

Energy infrastructure bankruptcies in Ukraine

Vadym Kizlenko and Yaroslav Mudryi report on the first cases of bankruptcies of energy companies during the present war with Russia



VADYM KIZLENKO
Counsel, Co-Head of Insolvency and Financial Restructuring, Attorney at Law, Insolvency Receiver, Ilyashev & Partners Law Firm



YAROSLAV MUDRYI
Lawyer, Ilyashev & Partners Law Firm, Ukraine

Russia's ongoing attacks on Ukraine's energy infrastructure have forced the state to take decisive actions to mitigate, prevent, and minimize the negative impacts of these attacks. As a result, Ukraine is actively working to enhance its legislative framework to protect energy enterprises and ensure their stable, uninterrupted operation.

Preventing bankruptcy among energy infrastructure enterprises is a crucial component of this effort. At present, this involves imposing prohibitions or moratoriums on bankruptcies of specific economic entities within the energy sector, or groups of enterprises that meet certain criteria.

Legislative levers

In the realm of bankruptcy law, the Verkhovna Rada of Ukraine has enacted Law No. 3577-IX, titled On Amending Certain Legislative Acts of Ukraine to Restore the Solvency of Certain State Enterprises in the Energy Sector which are in a Critical Condition. It aims to prevent key energy companies from going bankrupt.

With effect from 8 March 2024, the new law changed the final and transitional provisions of the Ukrainian Code of Bankruptcy Procedures in the following ways:

- 1) Insolvency proceedings against the State Enterprise Eastern Mining and Processing Combine are prohibited until **1 January 2025**.
- 2) Debtors who operate electricity distribution systems



within the field of licensed activities may not be in the process of bankruptcy until **1 January 2026**. This is especially true in those areas where hostilities occurred as of 31 December 2023 and in territories temporarily occupied by the Russian Federation.

The first precedent

In relation to Law 3577-IX, a precedent has been established in case No. 913/567/19 concerning the bankruptcy of Luhansk Energy Union LLC, an energy distribution company located in the temporarily occupied town of Starobilsk.

In 2019, bankruptcy proceedings were initiated by the debtor after it was unable to repay creditors. The total amount of monetary claims declared by all creditors, including SE Energorynok, Ukrenergo, Ukrinterenergo, Ukrtransgaz, Ukrgasvydobuvannya, Oshchadbank, and Bank Credit

Dnipro, reached nearly EUR 258 million as at 30 June 2019.

Despite the fact that Luhansk Energy Union LLC's bankruptcy procedure has been ongoing since 2019, creditors' demands have not yet been considered by the court. With over 1,500 court decisions, resolutions, and orders already in place, this case was approaching a crucial point - the court's consideration and recognition of creditors' claims.

Nevertheless, after the enactment of Law No. 3577-IX, the situation changed drastically. In April 2024, the Eastern Interregional Department of the Ministry of Justice of Ukraine filed a Motion with the Commercial Court of the Luhansk Region to close the proceedings. As such, the Luhansk Energy Union's bankruptcy proceedings are expected to be closed by the court in September 2024.

It will be the first bankruptcy closure for an energy infrastructure enterprise since the



Amid the ongoing full-scale war, major players have reported multiple bankruptcy cases against electricity suppliers



passage of Law No. 3577-IX.

As a result, creditors of Luhansk Energy Union will be compelled to pursue debt recovery through the “general procedure” by filing new (separate) claims or enforcing existing decisions in their favour through the enforcement service bodies. At least until January 2026, recovery of debt from Luhansk Energy Union will be impossible under bankruptcy procedures.

Bankruptcies will persist

In terms of the bankruptcy of energy industry companies, there has not been a “general” moratorium enacted by the legislator. This allows economic actors to initiate bankruptcy procedures against energy companies involved in energy distribution/sale, provided they operate outside the occupied territories or areas of active hostilities as at 31 December 2023.

Amid the ongoing full-scale war, major players – distribution system operators and electricity wholesalers – have reported multiple bankruptcy cases against electricity suppliers. Notable cases include *Powerstock LLC (Case No. 908/2289/23)* and *Ernering LLC (Case No. 910/13723/22)*. In each instance, bankruptcy proceedings were triggered by the inability of local suppliers to settle their debts.

“Pros” and “Cons” of the moratorium

In our opinion, Law No. 3577-IX is flawed as it introduces uncertainty regarding the debtor’s obligation to file for bankruptcy, as stipulated by Article 34(6) of the Code of Ukraine on Bankruptcy Procedures. According to this provision, a debtor is required to file a motion with the Commercial Court within one month to initiate bankruptcy proceedings if fulfilling the demands of one or more creditors would make it

impossible to fully meet the debtor’s obligations to other creditors (threat of insolvency), as well as in other cases specified by the Code.

This means that an energy company, once it exhibits signs of bankruptcy, is obligated to submit its own application for bankruptcy proceedings. Nevertheless, Law No. 3577-IX imposes a moratorium on such filings, creating a contradiction that clearly requires legislative revision.

Moreover, initiating bankruptcy proceedings on its own could benefit the energy company’s solvency. Judicial oversight of creditor claims, control of the company’s economic activities by an arbitration manager, and the opportunity to implement rehabilitation procedures could collectively improve the company’s financial situation. This, in turn, would positively impact not only the enterprise, but also the energy security of the region and the state as a whole. ■

“

Ukraine is actively working to enhance its legislative framework to protect energy enterprises and ensure their stable, uninterrupted operation

”



INSOL
EUROPE

eurofenix
The journal of INSOL Europe

To access previous editions and find out how to contribute, visit:
www.insol-europe.org/publications/about-eurofenix



Sponsorship & Advertising Opportunities

To advertise in *eurofenix* or for information on general sponsorship packages, contact Hannah Denney: hannahdenney@insol-europe.org