, without prior consent, any actions in the field of water management... which may cause change in the conditions of waters within an area under the jurisdiction of another Contracting Party, including any change in the location of a water body, water depths, water levels, water quantity and quality, that may result in any loss or damage to water bodies, fisheries, land, structures or any other assets; or that may lead to an abrupt alteration of water regime, modification of main waterway, difficulties in using a shared waterway by water transport, and any other infringements of shared interests with similar consequences”.*

However, Ukraine neither notified nor received consent with the Moldova prior to works on the Dniester PSP project as currently proposed.

UNECE Convention on the Protection and Use of Transboundary Watercourses and International Lakes

- The convention clearly defines “transboundary water”, leaving little doubt that Dniester PSP is both situated and will have impacts in a transboundary context:
 1. *“Transboundary waters” means any surface or ground waters which mark, cross or are located on boundaries between two or more States; wherever transboundary waters flow directly into the sea, these transboundary waters end at a straight line across their respective mouths between points on the low-water line of their banks;*
 2. *“Transboundary impact” means any significant adverse effect on the environment resulting from a change in the conditions of transboundary waters caused by a human activity, the physical origin of which is situated wholly or in part within an area under the jurisdiction of a Party, within an area under the jurisdiction of another Party. Such effects on the environment include effects on human health and safety, flora, fauna, soil, air, water, climate, landscape and historical monuments or other physical structures or the interaction among these factors; they also include effects on the cultural heritage or socio-economic conditions resulting from alterations to those factors;*

According to experts of the State Committee for Water Resources and Aqua Economy, one already observes significant negative impacts of the Dniester storage reservoir hydroelectric complex on the environment surrounding the lower flows from the Dniester river; these impacts will increase once the PSP begins operations.

One of the most serious impacts of the project is reduced water flow, which poses catastrophic consequences for Dniester’s lower course. As noted by the project EIA:¹

“One of the problems that will arise during Dniester PSP operation will be its influence on the lower basin [leading to] substantial impacts on water level regimes, and thus, on all hydrological processes in the reservoir... brinks reforming, influencing the conditions for fish spawning, etc... Water reservoirs are influencing practically all components of the lithosphere, hydrosphere and biosphere that are forming an environment of neighbouring areas – geodynamical conditions and terrain, groundwater regimes and climate, soils, flora, fauna and landscape.”

¹ Dniester PSP EIA, 732-1-T4-2005, pp.163

As information on the transboundary impacts of the Dniester PSP was not provided by Ukraine to Moldova, the following articles of the Convention were ignored:

- Article 2: “(b) To ensure that transboundary waters are used with the aim of ecologically sound and rational water management, conservation of water resources and environmental protection; (c) To ensure that transboundary waters are used in a reasonable and equitable way, taking into particular account their transboundary character”;
- Article 6: “Parties shall provide for the widest exchange of information, as early as possible, on issues covered by the provisions of this Convention”;
- Article 10: “Consultations shall be held between the Riparian Parties on the basis of reciprocity, good faith and good-neighbourliness, at the request of any such Party”; and
- Article 14: “Riparian Parties shall without delay inform each other about any critical situation that may have transboundary impact”.

Ramsar Convention

The PSP project threatens to reduce water flow for the lower course of the Dniester river, in particular the wetlands system protected by the Ramsar Convention. Two such sites- the northern part of the Dniester Liman and the Dniester-Turunchuk Crossrivers Area- are situated in the Dniester wetlands system and are included on the Ramsar List of Wetlands of International Importance.

World Commission on Dams

During project preparation, the project sponsor violated nearly all recommendations of the World Commission on Dams, including:

- Gaining public acceptance

There has been neither wide public participation nor proper consultation with stakeholders during the Dniester PSP project process, on both ‘Ukrainian energy strategy till the year 2003’ and project itself. Difficulties in accessing information have also inhibited the informed participation of NGOs and the wider public in the decision-making process.

These numerous project deficiencies have provoked criticism among environmental and social organisations, and the Public Council under the Ministry of Environment.

- Assessing comprehensive options

The comprehensive assessment of all scenarios for developing the Ukrainian energy sector must essentially include wide public participation and consultation with relevant stakeholders; yet such robust assessment has not been done. The project was designed with neither comprehensive and participatory assessments of public water and energy need, nor different options for meeting these outcomes. In particular, the option to maximise existing energy system efficiency before constructing new projects was not assessed.

- Sustaining rivers and livelihoods

Project implementation will also negatively impact local communities. Operating the plant will require the resettlement of nearby populations. Moreover, the remainder of local peoples will face challenges resulting from waterlogged agricultural lands, changes to water levels in drinking wells, and so on. The project also threatens to reduce water flow for the lower course of the Dniester, this will likely cause that the sea water can reach the level of Odessa water supply point. This will worsen problems with drinking water in the Odessa region.

- Recognising entitlements and sharing benefits

No noticeable attempts by the project sponsor to compensate adequately for the loss of agricultural land have been made.

- Sharing rivers for peace, development and security

Completion of the Dniester PSP has strained Ukrainian-Moldavian relationships. Intense discussions regarding land use planning and benefit sharing from Dniester PSP has gone as far as territorial claims for the part of Hydro Power Complex territory by the Moldavian Party.

In this context, the willingness of the Ukrainian government and the World Bank to invest in such a controversial project is alarming; the Ukrainian government should first settle political uncertainties with Moldova.

Violation of Ukrainian legislation and procedures

- Failure to respond to information requests.

Ukrhydroenergo has violated Ukrainian legislation on public access to information² by ignoring multiply requests for project documentation. The National Ecological Centre of Ukraine has received no response to its letters³; this unresponsiveness is a violation of Ukrainian legislation⁴ that requires responses to be given within 30 days.

- Public hearings and EIA

The project violates state EIA procedures, because the EIA was approved without the required public participation, specifically without proper public hearings; these processes and disclosure of informing to the public were extremely unsatisfactory.

We recommend that the World Bank should:

- Withdraw its financial consideration until the project is brought in compliance with Ukrainian and International Legislation;
- Conduct its own assessment of project compliance with relevant international and Ukrainian legislation and **publicly disclose its findings**;
- Organise public meetings with relevant stakeholders to discuss the ongoing schedule of preparatory work and areas of concern, on account of the project sponsor's ignorance of public opinion during project preparation.

For additional information please contact:

Nadia Shevchenko

National Ecological Centre of Ukraine / CEE Bankwatch Network
Tel: +380 (44) 4940354, Fax: 380 (44) 4940355, nadia@bankwatch.org,
www.bankwatch.org

² Specifically art. 34 of Ukrainian Constitution, art. 9, 32, 47, of Ukrainian law on information, and Aarhus Convention

³ № 125-1/78 from 18.08.06, №125-1/81 from 10.10.06, №125-1/84 from 12.10.06, №125-1/99 from 15.12.06 and №125-1/8 from 14.02.07

⁴ art. 33 of Ukrainian law on information