

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

Smart Energy B.V. and PJSC Ukrgazvydobutok

v.

Ukraine

(ICSID Case No. ARB/25/38)

PROCEDURAL ORDER NO. 2
On Transparency and Confidentiality

Members of the Tribunal

Sir Christopher Greenwood, GBE, CMG, KC, President of the Tribunal
Prof. Zachary Douglas KC, Arbitrator
Prof. Dr. Stephan W. Schill, Arbitrator

Secretary of the Tribunal

Ms. Jara Mínguez Almeida

Assistant to the Tribunal

Mr. Arjun Solanki

4 March 2026

I. INTRODUCTION

1. On 30 January 2026, the Tribunal circulated a draft of this order (“Draft PO2”) for discussion by the Parties.
2. On 25 February 2026, the Parties commented on Draft PO2.
3. On 2 March 2026, the first session was held. During the first session, the Parties and the Tribunal discussed the Parties’ comments on Draft PO2 and the draft procedural order no. 1.
4. This Procedural Order No. 2 contains the Parties’ agreements and the Tribunal’s decisions concerning the transparency regime governing this case.
5. The Tribunal notes that the legal framework applicable to these proceedings is determined by the ICSID Convention, and the 2022 ICSID Arbitration Rules. Departure from the ICSID Arbitration Rules requires the agreement of both Parties. Accordingly, where a Party’s suggestion required a departure from those rules, and the other Party did not agree to the proposed change, the Tribunal has maintained the regime provided for in the ICSID Arbitration Rules. The Tribunal is mindful of the sensitive nature of this dispute, and the fact that the Parties may wish to keep certain information confidential where its publication is not required by law and will take that consideration into account in exercising any discretion which the Arbitration Rules accord it in respect of publication.
6. For purposes of Section G below and in accordance with ICSID Arbitration Rule 66, confidential or protected information is information which is protected from public disclosure:
 - (a) by the instrument of consent to arbitration;
 - (b) by the applicable law or applicable rules;
 - (c) in the case of information of a State party to the dispute, by the law of that State;
 - (d) in accordance with the orders and decisions of the Tribunal;
 - (e) by agreement of the parties;
 - (f) because it constitutes confidential business information or protected personal information;
 - (g) because public disclosure would impede law enforcement;
 - (h) because a State party to the dispute considers that public disclosure would be contrary to its essential security interests;
 - (i) because public disclosure would aggravate the dispute between the parties; or
 - (j) because public disclosure would undermine the integrity of the arbitral process.

II. TRANSPARENCY RULES

7. The Tribunal adopts the following transparency and confidentiality rules governing the proceedings.

A. AWARD (ICSID ARBITRATION RULE 62)

8. For the purposes of Article 48(5) of the ICSID Convention and ICSID Arbitration Rule 62, the Parties consent to publication of the Award by ICSID on its website, with any redactions agreed by the Parties.¹ The Parties shall provide ICSID with their jointly redacted text within 60 days after the dispatch of the Award.
9. If the Parties do not agree on a jointly redacted text, they shall, within 60 days after the dispatch of the Award, inform ICSID and provide their respective proposals for redaction. It will then be for the Secretary-General to determine which parts of the Award shall be published in accordance with Arbitration Rule 62(4).

B. ORDERS AND DECISIONS (ICSID ARBITRATION RULE 63)

10. ICSID shall publish the orders and decisions of the Tribunal, with any redactions agreed by the Parties or decided by the Tribunal, in accordance with Section 0 below.

C. WRITTEN SUBMISSIONS (ICSID ARBITRATION RULE 64)

11. The Parties do not consent to the publication of the Parties' written submissions by ICSID which will therefore remain confidential.

D. SUPPORTING DOCUMENTS (ICSID ARBITRATION RULE 64)

12. Supporting documents, including exhibits, legal authorities, witness statements and expert reports (including annexes, appendices or exhibits thereto) shall not be published by ICSID.

E. OPEN HEARINGS (ICSID ARBITRATION RULE 65(1)–(2))

13. Hearings shall not be open to the public, unless the Parties agree otherwise at the latest two months before the hearing. If the Parties agree that the hearings shall be open to the public, the Tribunal shall establish a protocol governing public access to the hearing and the non-disclosure of confidential and protected information discussed during the hearing at the latest at the pre-hearing organizational conference.

¹ Pursuant to ICSID Arbitration Rule 72(2) this procedural order shall continue to apply to an interpretation, revision or annulment proceeding with necessary modifications, unless the Parties agree or the Tribunal or Committee orders otherwise.

F. TRANSCRIPTS AND RECORDINGS OF HEARINGS (ICSID ARBITRATION RULE 65(3))

14. Transcripts and recordings of hearings shall not be published by ICSID.

G. PROCEDURE FOR REDACTIONS – NON-DISCLOSURE OF CONFIDENTIAL OR PROTECTED INFORMATION (ICSID ARBITRATION RULE 66) AND DATA PRIVACY

15. With respect to publication pursuant to Section B above, any confidential or protected information as defined in paragraph 6 above that is submitted to the Tribunal shall be protected from disclosure and publication in accordance with the procedure set forth below.
16. The Tribunal is mindful of the need to protect the personal data of individuals and draws the Parties' attention to Section 26 of Procedural Order No. 1. When identifying protected information in accordance with paragraph 17 below, the Tribunal recommends that the Parties redact, to the extent possible, the names of individuals, possible identifiers (such as position, title, nationalities) and information that can be considered sensitive regarding any individuals mentioned in any document to be published.
17. Each Party will have 21 days from the date of a decision or order, to give written notice to the Tribunal and the other Party that it requests the non-disclosure of certain information it considers confidential or protected. Absent such a notice within the 21-day timeline, the Tribunal will authorize ICSID to publish the order or decision without redactions from the Parties.
18. Within 14 days of receipt of the notice referred to in paragraph 17 the other Party may raise objections to the proposed redactions.
19. If no objections are raised within the deadline established in paragraph 18, the Tribunal will authorize ICSID to publish the order or decision at issue with the requested redactions.
20. If objections are raised within the deadline established in paragraph 18, the Parties shall confer and seek to agree on redactions within 14 days of receipt of the objections to the proposed redactions. If the Parties reach an agreement, they shall provide a redacted version of the document indicating the agreed redactions. The Tribunal will then authorize ICSID to publish the document at issue with the agreed redactions.
21. If the Parties are not in agreement about all of the redactions, the disputed redaction requests and the objections thereto shall be submitted to the Tribunal in the form of the Transparency Schedule set out in Annex A to this Order. The Tribunal shall resolve the disputed redactions requests and communicate its decision to the Parties. It will then authorize ICSID to publish the document in accordance with that decision.

22. If information is to be redacted from a document or recording in accordance with paragraph 21, the Parties shall provide a redacted version of the document. Upon receipt of the redacted document, the Tribunal will ask ICSID to publish the document.

On behalf of the Tribunal,

[*signed*]

Sir Christopher Greenwood, GBE, CMG, KC
President of the Tribunal
Date: 4 March 2026

ANNEX A

TRANSPARENCY SCHEDULE

[insert Party]	Request [1]
Information sought to be protected from disclosure	
Legal basis for protection	
Comments	
Reply by opposing Party	
Decision	