



NUCLEARELECTRICA

**Adopted by Decisions of the Board of Directors no.. 67/03.05.2017  
and no. 94/08.06.2017**

**Board of Directors**

**President**

**Robert Iulian TUDORACHE**

#### **NOTE**

**on the approval by the Extraordinary General Meeting of Shareholders of SNN of the granting, by SNN, of a shareholder loan, convertible into shares, to Energo Nuclear SA subsidiary, amounting to a maximum of RON 4,000,000, for the financing of the maintenance and conservation activities of the site Units 3 and 4 Cernavoda CNE, as well as the main conditions associated with this credit - object, value, tranches / draw, interest, maturity / maturity, other special conditions**

#### **1. 1. General / Competent issues**

- The provisions of art. 13 par. (3) lit. o) paragraph (i) of the UPN Constitutive Act, according to which the Extraordinary General Meeting of Shareholders approves the mandate of SN Nuclearelectrica S.A. In the General Meeting of Shareholders of S.C. Energonuclear S.A. for the modification of the share capital of Energonuclear S.A. ;
- The provisions of art. II of GD no. 664 / 31.07.2014 for the abrogation of some normative acts related to the project of Units 3 and 4 from Cernavoda CNE, provisions according to which "The continuity of the activity and the duration of the company" EnergoNuclear "- SA, a company established following the selection procedure of the investors For the realization of Units 3 and 4 from Cernavoda CNE, are set, according to the law, by the General Meeting of the shareholders of the National Company "Nuclearelectrica" SA and in compliance with the provisions of the articles of association of these two companies. "

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#### **2. Presentation of the problem**

Within EnergoNuclear S.A. ("EN"), the project company set up in March 2009, to develop the project 3 and 4 of CNE Cernavoda, by promoting, at that time, shareholder structures in which SNN held a participation share of 51% the share capital, the other 6 investors in the project holding

**Societatea Nationala NUCLEARELECTRICA S.A.**

Street Polona, nr. 65, sector 1, 010494, Bucharest, Romania; Tel +4021 203 82 00, Fax +4021 316 94 00;

No. with the Trade Registry: J40/7403/1998, Sole Registration Code: 10874881,

Subscribed and paid up share capital: 3.015.138.510 lei

[office@nuclearelectrica.ro](mailto:office@nuclearelectrica.ro), [www.nuclearelectrica.ro](http://www.nuclearelectrica.ro)

minority stakes, following the decision of the investors withdrawing from the Project, in 2011, and 2013 respectively, SNN, according to the provisions of the Investment Agreement, acquired, in successive stages, the shares held by all the other 6 Shareholders, becoming a sole shareholder of the EN. In the period 2011 - 2013, activities were carried out to maintain an adequate technical state of the U3-U4 site, of which we mention, for example: elimination of perennial vegetation, drainage of infiltrated water in the basement of buildings, reconditioning roads, access stairs and platforms in buildings, installation of protective caps and isolation penetrations in walls, reconditioning and commissioning of electrical installations lighting and monitoring the technical condition of the site . Also, it was executed - with CANDU Energy / AECL (licensor Technology) - a comprehensive detailed program of inspections of civil structures existing, which revealed that they correspond to their original purpose or use in completing the construction of two units that are expected to operate for a period of 50 years . The report of this inspection recommended conducting conservation works on steel structures, they were expected to be made in the near future by investors part in the project agreement at that time .

After 2013, motivated by the withdrawal of foreign investors, the limitation of the budget and the expectations that the setting up of the new project company is feasible within 1 to 2 years, the activities were executed at a very low level .

In order to calibrate the EN activity with the evolution of the negotiations with the selected investor, starting with January 2015, EN implemented a reorganization program that would ensure continuity of the company's activity for a long time, with the funds available in the EN. In the context of additional measures to reduce EN activity in the second half of 2017, EN management estimates that it will be possible to ensure the continuity of EN activity with the availability of available funds, at the latest by December 2017 .

### ***2.1. Activity maintenance / conservation U3-U4 location and estimated budget***

The maintenance and conservation activities of Units 3 and 4 of Cernavoda CNE are a component of the diligent behavior of a good owner , and this effort is to be found in maintaining the value of civil assets existing in the asset valuation process . In this respect, the feasible solutions for the maintenance and maintenance of the 3 and 4 Units 3 and 4 of the Cernavoda CNE , owned by SNN , and also the subject of the commodity contract no. 500 / 22.04.2011 , concluded between SNN as a commodatum and EN , as a provider , as the EN can no longer provide the human and financial resources for the conservation and maintenance activities of the U3-U4 site .

In the context of the above mentioned , the maintenance and conservation activities were identified , identifying an estimated budget of RON 3,256 thousand . To this is added an estimated amount of RON 600 thousand representing the costs associated with the human resource to ensure the continuous technical supervision as well as the monthly check of the services / works and the authorization of the payments . Estimated time for preparation of procurement documentation, contracting and implementation of maintenance / preservation / maintenance / maintenance / maintenance services is 18 months .

### ***2.2. Constraints / implications in the context of negotiations with the selected investor***

The selection process for investors for the Unit 3 and 4 Project of Cernavoda CNE is carried out on the basis of the strategy for the continuation of the Unit 3 and 4 CNE Cernavoda ("the Strategy") , coordinated by the Interministerial Commission appointed by the decision of the Prime Minister of Romania no. 254/2014 , with subsequent amendments and completions , respectively , conducted by the Negotiation Commission , appointed by order of the Minister of Energy .

Only one investor - China General Nuclear Power Corporation ("CGN") - filed the qualification documentation and was subsequently declared Investor selected .

On 09.11.2015 the Memorandum of Understanding on the development , construction , operation and decommissioning of Units 3 and 4 of Cernavoda CNE ("MoU") was signed .

Between 10 March and 20 December 2016, intensive rounds of negotiations between the Negotiating Commission and the CGN of the main aspects of the Investors Agreement ("AI") took place, the parties identifying a number of divergent issues, who have undergone to the escalation of the higher decisional forums . The Interministerial Commission has endorsed (i) the continuation of negotiations on investment Documents under the same terms of the MoU for a period of up to 6 months from the date of institutional and corporate approval, and (ii) a revised mandate of the negotiating commission. The continuation of the negotiations must be approved by the Romanian Government and, respectively, the Extraordinary General Shareholders Meeting (AGEA) SNN .

#### ***Strategy and MoU stipulations :***

- Art. 1.1. and art 5.5. of the Strategy: *"the creation of a mixed society within the meaning of art. 50 of Law no. 137/2002 between SNN and a private investor, selected respectively Society of Project ( "Joint Venture" or "JV"), which is transferred by SNN amount invested to subsidiary SC EnergoNuclear S.A. ("EN") "*;
- Art. 2 according to paragraph 5 of the MoU describes an EN absorption merger mechanism in JVCo *"at the highest value of (a) the amount of subscribed and paid subscribed capital of the EN on December 31, 2014, respectively RON 146,152,999 and (B) the value of the EN absorption fusion (determined in accordance with the legal stipulations in force) . "* After the establishment of JVCo, EN will merge with and be absorbed by JVCo and therefore SNN's share in JVCo's share capital will increase with the value of EN net contribution to JVCo .

#### ***CGN demands in the negotiations :***

In the process of negotiating the Investor Agreement ("IA"), CGN has conducted a due diligence on the EN. In this context, CGN has requested the inclusion of the annex to IA ("EN Conduct of Business"), according to which SNN , as the sole shareholder of EN, undertakes not to take actions to (i) increase the share capital of EN (ii) increase the liability of the EN by contracting a bank loan , shareholder loan or otherwise *[over a certain amount to be negotiated]* , or (iii) to change the accounting policies of the EN .

### **3. Decisions of the SNN Board of Directors on the concrete way of financing the maintenance and conservation activities of the U3-U4 CNE Cernavoda**

In the context of the previously constrained constraints, both financial and legal (we reiterated the idea that at present, the location of Units 3 and 4 is taken over by EN as a comodator, so the expenses covered by this Note , the financing of the maintenance and conservation activities of the U3-U4 CNE Cernavoda site can only be carried out through EN, being expenditures that, according to the civil legislation , fall under the responsibility of the convenient) , it is necessary to finance the maintenance / preservation activities through the subsidiary EN (100% owned by SNN) , amounting to no more than RON 4,000,000 , in which the following two options were identified :

- (1) the increase of the share capital of EN, by cash contribution of the sole shareholder, SNN, with a maximum of 4,000,000 lei, the amount of which would subsequently be financed by EN, (i) the actual expenditures with maintenance and conservation works of the U3-U4 CNE Cernavoda site and (ii) additional staff costs (additional) to the existing one at this time and which will be absolutely necessary in connection with the contracting and running of the U3-U4 maintenance and conservation contracts (for the preparation of the acquisition documentation, for monitoring the execution of the contracts, the reception of the services / works, etc.) ; or

- (2) the granting by SNN , as a sole shareholder , of a so-called "shareholder loan" to EN subsidiary , a loan that would later be converted into shares and which would lead , in this way to increase the share capital of the EN .

Both of the above-mentioned financing mechanisms have the same goal , namely to provide the means to finance the maintenance and conservation activities of the U3-U4 CNE Cernavoda site . The difference , the practice between the two mechanisms is that in the variant of the shareholder loan, subsequently convertible into a share capital increase , the financing of the activities in question is realized much faster , the loan being actually granted to EN - and spent according to the destinations mentioned in the present Note - immediately after its approval by AGEA SNN , the conversion of the loan into social capital is to be done at a later date , while in case of capital increase with cash , the procedure is a little longer, so the activities in question will could be effectively funded only after the completion of the share capital increase procedure .

In addition , in the shareholder loan option , the capital injection into the EN will be phased in and correlated with the actual funding needs of the EN ( so if it is not actually needed, the EN will not receive the single shareholder's financing , SNN, the entire value of 4 million lei , but only as much as it is actually necessary ) , whereas in the case of the increase of the share capital , from the very beginning , the concrete amount with which the increase will be made , the entire amount so the SNN will be established as a cash increase of the share capital of EN , regardless of whether this amount will be spent by the EN in full or not .

At the same time , considering that EN , as a project company , does not generate income and that in according to the Cernavoda CNE Units 3 and 4 Project Continuation Strategy , EN will merge through absorption with the future project company (JVCo) established by SNN with CGN , so that EN will represent a contribution in nature of SNN to the share capital of this forthcoming JVCo , it is presumed that a possible shareholder loan (granted by SNN to its subsidiary under the terms of this Note) will follow Either converted into a shareholder's contribution to the share capital of EN (SNN) , thereby increasing accordingly the share capital of EN (with the equivalent of this shareholder loan) . This conversion of a possible loan granted by the SNN's shareholder to its subsidiary in cash to the share capital of EN would be expected to operate prior to the merger between EN and future JVCo, the decision to convert it to AGEA SNN as the conversion would represent Final, an increase in the share capital of the EN .

Since both identified financing mechanisms imply , sooner or later , an appropriate increase of the share capital of the EN and the approval power is awarded to AGEA SNN .

By Decision no. 67 / 03.05.2017, the Board of Directors of SNN decided the following :

- (i) endorsement of the mechanism for financing the maintenance and conservation activities of U3-U4 CNE Cernavoda by granting SNN a shareholder loan , convertible into shares , to the EN subsidiary ;
- (ii) approval of the notification of the majority shareholder of SNN , the Ministry of Energy , the interministerial commission , the negotiating commission on the selected financing mechanism and the request of the negotiating commission to submit this CGN proposal for prior consultation and obtaining the CGN agreement ;
- (iii) approval of the maximum value of RON 4,000,000 , to be financed by the maintenance and conservation activities of the U3-U4 CNE Cernavoda site ;
- (iv) approving the convening of AGEA SNN having as an agenda the approval by the SNN shareholders of the financing mechanism set out in point 1 above and of the value of this financing , after informing the Ministry of Energy , the interministerial commission , the negotiating commission and the consultations with CGN regarding the financing mechanism selected by CA SNN and the amount of this financing .

We mention that , after exploratory talks be conducted in CGN and Negotiation Commission , sent the Commission negotiating CGN address CGNR-0140 / 27.05.2017 according to which , according to SNN granting of a shareholder loan by EN recommends adhering to the following principles :

(1) the costs associated with the maintenance and conservation of the U3-U4 CNE Cernavoda for site are exclusively borne and capitalized by EN , (2) the conversion of the loan into shares is made prior to the merger by absorbing EN with JVCo , (3) in which the conversion of the loan into shares will not be realized , the maturity of the loan should be extended up to a date subsequent to the date of the Final Investment Decision and (4) the interest on the convertible shareholder loan should be at the level of the Romanian market .

By Decision no. 94 / 08.06.2017, the Board of Directors of SNN decided the following:

( i ) endorsement of the main provisions / associated terms of the convertible loan in shares presented below ;

( ii ) the approval of AGEA SNN convening as a point of view the approval by the shareholders of SNN of the granting by SNN of a shareholder loan , convertible into shares , to the subsidiary EnergoNuclear SA , amounting to a maximum of 4,000,000 RON , for the financing of the activities maintaining and preserving the location of Units 3 and 4 of Cernavoda CNE , as well as the main conditions associated with this credit – object , value , tranches / draw , interest , maturity / maturity , other special conditions .

Main conditions of the shareholder loan contract convertible into shares :

(i) **Object of the Loan Agreement** : EN lending by SNN for the sole purpose of financing the expenditures that EN will incur in relation to: (a) maintenance and conservation works of the U3-U4 CNE Cernavoda site; (B) additional staff costs (additional) to that existing at the time of the contract and which will be absolutely necessary in connection with the contracting and running of the U3-U4 maintenance and conservation contracts and ( C ) other EN expenses for implementation and monitoring of U3-U4 site maintenance and conservation works, including general administrative expenses.

**(ii) Loan amount: maximum 4.000.000 RON**

**(iii) Credit withdrawals: in multiple tranches of 100,000 RON but not more than 1,000,000 RON** ( the maximum value of each tranche ) ;

**(iv)Interest rate** : 1.75% / year (the current monetary policy rate of the BNR ) ( 365 days calculated ) . Interest is calculated monthly and can be capitalized or paid monthly ;

**(v) Maturity of the bill (maturity)** : maximum 12 months from the date of the first drawdown of the credit .

**(vi) Special clauses :**

- *Prior conditions for the entry into force of the Loan* : (a) approval by SNN of the SNN of the loan granted by SNN to its EN subsidiary ; (b) signing the loan agreement between SNN and EN ; (c) the submission by EN of a Grant Application that substantiates the financing need (d) the corporate approvals required at EN level .
- *The amount of each draw will be dimensioned by an EN Grant Application for Funding under the conditions of point iii above .*

- *At any time from the date of entry into force of the loan up to the due date , SNN will be able to send EN a Loan Conversion Notification ( actual withdrawals including accrued interest ) to ordinary nominative shares of EN ( nominal value per share of 3, 9389 RON ) , with one or more conversion of the loan into shares by the full or partial conversion of the loan into shares .*

#### **4. Proposals subject to the approval of the Extraordinary General Meeting of Shareholders of SNN**

Considering the above , we submit to the approval of the Extraordinary General Meeting of Shareholders of SNN the following :

4.1 Approval of the granting by SNN of a shareholder loan , convertible into shares , to the EnergoNuclear S.A. subsidiary , amounting to a maximum of 4,000,000 RON , for the financing of the maintenance and conservation activities of the 3rd and 4th Cernavoda CNE Units .

4.2 Approval of the main provisions / conditions associated loan agreement convertible into shares, according to the specifications in the content of this Note .

**Daniela Lulache**

**General Manager / CEO**

**Mihai Darie**

**Financial Director / CFO**

**Director of the Legal Department  
and Corporate Affairs**

**Laura Constantin**

**Director of the Technical Department  
and Nuclear Safety**

**Romeo Urjan**

**Head of Advisory Department  
Legality Documents**

**Vlad Chiripus**

**Head of Project Management Department**

**Alexandru Havris**