



**NATIONAL COMMISSION FOR STATE REGULATION OF
ENERGY AND PUBLIC UTILITIES
(NEURC)**

RESOLUTION

_____ Kyiv

№ _____

On adoption of preliminary decision on the certification of a transmission system operator

In accordance with point 7 of subparagraph 4 of paragraph 1 of Article 17 of the Law of Ukraine “On National Commission for State Regulation of Energy and Public Utilities”, Articles 23, 24, 27, 28, 29, 30, 31 of the Law of Ukraine “On the natural gas market”, paragraph 2 of Article 1 of the Law of Ukraine “On ratification of the Protocol of Ukraine's accession to the Treaty establishing the Energy Community” National Commission for State Regulation of Energy and Public Utilities,

ESTABLISHES TO:

1. Adopt a preliminary decision on the certification of a LIMITED LIABILITY COMPANY GAS TRANSMISSION SYSTEM OPERATOR OF UKRAINE (EDRPOU CODE 42795490) on the basis of the justification to the preliminary certification decision of the LIMITED LIABILITY COMPANY GAS TRANSMISSION SYSTEM OPERATOR OF UKRAINE, as attached.

2. Notify to the Energy Community Secretariat the preliminary decision on the certification of the LIMITED LIABILITY COMPANY GAS TRANSMISSION SYSTEM OPERATOR OF UKRAINE.

Chairman of NEURC

V.Tarasiuk

JUSTIFICATION
TO THE PRELIMINARY DECISION ON CERTIFICATION OF THE
LIMITED LIABILITY COMPANY GAS TRANSMISSION SYSTEM
OPERATOR OF UKRAINE

1. Introduction

Articles 9, 10 of Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC (hereinafter – Directive) and Article 3 of the Regulation (EC) No 715/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the natural gas transmission networks and repealing Regulation (EC) No 1775/2005 (hereinafter – EU Regulation), define the requirements for designation as transmission system operator a business entity, which has obtained a certification decision pursuant to requirements of the Directive and EU Regulation. The implementation of the mentioned requirements of Directive and EU Regulation in the national legislation is envisaged by international obligations of Ukraine undertaken within the framework of Energy Community Treaty, signed on 24 September 2010 in Skopje (Macedonia) and ratified by the Law of Ukraine “On ratification of the Protocol of Ukraine's accession to the Treaty establishing the Energy Community”, and the Law of Ukraine “On the natural gas market” (hereinafter – the Law).

The Law defines two unbundling models from three possible, as provided for by provisions of Directive. Article 23 of the Law has established general unbundling and independence requirements for the gas transmission system operator (OU unbundling model), accordingly Articles 27, 28, 29 of the Law defines specific unbundling and independence requirements for the gas transmission system operator (ISO unbundling model).

LLC GAS TSO OF UKRAINE (EDRPOU CODE 42795490) on 4th of October 2019 has submitted to NEURC a request for certification as a gas transmission system operator under ISO model together with documents, data and information as required by the Procedure on certification of a gas transmission system operator, adopted by NEURC resolution dated 14.04.2016 № 631.

2. Applicable legislation

According to paragraph 3 of Article 27 of the Law a gas transmission system operator (hereinafter – GTS Operator) shall:

comply with requirements of paragraphs 1 and 3 of the Article 23 of the Law; be equipped with all financial, technical, physical and human resources necessary for fulfilling its functions under Article 28 of the Law, in particular as regards cooperation with gas transmission system operators of neighbouring states.

Pursuant to paragraph 1 of Article 23 of the Law the GTS Operator shall be a separate legal person which is not part of a vertically integrated undertaking and carries out its commercial activities independent from activities of production, distribution, supply of natural gas, activities of wholesale sellers. The gas transmission system operator may not carry out activities of production, distribution or supply of natural gas.

In addition, paragraph 3 of Article 23 of the Law defines that in order to ensure independence of the gas transmission system operator an individual or a legal person shall not simultaneously:

1) directly or indirectly exercise sole or joint control over at least one business entity (including a foreign one) carrying out production and/or supply of natural gas and/or electricity, and directly or indirectly exercise sole or joint control over the gas transmission system operator (including be the gas transmission system owner) or exercise any right over the gas transmission system operator (including any rights in respect of the gas transmission system itself);

2) directly or indirectly exercise sole or joint control over the gas transmission system operator (including be the gas transmission system owner), and directly or indirectly exercise sole or joint control over at least one business entity (including a foreign one) carrying out production and/or supply of natural gas and/or electricity or exercise any right over at least one business entity (including a foreign one) carrying out production and/or supply of natural gas and/or electricity;

3) appoint at least one official of the gas transmission system operator, and directly or indirectly exercise sole or joint control over at least one business entity (including a foreign one) carrying out production and/or supply of natural gas or exercise any right over at least one business entity carrying out production and/or supply of natural gas;

4) be an official of the gas transmission system operator and of at least one business entity (including a foreign one) carrying out production and/or supply of natural gas.

Paragraph 4 of Article 27 defines that gas transmission system owner shall comply with requirements of paragraph 2 of Article 28 of the present Law.

At the same time, paragraph 2 of Article 28 of the Law provides that gas transmission system owner shall:

1) provide all necessary cooperation and support to the gas transmission system operator for the fulfilment of its functions, including all necessary information;

2) finance investments stipulated in the ten-year gas transmission system development plan or consent to financing of such an investment by any interested party including by the gas transmission system operator;

3) ensure performance of financial liabilities related to the gas transmission system assets, excluding the liabilities relating to the functions of the gas transmission system operator;

4) attract investments for purposes of development of the gas transmission system with the exception of those investments where pursuant to item 2) of this paragraph it has consented to their financing by any interested party including the gas transmission system operator.

In addition, item 2 of paragraph 4 of Article 27 of the Law provides that gas transmission system owner shall provide to the Regulator all draft contracts with the business entity which has submitted a request for certification and with any other relevant person.

Paragraph 2 of Article 20 of the Law provides that business entity, which has obtained a license for gas transmission shall be deemed to be GTS Operator.

At the same time, the license for gas transmission shall be issued only to the applicant in respect of which there has been adopted a final decision on certification (in accordance with Articles 24, 26 of the present Law except for applicants in respect of which the Regulator has adopted a decision on non-application of Article 23 of the present Law in accordance with Article 54 of the present Law).

In order to ensure the implementation of unbundling and independence requirements for the GTS Operator under ISO model in line with the Law, the Verkhovna Rada of Ukraine adopted the Law of Ukraine № 264-IX dated 31 October 2019 "On amendments to certain legislative acts of Ukraine in connection with the unbundling of natural gas transmission activities", which regulates the issues of concern in the current legislation, inter alia:

amendments introduced to the Commercial Code of Ukraine:

remove the indirect control over the GTS operator from the Government by eliminating the requirement for approval by the Cabinet of Ministers of Ukraine of the financial plan;

provide that Cabinet of Ministers of Ukraine or the respective authorized subject of management of state property object may transfer state-owned objects (GTS) to the economic management of the GTS operator;

define the scope of rights and obligations under the ISO model of the owner of assets, transferred to the GTS operator under the right of economic management, in part related to its control, usage and safety in accordance with the requirements of the Law;

provide that new GTS operator may use state property on the basis of economic management rights regardless of any further changes in its management structure, including in connection with the involvement of a foreign partner;

amendments introduced to the Land Code of Ukraine:

provide for the possibility of granting land plots based on the right of permanent use to the new GTS operator;

ensure simultaneous transfer of property rights on the GTS objects (based on the right of economic management) to the new GTS operator and termination of the right of JSC Ukrtransgaz of permanent use of the plots under such objects;

the Law of Ukraine "On pipeline transport" has been amended with the purpose of eliminating terminological inconsistencies regarding the possible alienation of the fixed assets of JSC Ukrtransgaz which are not state-owned, but will be used in the course of natural gas transmission activities;

the Law of Ukraine “On management of state property objects” has been amended to ensure the scope of rights of GTS operator required for certification under the selected ISO unbundling model;

the Law of Ukraine "On licensing of types of economic activities" has been amended in part of setting a period within which a new GTS operator must obtain the appropriate license, taking into account the practice and legal requirements of the previous procedures (for example, the certification procedure in the case of the GTS operator itself takes up to 6 months). The amendments will allow the new GTS operator to provide natural gas transmission services and have a licensee status before undergoing its own licensing procedure. Similar amendments were introduced to the Law of Ukraine “On the permitting system in the field of economic activity”.

the Law of Ukraine “On the Cabinet of Ministers of Ukraine” has been amended in order to eliminate the possibility of influence by the Prime Minister of Ukraine or the Cabinet of Ministers of Ukraine on decision-making of the ministry in the course of managing the state corporate rights in the GTS operator and, accordingly, simultaneously exercise indirect control over the producers/suppliers in electricity or natural gas.

the Law of Ukraine “On the National Commission for State Regulation in the Fields of Energy and Public Utilities” was amended to strengthen the Regulator's ability to oversee the compliance of the GTS owner with independence requirements provided for in the Law, in particular, the approval of contracts concluded between the GTS operator and the owner, as well as the settlement of disputes arising between the GTS operator and the authorized subject of management of state property object used in the process of carrying out natural gas transmission and/or storage activities.

Pursuant to the paragraph 2 of Article 24 of the Law, the certification procedure, containing requirements for notifications, documents, data and information to be provided by business entity applying for certification, the period of their submission, the amount and the procedure for charging for certification, the term validity of the certification decision, are approved by the Regulator.

The procedure for certification of gas transmission system operator is approved by the NEURC resolution No. 631 of 14 April 2016 (hereinafter - Certification Procedure).

In accordance with the item 1 of paragraph 1 of Article 24 of the Law and clause 1 of section III of the Certification Procedure, the Regulator (NEURC) shall review the compliance of the business entity which has submitted a request for certification with unbundling and independence requirements of gas transmission system operator as stipulated for the selected unbundling model by the Law.

Pursuant to paragraph 1 of the Cabinet of Ministers of Ukraine resolution No. 840 of 18 September 2019 “On separation of natural gas transmission activities and ensuring the operation of the gas transmission system operator” (hereinafter - the Resolution), it is foreseen to choose the natural gas unbundling model, provided for by Article 27 of the Law, as unbundling model for the operator of the gas transmission system, which is state-owned and not subject to privatization (ISO model).

Paragraph 2 of the Resolution stipulates that the LIMITED LIABILITY COMPANY GAS TRANSMISSION SYSTEM OPERATOR OF UKRAINE

(hereinafter - LLC GAS TSO OF UKRAINE) has the right to submit to NEURC a request for certification as gas transmission system operator.

According to the Certification Procedure, within four months from the receipt of the request for certification, NEURC shall issue a preliminary decision on certification or refusal of certification. Regulator shall take the final decision within two months from the date of receipt of the opinion of the Energy Community Secretariat on the preliminary certification decision.

3. Details on the Applicant, which submitted a certification request (LLC GAS TSO OF UKRAINE) and other stakeholders

NATIONAL JOINT STOCK COMPANY "NAFTOGAZ OF UKRAINE" (hereinafter - National Joint Stock Company "Naftogaz of Ukraine") is the successor of the State Committee of Ukraine for Oil and Gas, which was established in 1993 as a legal entity with the status of a central executive body subordinated to the Cabinet of Ministers of Ukraine. The State Committee of Ukraine for Oil and Gas exercised control over all state-owned oil and gas companies that existed at that time: JSC "Ukrigasprom" (gas production and transportation), JSC "Ukrigas" (gas distribution), JSC "Ukrnafta" (oil), JSC "Chornomornaftogaz" (Assets in the Autonomous Republic of Crimea), as well as oil refining and transportation companies.

According to the Resolution of Cabinet of Ministers of Ukraine No. 747 of 25 May 1998 "On the formation of National Joint Stock Company "Naftogaz of Ukraine", National Joint Stock Company "Naftogaz of Ukraine" was founded as a holding company-owner of assets that remained under the control of the State Committee of Oil and Natural Gas of Ukraine.

In accordance with the Decree of the President of Ukraine No. 151 of 15 February 1998 "On reforming the oil and natural gas sector of Ukraine" and the resolution of the Cabinet of Ministers of Ukraine No. 1173 of 24 July 1998 "On the separation of functions on the production, transmission, storage and sale of natural gas", JSC "Ukrigasprom" was reorganized, in particular, by establishing a subsidiary company "Ukrtransgaz" of National Joint Stock Company "Naftogaz of Ukraine" based on gas transmission entities and structural units of the joint stock company "Ukrigasprom".

During the reorganization of JSC "Ukrigasprom", pursuant to the joint order of National Joint Stock Company "Naftogaz of Ukraine" and the State Committee of the Oil, Natural Gas, and Oil Processing Industry of Ukraine No. 68/234 of 6 November 1998, pipeline transport objects (main pipelines, its facilities, etc.) were transferred into usage to National Joint Stock Company "Naftogaz of Ukraine", in accordance with agreement on usage of state property that is not subject to privatization No. 76 of 04 February 1999, concluded between the State Property Fund of Ukraine and National Joint Stock Company "Naftogaz of Ukraine".

In accordance with the agreement on usage of state property that is not subject to privatization No. 19/275 of 17 June 1999 concluded between National Joint Stock Company "Naftogaz of Ukraine" and SC Ukrtransgaz, the mentioned pipeline transport objects were transferred into usage to SC Ukrtransgaz.

PJSC Ukrtransgaz was founded in accordance with the decree of the Cabinet of Ministers of Ukraine No. 360-o of 13 June 2012 “On the reorganization of subsidiaries of the National Joint Stock Company "Naftogaz of Ukraine"”, the order of the Ministry of Energy and Coal Industry of Ukraine No. 530 of 18 July 2012 “On the reorganization of the subsidiary company Ukrtransgaz of National Joint Stock Company "Naftogaz of Ukraine"” as a result of reorganization through transformation into a public joint stock company of the Subsidiary company Ukrtransgaz of National Joint Stock Company “Naftogaz of Ukraine”, that was founded in accordance with the resolution of Cabinet of Ministers of Ukraine No. 1173 of 24 July 1998 “On the separation of functions on the production, transmission, storage and sale of natural gas”.

The founder of PJSC Ukrtransgaz is the National Joint Stock Company “Naftogaz of Ukraine”. PJSC Ukrtransgaz is the successor to property and non-property rights and obligations of SC Ukrtransgaz.

The structure of JSC Ukrtransgaz includes 13 business units with a status of branches, production facilities of which are located in all regions of Ukraine. The average number of employees of JSC Ukrtransgaz constituted 20,058 permanent units.

It should be noted that from 2002 to 2013 SC Ukrtransgaz of National Joint Stock Company "Naftogaz of Ukraine" was carrying out economic activities on the basis of licenses issued by the NCRE on the right to carry out activities on:

- transmission of natural and petroleum gas, and gas (methane) via pipelines;
- storage of natural gas, gas (methane) of coal deposits.

Due to the transformation of SC Ukrtransgaz of National Joint Stock Company "Naftogaz of Ukraine" into PJSC Ukrtransgaz, NEURC revoked the previous licenses and issued new licenses for the types of economic activities in question to PJSC Ukrtransgaz (from 6 June 2018 as JSC Ukrtransgaz) on 28 February 2013.

As already noted, the sole founder of JSC Ukrtransgaz is National Joint Stock Company "Naftogaz of Ukraine", which is a vertically integrated undertaking within the meaning of the Law, and falls under the management of the Cabinet of Ministers of Ukraine, under the management of which fall, in particular, legal entities carrying out activities on distribution and supply of electricity (Fig. 1).



Fig. 1. Economic entities in the energy sector that fall under the management of the Cabinet of Ministers of Ukraine (as of the date of the request for certification)

At the same time, National Joint Stock Company "Naftogaz of Ukraine" as the main (parent) company remains under full state ownership (100%), and the Cabinet of Ministers of Ukraine¹ acts as an organization authorized to manage corporate rights of the state (organization-owner). Before the start of corporate governance reform of the company, which started in 2015, the shareholders rights in National Joint Stock Company "Naftogaz of Ukraine" were exercised by the Ministry of Fuel and Energy of Ukraine, and then in December 2015 these rights were transferred to the Ministry for Economic Development and Trade (MEDT).

As for today National Joint Stock Company "Naftogaz of Ukraine" has a corporate structure of a joint stock company that integrates controlled companies that operate as: subsidiaries, i.e., affiliates founded by National Joint Stock Company "Naftogaz of Ukraine"; controlled "commercial" companies (business enterprises) founded by National Joint Stock Company "Naftogaz of Ukraine" or are under its full ownership; and subsidiaries, i.e., - joint-stock companies, - which were partially privatized but are partially owned by National Joint Stock Company "Naftogaz of Ukraine".

The current Charter and other corporate documents of National Joint Stock Company "Naftogaz of Ukraine" were adopted, in particular, by resolution of the Cabinet of Ministers of Ukraine No. 1044 of 14 December 2016 (version of resolution

¹ Resolution of the Cabinet of Ministers of Ukraine No. 675 of 22 September 2016 "Regarding certain issues of management of the public joint stock company" National Joint Stock Company "Naftogaz of Ukraine"

of the Cabinet of Ministers of Ukraine No. 226 of 6 March 2019). The package of corporate documents includes: Regulation on the Supervisory Board, as well as the Regulation on the Executive Board.

According to the current Charter of National Joint Stock Company "Naftogaz of Ukraine", the Cabinet of Ministers of Ukraine is the body authorized to manage state corporate rights in the authorized capital of the company. The powers of the Cabinet of Ministers of Ukraine are enshrined in the law:

Law of Ukraine "On the management of state property objects";

Law of Ukraine "On joint stock companies";

Law of Ukraine "On the Cabinet of Ministers of Ukraine"; and

The Charter of National Joint Stock Company "Naftogaz of Ukraine", that provides, in particular, for the competence of the Cabinet of Ministers of Ukraine regarding the following:

adoption of Charters;

appointment of members of the Supervisory Board and the Executive Board;

adoption of development strategies, financial and investment plans;

ensuring an annual independent audit of financial transactions;

adoption of agreements on joint activities, agency and broker agreements;

ensuring the distribution of part of the profit.

On 5 February 2019, in order to meet the unbundling and independence requirements, LLC Gas TSO of Ukraine is established based on the branch of JSC Ukrtransgaz, the sole founder of LLC Gas TSO of Ukraine is JSC Ukrtransgaz.

The current version of the charter of LLC Gas TSO of Ukraine of 4 February 2019 (hereinafter - the Charter) determines that officials of the Company are the Director General (the sole executive body of the Company that manages the current activities of the Company) and other persons in accordance with the law of Ukraine "On limited and additional liability companies".

The management of current activities of LLC Gas TSO of Ukraine is exercised by the Director General, who is accountable and responsible to the general meeting for management of the Company's current activity and fulfilling the tasks and functions assigned to the General Director. The scope of competence of the General Director shall include all issues of the Company's activities (except for those that fall within the exclusive competence of the general meeting).

In accordance with the Charter, the Director General:

manages the current activities of the Company;

within his/her competence issues orders and instructions binding on all employees of the Company;

within the competence approves internal documents regulating issues of the Company's activities except for those that are introduced at the initiative of the general meeting of the Company;

determines the conditions and limits for the remuneration of employees of the Company, branches and representative offices, other separate divisions of the Company;

disposes of the property and funds of the Company subject to restrictions established by law and the Charter and the decision of the general meeting;

appoints and dismisses employees of the Company;
organizes the preparation of a financial plan, business plan, as well as the investment program of the Company.

According to the information provided by the Applicant, the Director General of LLC Gas TSO of Ukraine is Makogon Sergiy.

In addition, according to the information provided by LLC Gas TSO of Ukraine, the Company did not form a supervisory board, an audit committee or other executive bodies.

As the sole shareholder of LLC Gas TSO of Ukraine, JSC Ukrtransgaz has rights in respect of the Company as defined by the Law of Ukraine "On limited and additional liability companies" and the Charter. In accordance with Article 28 and the first paragraph of Article 29 of the Law of Ukraine "On limited and additional liability companies", the bodies of the company are the general shareholders meeting, the supervisory board (if established) and the executive body. The general shareholders meeting is the highest authority of the company. According to article 37 of this Law in case of sole shareholder in the company, decisions on matters falling within the competence of general shareholders meeting are taken individually by such sole shareholder of the company and shall be made in the form of the resolution in writing by such shareholder.

Pursuant to applicable terms and conditions of transit contract concluded between National Joint Stock Company "Naftogaz of Ukraine" and PJSC "Gazprom" (hereinafter – Contract), by 1 January 2020 National Joint Stock Company "Naftogaz of Ukraine" is the provider of natural gas transit services.

In particular, the Contract provides that National Joint Stock Company "Naftogaz of Ukraine" ensures the proper functioning of the GTS of Ukraine and guarantees reliable and uninterrupted transit, which in turn is based on the availability of relevant technical and physical resources in National Joint Stock Company "Naftogaz of Ukraine" to provide natural gas transit services (including at the expenses of technical resources of its subsidiary JSC Ukrtransgaz), including the right to use the gas transmission system. According to the terms and conditions of the Contract, National Joint Stock Company "Naftogaz of Ukraine", entrusts the technical execution of the Contract based on its obligations to JSC Ukrtransgaz as successor of SC Ukrtransgaz National Joint Stock Company "Naftogaz of Ukraine". Pursuant to terms and conditions of the Contract National Joint Stock Company "Naftogaz of Ukraine" may not transfer its rights and obligations under this Contract to third parties without the written consent of PJSC "Gazprom" until the expiry date of the Contract.

Thus, according to the terms and conditions of the current Contract, as well as in accordance with the Arbitration award on the case of National Joint Stock Company "Naftogaz of Ukraine" vs. the PJSC "Gazprom" under the Contract, granted on 28 February 2018 by the Tribunal at the Arbitration Institute of the Stockholm Chamber of Commerce, National Joint Stock Company "Naftogaz of Ukraine" has no right to unilaterally transfer its rights and obligations under this Contract to new GTS operator or unilaterally amend other terms and conditions of the Contract.

In accordance with the above-mentioned, as of the date of the submission of certification request LLC Gas TSO of Ukraine is a legal entity that is part of a vertically

integrated undertaking, which does not comply with the first paragraph of Article 23 of the Law.

For fulfilment of international obligations, the Government developed a restructuring plan for National Joint Stock Company "Naftogaz of Ukraine" with the purpose of unbundling natural gas transmission activities (resolution of the Cabinet of Ministers of Ukraine No. 496 of 1 July 2016). As part of the implementation of the unbundling plan, by resolution No. 800 of 9 November 2016 the Cabinet of Ministers of Ukraine established JSC "Mahistralni Gazoprovody Ukrainy".

At the same time, JSC "Mahistralni Gazoprovody Ukrainy" was founded as a state joint stock company with 100 percent of shares belonging to the state and the power to manage corporate rights of the state in the authorized capital, approval of the charter and regulations on the supervisory board and executive board taking into account the action plan on corporate management of the gas transmission system operator of which was carried out by the Ministry of Energy and Coal Industry of Ukraine.

At the same time, within the competence of the Ministry of Energy and Coal Industry of Ukraine (the successor of which is the Ministry of Energy and Environmental Protection of Ukraine - Minekoenergo) falls the management of, in particular, legal entities engaged in the production, distribution and supply of electricity (Fig. 2).

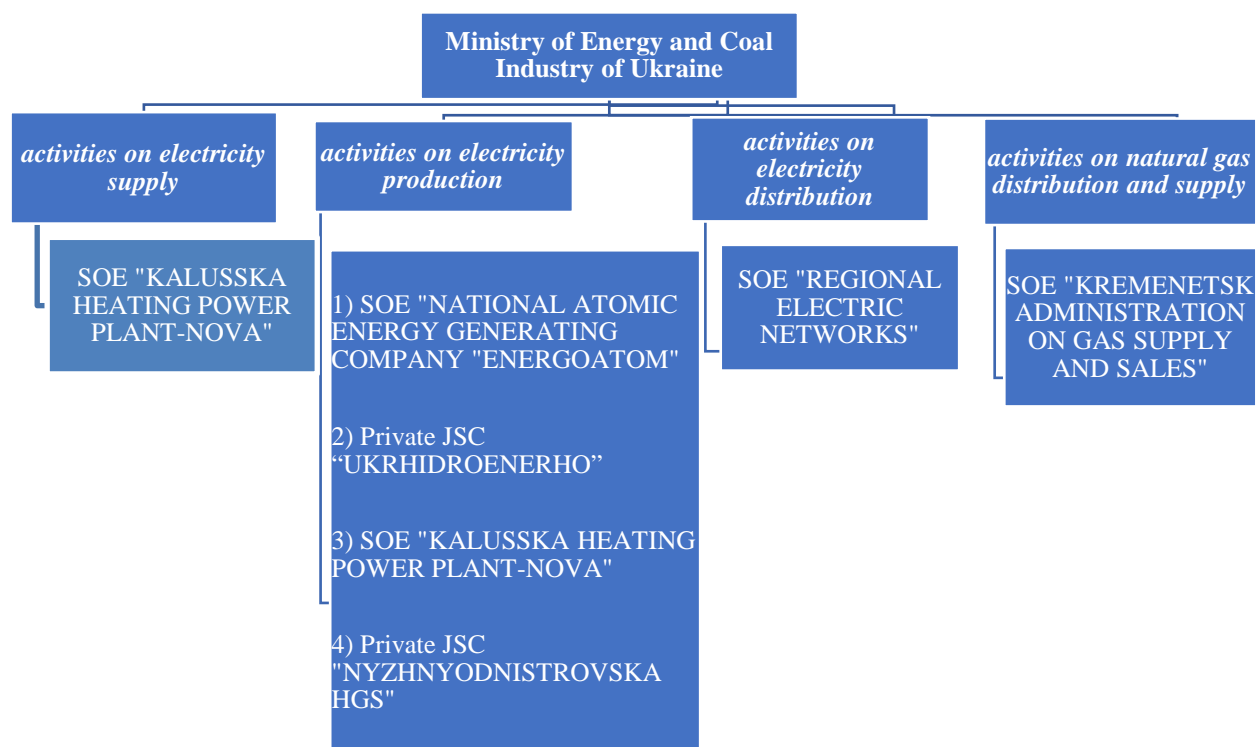


Fig. 2. The list of economic entities on the transmission, production, supply and distribution of electricity and natural gas that fall within the competence of the Ministry of Energy and Environmental Protection of Ukraine (as of the date of the request for certification)

On 18 September 2019 by the decree of the Cabinet of Ministers of Ukraine No. 791-o it was decided to transfer the state's managing powers in JSC "Mahistralni Gazoprovody Ukrainy" to the Ministry of Finance of Ukraine in order to comply with requirements of European law, as well as paragraph 3 of Article 23 of the Law with regard to the prohibition to an individual or a legal person simultaneously:

1) directly or indirectly exercise sole or joint control over at least one business entity (including a foreign one) carrying out production and/or supply of natural gas and/or electricity, and directly or indirectly exercise sole or joint control over the gas transmission system operator (including be the gas transmission system owner) or exercise any right over the gas transmission system operator (including any rights in respect of the gas transmission system itself);

2) directly or indirectly exercise sole or joint control over the gas transmission system operator (including be the gas transmission system owner), and directly or indirectly exercise sole or joint control over at least one business entity (including a foreign one) carrying out production and/or supply of natural gas and/or electricity or exercise any right over at least one business entity (including a foreign one) carrying out production and/or supply of natural gas and/or electricity;

3) appoint at least one official of the gas transmission system operator, and directly or indirectly exercise sole or joint control over at least one business entity (including a foreign one) carrying out production and/or supply of natural gas or exercise any right over at least one business entity carrying out production and/or supply of natural gas;

4) be an official of the gas transmission system operator and of at least one business entity (including a foreign one) carrying out production and/or supply of natural gas.

According to the Uniform state register of legal entities, individual entrepreneurs and public organizations of Ukraine, and information provided by a letter of the Ministry of Finance of Ukraine of 19 August 2019, 23 business entities, whose activities are directed and coordinated by the Cabinet of Ministers of Ukraine through the Minister of Finance of Ukraine and which are not engaged in the production (extraction), distribution, supply of electricity (natural gas) and resale (trading) of electricity/natural gas, fall under the management of the Ministry of Finance of Ukraine. In addition, the Ministry of Finance of Ukraine manages state corporate rights in the authorized capital and owns the shares of three banks (Fig. 3).

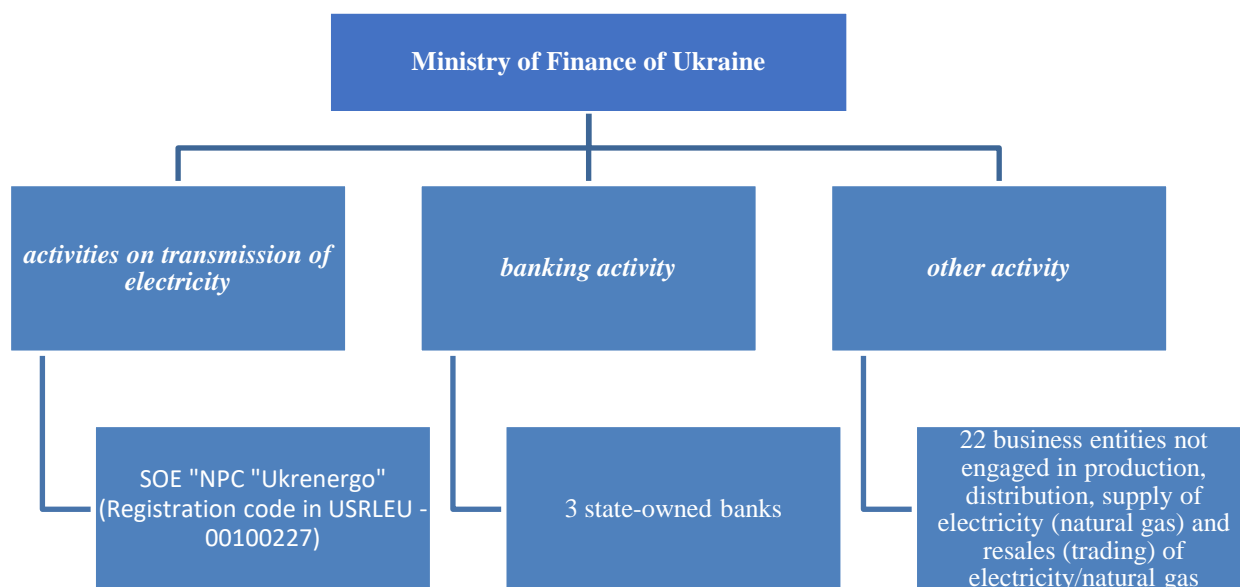


Fig. 3. Enterprises and institutions that fall under the management of the Ministry of Finance of Ukraine (as of the date of the request for certification)

Given that corporate rights of JSC "Mahistralni Gazoprovody Ukrainy" belong to the Ministry of Finance of Ukraine, by order of the Ministry of Finance of Ukraine No. 466 of 7 November 2019 the charter of JSC "Mahistralni Gazoprovody Ukrainy" (hereinafter - Charter of JSC "MGU") was approved.

The Charter of JSC "MGU" provides that JSC "Mahistralni Gazoprovody Ukrainy" is a legal entity, created as a joint stock company, 100 percent of the shares of which are state-owned and whose corporate rights are managed by the Ministry of Finance of Ukraine. The purpose of the JSC "Mahistralni Gazoprovody Ukrainy" operations is to generate profit from conducting business, management and facilitation of the efficient operation of the gas transmission system operator in accordance with the legislation of Ukraine, to facilitate the interruptible natural gas transmission via main gas pipelines, facilitate the development and implementation of strategy for the gas transmission system development to meet the expected demand for natural gas transmission services of natural gas economic entities, increase the level of energy security of the state and development of the gas transmission system.

In accordance with the Charter of JSC "MGU" the management and control of the financial and economic activities of the Company is carried out by its bodies, the composition and procedure for the election (appointment) of which is determined by the legislation of Ukraine and the Charter of JSC "MGU".

At the same time, the managing bodies of JSC "Mahistralni Gazoprovody Ukrainy" are: General meeting, Supervisory board, Executive board.

The General meeting is the highest authority of the Company. The powers and functions of General meeting, defined by the Charter of JSC "MGU" and the legislation

of Ukraine, shall be exercised by the sole shareholder of the Company - the state represented by the Ministry of Finance of Ukraine.

Supervisory board of the Company is a collegial body that protects the rights of the shareholders of the Company, and within the competence defined by the legislation of Ukraine and this Charter, exercises management of the Company, controls, and regulates the activities of Executive board. Matters that fall within the exclusive competence of the Supervisory board of a joint stock company may not be resolved by other bodies of the Company, except for the general meeting, except in cases as established by the law. Supervisory board acts on the basis of legislation of Ukraine, this Charter and its. Each member of the Supervisory board shall act in the interests of Company and shareholder in order to prevent conflicts of interest, to ensure a balance of purposes (goals) of the activity of Company and shareholder. The Supervisory board of Company consists of seven members, four of which must meet the criteria and requirements of an independent member of the Supervisory board (hereinafter - an independent member) as established by the legislation of Ukraine.

Members of Supervisory board of JSC "Mahistralni Gazoprovody Ukrainy" according to provided documents and information are:

Walter Boltz;
Fabris Naulan;
Jan Chad;
Kirina Luchinkina;
Adomas Auditskas;
Victor Pynzenyk.

Management of the current activities of JSC "Mahistralni Gazoprovody Ukrainy" is carried out by Executive board, which is the collegial executive body of JSC "Mahistralni Gazoprovody Ukrainy". Executive board in its activities shall account to Supervisory board and General meeting of JSC "Mahistralni Gazoprovody Ukrainy" and organizes the implementation of their decisions. Executive board shall act on the basis of its regulations. Executive board of JSC "Mahistralni Gazoprovody Ukrainy" is composed of at least three and no more than seven people, including the head of the board, in the manner as provided for in this Charter.

Members of Executive board, including its Chairman, are elected and dismissed by Supervisory board on the basis of submission by Nomination and Remuneration Committee. Term of appointments of members of Executive board shall be determined by the resolution of Supervisory board. One person may be elected to Executive board more than once. In case if members of Executive board, except for its Chairman, are not elected, the Chairman of Executive board exercises the power of Executive board individually. A member of Executive board can be any individual with full civil legal capacity and who is not a member of the Supervisory board of JSC "Mahistralni Gazoprovody Ukrainy".

The Acting Chairman of Executive board of Executive board is Oleksandr Lisnichenko.

The Ministry of Finance of Ukraine, as the authorized body of management of state objects of gas transmission system, used in the process of carrying out activities on the natural gas transmission via main pipelines (decree of the Cabinet of Ministers

of Ukraine No. 1087-p of 15 November 2019), forms part of central executive power bodies of Ukraine.

As part of particularities in managing state-owned enterprises, the Ministry of Finance of Ukraine and other ministries are separate state bodies that are not subordinated to each other, and their areas of activity are separated by the Cabinet of Ministers of Ukraine and established in the relevant regulations of ministries.

Article 6 of the Constitution of Ukraine provides for the division of state power (competence) between the legislative body (the Verkhovna Rada of Ukraine), the executive body (the Cabinet Ministries of Ukraine and the President of Ukraine) and the system of judicial bodies.

The competence of the Cabinet of Ministers of Ukraine, as an executive body, regarding the activities of ministries and other executive bodies is conditioned by the constitutional fundamental principles and is exercised by this body only within the framework of exercising functions of executive power. In accordance with Article 6 of the Constitution of Ukraine, executive bodies exercise their powers within the scope as established by Constitution and in accordance with the laws of Ukraine. In accordance with Article 19 of Constitution of Ukraine state bodies and bodies of local self-government, their officials are obliged to act only on the basis, within the powers and in the manner as prescribed by Constitution and laws of Ukraine.

Article 113 of Constitution of Ukraine establishes that Cabinet of Ministers of Ukraine is the highest body in the system of bodies of executive power. The Cabinet of Ministers of Ukraine in its activity is guided by this Constitution and the laws of Ukraine, as well as decrees of the President of Ukraine and resolutions of the Verkhovna Rada of Ukraine adopted in accordance with the Constitution and laws of Ukraine.

Article 114 of the Constitution of Ukraine provides that the Cabinet of Ministers of Ukraine shall be comprised of the Prime Minister of Ukraine, the First Vice-Prime Minister, Vice-Prime Ministers and Ministers. The Prime Minister of Ukraine shall manage the work of the Cabinet of Ministers of Ukraine and direct such work at the implementation of the Programme of Activity of the Cabinet of Ministers of Ukraine adopted by the Verkhovna Rada of Ukraine.

In accordance with paragraphs 5, 9, 10 of Article 116 of Constitution of Ukraine and Article 2 of the Law of Ukraine "On the Cabinet of Ministers of Ukraine", the Cabinet of Ministers of Ukraine, in particular, directs and coordinates the work of ministers, other executive bodies, exercised management of state-owned objects in accordance with the law; exercises other powers specified in the Constitution and the laws of Ukraine.

Paragraph 2 of Article 1 of the Law of Ukraine "On the Cabinet of Ministers of Ukraine" establishes that Cabinet of Ministers of Ukraine exercises executive power directly and through the ministers, other central executive bodies, the Council of Ministers of the Autonomous Republic of Crimea and local state administrations, directs, coordinates and controls the activities of these bodies.

Article 3 of the Law of Ukraine "On the Cabinet of Ministries of Ukraine" establishes that Cabinet of Ministries of Ukraine is the collegial body and which adopts decisions after discussing matters as its meetings.

According to the requirements of points 1 - 2 of paragraph 21 of the Regulations of the Cabinet of Ministers of Ukraine, approved by resolution of Cabinet of Ministers of Ukraine No. 950 of 18 July 2007, the decision of the Cabinet of Ministers is adopted by a majority vote of the Cabinet of Ministers. In the event of an equal distribution of votes, the vote of the Prime Minister is decisive.

Based on paragraph 2 of Article 19 of the Law of Ukraine "On the Cabinet of Ministers of Ukraine" the Cabinet Ministries of Ukraine exercises constant control over the implementation by bodies of the executive power of Constitution of Ukraine and other acts of the legislation of Ukraine, and takes measures to eliminate failures in the work of these bodies. In accordance with paragraph 6 of Article 21 of the Law of Ukraine "On the Cabinet of Ministers of Ukraine" the Cabinet of Ministers of Ukraine is empowered to repeal acts of ministries and other central executive bodies in whole or in part.

At the same time, the Law of Ukraine No. 264-IX of 31 October 2019 "On amendments to certain legislative acts of Ukraine in connection with the unbundling of natural gas transmission activities" (hereinafter – Unbundling Law) introduced amendments to Article 44 of the Law of Ukraine "On Cabinet Of Ministers of Ukraine", which provides that the relevant Ministry, exercising direct or indirect control over economic entities acting on the basis of the effective license for conducting natural gas transmission activities, exercises its powers of management of state-owned corporate rights in such economic entities or business organizations, owning corporate rights in respect of such economic entities, solely and independently in accordance with the principles of openness and transparency, responsibility for adopted decisions. Such rights shall not be exercised in respect of operation and allocation of capacity and investment planning that falls under the competence of economic entities conducting natural gas transmission activities.

Decisions on the management of corporate rights belonging to the state are adopted exclusively upon approval by Cabinet of Ministers of Ukraine and shall concern:

reorganization (merger, acquisition, split, spin off) or liquidation of such economic entities or business organizations;

transactions that may result in the termination of the economic management right on the property used in the process of natural gas transmission activities, of such economic entities or business organizations;

introducing amendments to charter of such economic entities or business organizations of relating to the purpose, subject, and main directions of their activity;

approval of a part of the net profit of such economic entities or business organizations, which should be aimed at paying dividends.

Intervention in the exercise of powers by the Ministry (which exercises direct or indirect control over economic entities acting on the basis of the effective license for conducting natural gas transmission activities or on the basis of the effective license for conducting electricity transmission activities, exercises powers of management of corporate rights, belonging to the state in such economic entities or business organization owning corporate rights in respect of such entities) is prohibited.

In addition, Article 44 of the Law of Ukraine “On the Cabinet of Ministers of Ukraine” is supplemented with paragraph 4, which provides that the Cabinet of Ministers of Ukraine, the Prime Minister of Ukraine, the minister who heads the ministry, which exercises control over the production or supply on the market of electricity or natural gas in accordance with the unbundling and independence requirements provided in by law for gas transmission system operator, shall not exercise coordination and control over the economic entities acting on the basis of license for conducting natural gas transmission activities, nor shall appoint members of the management bodies of such entities.

Thus, none of the officials of the Government of Ukraine is empowered to take decisions individually on matters falling within the competence of the Cabinet of Ministers of Ukraine, which is an additional guarantee of limiting their influence on the central executive bodies, in particular with regard to the management of corporate rights of the state in the authorized capital of joint stock companies the sole shareholder of which is the state, in addition, amendments introduced to the Law of Ukraine "On the Cabinet of Ministers of Ukraine" establish conditions for preventing conflicts between private interests and state’s responsibilities of officials and state officials.

4. Preliminary conclusions regarding compliance of LLC Gas TSO of Ukraine with unbundling and independence requirements

4.1. Unbundling of the natural gas transmission activities from production, distribution, supply of natural gas, and wholesaler’s activities.

a) at the date of submission of certification request by LLC Gas TSO of Ukraine in accordance with the documents provided to NEURC, LLC Gas TSO of Ukraine does not conduct activity on production and/or supply of natural gas and/or electricity. In addition, no business entity (including foreign) is established to conduct activity on production and/or supply of electricity (natural gas) under the direct/indirect joint or sole control of the right on behalf of Makogon Sergiy.

At the same time, on the date of submission of certification request by LLC Gas TSO of Ukraine, in accordance with the Unified State Register of Legal Entities, Individual Entrepreneurs and Public Organizations, JSC Ukrtransgaz is the sole founder of the Company.

JSC Ukrtransgaz exercises direct control over LLC Gas TSO of Ukraine through the authority to adopt sole decisions of the general shareholders meeting. Also, National Joint Stock Company "Naftogaz of Ukraine", in exercising its powers as sole shareholder of JSC Ukrtransgaz has the features of a subject that exercises indirect control over LLC Gas TSO of Ukraine.

Thus, in paragraph 10.2.49 of charter of JSC Ukrtransgaz it is determined that the exclusive competence of general shareholders meeting exercised by JSC Ukrtransgaz includes adoption of decisions on the establishment, participation, transformation or termination (including jointly with other legal entities) of legal entities. In accordance with paragraph 1 of Article 33 of the Law of Ukraine "On Joint Stock Companies", general meeting may decide on any issues of the company, except for those falling under exclusive competence of the supervisory board by law or charter. As of the date

of submission of certification request, the Supervisory board as a body of JSC Ukrtransgaz is not envisaged by its charter.

In addition, the Cabinet of Ministers of Ukraine exercises direct control over National Joint Stock Company "Naftogaz of Ukraine", and accordingly has indirect influence on the activities of JSC Ukrtransgaz and LLC Gas TSO of Ukraine.

As a result, at this stage of evaluation of information, documents and information submitted by LLC Gas TSO of Ukraine, NEURC establishes that LLC Gas TSO of Ukraine is a legal entity, which is part of vertically integrated undertaking, National Joint Stock Company "Naftogaz of Ukraine", and accordingly, this contradicts with the requirements of the Law in the part on control over natural gas transmission activities by economic entities conducting natural gas extraction (production) and/or supply activities and which within the meaning of the Law are part of a single vertically integrated undertaking.

In addition, economic entities conducting electricity (natural gas) extraction (production) and/or supply activities, and electricity (natural gas) transmission are in ownership of the State of Ukraine and fall under the control of individual state bodies.

Information on the list of economic entities performing electricity (natural gas) extraction (production) and/or supply activities, whose state share in the authorized capital exceeds 50 percent, and their managing bodies at the date receipt of certification request are provided in Annex 1 to this Justification.

According to the information provided in Annex 1 to this Justification, such state bodies as Cabinet of Ministers of Ukraine, Ministry of Energy and Environmental Protection, Ministry of Economic Development, Trade and Agriculture of Ukraine, Ministry of Infrastructure of Ukraine and State Property Fund of Ukraine exercise management over economic entities performing electricity (natural gas) extraction (production) and/or supply activities.

As of the date of certification request submission, Cabinet of Ministers of Ukraine, which carries out the functions of management of corporate rights of the National Joint Stock Company "Naftogaz of Ukraine", has indirect influence on the activity of LLC Gas TSO of Ukraine.

b) with the purpose of bringing the activity of LLC Gas TSO of Ukraine in compliance with requirements of the Law, to fulfill Ukraine's obligations under Energy Community and in accordance with Article 27 of the Law, the Cabinet of Ministers of Ukraine adopted resolution No.840 of 18 September 2019, which approves an Action Plan for implementation of unbundling and independence requirements of gas transmission system operator (hereinafter - the Action Plan).

The preconditions to be ensured for implementation of unbundling of LLC Gas TSO of Ukraine in accordance with the requirements of Articles 27, 28, 29 of the Law are the signing of Agreement on transfer under economic management right of state-owned property and is used in the process of natural gas transmission activities through main pipelines and Agreement on sale and purchase to JSC "Mahistralni Gazoprovody Ukrainy" of the share in the authorized capital of LLC Gas TSO of Ukraine.

Pursuant to the Procedure for transfer of objects of state property rights used in the process of carrying out natural gas transmission activities, adopted by resolution of

Cabinet of Ministers of Ukraine No. 942 of 15 November 2019, the objects are transferred by a decision of Cabinet of Ministers of Ukraine and in accordance with the agreement concluded between the subject of managing of objects and business entity under conditions approved by the Cabinet of Ministers of Ukraine. Transfer of objects is performed by signing the Statement of acceptance and transfer of property. The business entity ensures in the manner prescribed by law the registration of property rights to objects, the rights to which are subject to such registration, as well as the completion of all necessary registration actions in relation to the land plots on which the objects are located.

In accordance with the Terms and conditions of Agreement on transfer under economic management right of state-owned property and is used in the process of natural gas transmission activities through main pipelines, approved by resolution of Cabinet of Ministers of Ukraine No. 942 of 15 November 2019 and Agreement on the transfer under economic management right of state owned property, used in the process of carrying out natural gas transmission activities through main pipelines dated 21 November 2019 No. 13010-05/197 signed between the Ministry of Finance of Ukraine and LLC Gas TSO of Ukraine, property is transferred to the User (LLC Gas TSO of Ukraine) under the right of economic management starting from 7-00 01 January 2020 in case of occurrence of such Conditions precedent:

issuing in respect of User of final certification decision by the Regulator, adopted taking into account the opinion of the Energy Community Secretariat;

User has the right to carry out natural gas transmission activities.

The term for which property is transferred under economic management right to the User is 15 years. The composition of the property transferred under this Agreement under economic management right, is specified in the annex to this contract and is formalized by the Statement of acceptance-transfer of property.

In addition, according to the Agreement on purchase and sale of share in the authorized capital of Limited Liability Company “Gas Transmission System Operator of Ukraine” in the amount of 100 percent between Joint Stock Company Ukrtransgaz and Joint Stock Company Main Gas Pipelines of Ukraine No. 1911000192 of 22 November 2019, the date of transfer of property right of share in the authorized capital of LLC Gas TSO of Ukraine is 01 January 2020 if the Conditions precedent (mentioned below) have been completely fulfilled as of 27 December 2019 inclusive. If the Conditions precedent have not been fulfilled as of 27 December 2019 inclusive, the date of transfer will be the third business day after the calendar day on which the Conditions precedent have been fulfilled.

The Conditions of the transfer of share in the authorized capital of the Company are:

1) adoption by the Regulator of the final decision on certification of the Company based on the opinion of the Energy Community Secretariat;

2) conclusion of Agreement on transfer under economic management right of state-owned property and is used in the process of natural gas transmission activities through main pipelines;

3) entry into force of the Unbundling Law;

4) obtainment of the permission of the Antimonopoly Committee of Ukraine for concentration in connection with (i) transfer to the Company under economic management right of state owned property that is used in the process of carrying out natural gas transmission activities through main pipelines and (ii) acquisition by the Buyer of a Share in the authorized capital of Company according to conditions of this Agreement.

In addition, this Agreement provides that after signing of Statement of acceptance-transfer and state registration of relevant amendments regarding the participants of the Company stipulated in a United State Register of Legal Entities, Individual Entrepreneurs and Public Organizations of Ukraine and amendments to the statutory documents of Company all rights of the Share are transferred in full to the Buyer and the Buyer becomes the sole legal owner of the Share and acquires all rights as participant of Company. The Buyer shall, from the moment of signing of the Statement of acceptance-transfer, bear all obligations as the Company's participant arising out of the legislation of Ukraine.

Taking the above into consideration, in case of fulfillment of the above-mentioned Conditions precedent from 1 January 2020 the operation of LLC Gas TSO of Ukraine will be under indirect influence exercised by Ministry of Finance of Ukraine, which manages corporate rights in JSC "Mahistralni Gazoprovody Ukrainy".

At the same time, according to information obtained by NEURC, members of Supervisory board and of Executive board of the JSC "Mahistralni Gazoprovody Ukrainy" do not exercise sole or joint control over business entities (including foreign ones) engaged in production and/or supply of gas and/or electricity.

Ministry of Finance of Ukraine manages state corporate rights in the authorized capital of JSC "Mahistralni Gazoprovody Ukrainy" and according to Article 49 of the Law of Ukraine "On Joint Stock Companies" solely exercises the powers of general meeting. The rights of Minister of Finance, as a sole shareholder, regarding JSC "MGU" are defined by the Law of Ukraine "On Joint Stock Companies", Law of Ukraine "On management of state property objects".

According to paragraph 1 of Article 33 of the Law of Ukraine "On Joint Stock Companies", the general meeting may resolve on any matter of activity of a joint stock company, other than the matters reserved exclusively to the supervisory board by law or charter. The powers of the general shareholders meeting also include the election of members of the supervisory board of a joint stock company.

On the basis of subparagraph 161 of paragraph 2 of Article 52 of the Law of Ukraine "On Joint Stock Companies" the Supervisory board shall have an exclusive competence to resolve on matters regarding the establishment and/or participation in any legal entities, their reorganization and liquidation. In addition, paragraph 1 of Article 51 and paragraph 3 of Article 52 of this Law stipulates that issues that fall within the exclusive competence of the Supervisory board of a joint stock company cannot be resolved by other bodies of the company, other than the general meeting, except in cases as established by this Law. Supervisory board is the body that protects the rights of shareholders of the company and within the powers defined by the Law of Ukraine "On Joint Stock Companies" and the charter, controls and regulates the

activities of the board. In particular, Supervisory board shall have the competence to elect and dismiss the Chairman and board members of JSC “MGU”.

Therefore, the Ministry of Finance of Ukraine, during the performance of its powers as general shareholders meeting of JSC “MGU”, indirectly exercises influence over LLC Gas TSO of Ukraine through the possibility of making decisions of the shareholder of JSC “MGU” that may relate to the activities of LLC Gas TSO of Ukraine.

The Ministry of Finance of Ukraine also exercises indirect influence over LLC Gas TSO of Ukraine in connection with the possibility of appointing the composition of Supervisory board of JSC “MGU”. This influence may appear within the following:

- exclusive right of Supervisory board to establish, liquidate and reorganize the subsidiaries of JSC “MGU”, one of which will become LLC Gas TSO of Ukraine;

- powers of Executive board of JSC “MGU” appointed by Supervisory board to decide on the management of LLC Gas TSO of Ukraine.

Pursuant to paragraph 4 of Article 11 of the Law of Ukraine “On management of state property objects”, if the state is the sole shareholder (participant) in a business organization, the functions for managing state corporate rights are performed in accordance with this Law directly, without convening a general meeting of shareholders (participants) of a business entity.

At the same time, the Unbundling Law introduced amendments to Article 44 of Law of Ukraine “On the Cabinet of Ministers of Ukraine”, providing that the Cabinet of Ministers of Ukraine, the Prime Minister of Ukraine cannot exercise coordination and control over business entities acting on the basis of the license for conducting natural gas transmission activities nor can appoint members of management bodies of such entities.

In order to prevent the use of powers of authorized management body in relations with LLC Gas TSO of Ukraine, to which the property will be transferred under the right of economic management, to interfere with the functions of gas transmission system operator, the Unbundling Law introduced amendments to Article 136 of Commercial Code of Ukraine (new paragraphs 5 and 6 added), which provide that:

- business entity to which the state-owned objects have been transferred in order to designate a transmission system operator or a gas transmission system operator under the right of economic management shall be completely independent in taking decisions on the usage, operation, maintenance, planning, development and financing thereof in accordance with the Law of Ukraine “On natural gas market”, the Law of Ukraine “On the electricity market”.

- the owner of transmission system or gas transmission system represented by the authorized subject of management of state property objects may not refuse in financing by the transmission system operator or the gas transmission system operator to which the property is transferred under the right of economic management, or by other interested party, of the investments, approved by the National Energy and Utilities Regulatory Commission. When approving such investments, National Commission for State Regulation in the Energy and Utilities Sector in particular shall be guided by the necessity to ensure the security of natural gas supply.”

Therefore, the relations between the owner (state represented by authorized managing entity – Ministry of Finance of Ukraine) and the business entity to which the state-owned property which is a part of gas transportation system is transferred under the economic management right (LLC Gas TSO of Ukraine) is governed by the Commercial Code of Ukraine and the Law (and also from 1 January 2020 by the Agreement on the transfer under economic management right of state-owned property and used in the process of carrying out natural gas transmission activities through main pipelines), therefore the powers of the owner do not provide the right to Ministry of Finance of Ukraine to intervene in operational and economic activities of such business entity.

In addition, in accordance with Article 28 Law in the part of separation of duties of gas transmission system operator (ISO unbundling model) and owner of gas transmission system, the charter of JSC “MGU” establishes that the subject of JSC "Mahistralni Gazoprovody Ukrainy" activities is the creation and preconditions and facilitation of:

- secure, reliable and efficient functioning of the gas transmission system;
- attraction within the framework of legislation of investments for the purposes of development of the gas transmission system;

- financing of investments, provided for the ten-year gas transmission system development plan, including financing of joint investment projects between the gas transmission system operator and any interested party within the current legislation;

- preparation of proposals for the development and formulation of state policy in the oil and gas complex within its competence, in particular, participation in the formation of long-term forecasts, prospective and current plans for economic and social development, targeted complex scientific, technical, economic, investment and social programs of JSC "Mahistralni Gazoprovody Ukrainy" and the gas transmission system operator in accordance with the state development strategies in the oil and gas complex;

- integration of the national natural gas market into the unified natural gas market in accordance with international obligations of Ukraine, in particular, within the framework of the Law of Ukraine “On ratification of the Protocol of Ukraine's accession to the Treaty establishing the Energy Community” as of 15 December 2018 No. 2787-VI;

- cooperation and interaction of gas transmission system operator with the gas transmission system operators of other countries, in particular of the countries of the Energy Community, including through participation within the effective legislation in operational arrangements, with the aim of creating regional (international) natural gas markets, to cooperate with the of the Energy Community Regulatory Board and, where appropriate, national energy regulators of other countries;

- taking measures to improve rational use of energy resources and environmental protection by the gas transmission system operator in compliance with unbundling and independence requirements for gas transmission system operator in accordance with the ISO unbundling model;

- development of mutually beneficial foreign economic relations, trade, economic, scientific and technical cooperation of the Company and the gas transmission system operator.

With the view of the above-mentioned and in accordance with the subject of activity of JSC "Mahistralni Gazoprovody Ukrainy", as defined in the Charter of JSC "MGU", the absence of influence of JSC "MGU" on the operational activities of the gas transmission system operator has been ensured and the requirements of Article 28 of the Law on the separation of the duties of the gas transmission system operator (ISO unbundling model) and the owner of the gas transmission system are complied with.

Therefore, from 1 January 2020 the indirect influence over the operation of LLC Gas TSO of Ukraine will be exclusively exercised by the Ministry of Finance of Ukraine, which manages corporate rights in JSC "Mahistralni Gazoprovody Ukrainy".

At the same time, given the postponed nature of the entry into force of the relevant transactions for transfer of property to LLC Gas TSO of Ukraine and purchase by JSC "MGU" of the share in the authorized capital of LLC Gas TSO of Ukraine, **the adoption of the final decision on certification is possible exclusively subject to submission to NEURC of the following:**

1) duly executed Statement of acceptance-transfer of property with the date of acceptance and transfer, drafted in accordance with Agreement on the transfer under economic management right of state-owned property and used in the process of carrying out natural gas transmission activities through main pipelines dated 21 November 2019 No. 13010-05/197;

2) in connection with the concluded Agreement on purchase and sale of share in the authorized capital of a LIMITED LIABILITY COMPANY "GAS TRANSMISSION SYSTEM OPERATOR OF UKRAINE" in the amount of 100 percent of the authorized capital between JOINT STOCK COMPANY UKRTRANGAZ and JOINT STOCK COMPANY "MAHISTRALNI GAZOPROVODY UKRAINY" from 22 November 2019 No. 1911000192:

copy of the permission of the Antimonopoly Committee of Ukraine for the concentration in connection with the transfer to the LIMITED LIABILITY COMPANY "GAS TRANSMISSION SYSTEM OPERATOR OF UKRAINE" under economic management right of state-owned property used in the process of carrying out natural gas transmission activities through main pipelines and acquisition by the JOINT STOCK COMPANY "MAHISTRALNI GAZOPROVODY UKRAINY" of a share in the authorized capital of the LIMITED LIABILITY COMPANY "GAS TRANSMISSION SYSTEM OPERATOR OF UKRAINE";

the duly executed Statement of acceptance and transfer of a share in the authorized capital of the LIMITED LIABILITY COMPANY "GAS TRANSMISSION SYSTEM OPERATOR OF UKRAINE", indicating the date of acceptance and transfer;

4.2. Compliance of LLC Gas TSO of Ukraine with the requirements of subparagraph 2 of paragraph 3 Article 27 of the Law regarding the disposal of the required financial, technical, physical and human resources to carry out its tasks under Article 28;

a) as of the date of submission of certification request LLC Gas TSO of Ukraine does not own or use the gas transmission system, and does not perform the

functions of granting access to gas transmission system, including the collection of gas transmission services charges and other charges, related to access or connection to the gas transmission system. These functions are performed by JSC Ukrtransgaz as an entity operating under a valid license for natural gas transmission activities.

At the same time, according to the Service Level Agreement as of 19 June 2019 No. 1906000195/1906000197 concluded between LLC Gas TSO of Ukraine and JSC Ukrtransgaz (hereinafter – SLA Agreement), LLC Gas TSO of Ukraine from 1 July 2019 till 1 January 2020 will be providing the following services to JSC Ukrtransgaz:

set of organizational and technical measures related to planning, preparation, organization of performance, control and accounting of all types of works related to operation, technical maintenance and repairs of the industrial objects, aimed to ensure safe and efficient operation of objects of main gas transmission pipelines.

collection of data related to operation of the Industrial Objects to the extent, on the terms, and in the forms, provided by the SLA Agreement;

at the Client's request other measures related to direct performance and ensuring provision by the Service Provider of the Services set out above as well as measures for planning, preparation and supervision of Client's construction facilities.

Therefore, from 1 July 2019 until 1 January 2020 LLC Gas TSO of Ukraine together with the JSC Ukrtransgaz ensures safe and efficient operation of gas pipeline facilities.

According to the information provided by the Applicant, as of the date of submission of the request, LLC Gas TSO of Ukraine has a current account in the amount of UAH 109 million. The key revenue item by 1 January 2020 is revenue from the provision of services under the SLA.

The number of employees of LLC Gas TSO of Ukraine as of the date of submission of the request is 9 739 permanent units, which is comparable to the tasks and functions stipulated by the SLA Contract, considering that as of 30.06.2019 the average number of employees of JSC Ukrtransgaz was 18 107 employees and JSC Ukrtransgaz in addition to natural gas transportation functions also performs natural gas storage functions.

b) as stated above, from 1 January 2020 LLC Gas TSO of Ukraine will receive under economic management right state-owned property used in the process of carrying out natural gas transmission activities through main pipelines and will start to provide natural gas transmission services.

Accordingly, the main source of Company's revenue will be income from natural gas transmission services, which will depend on the tariffs set by the Regulator for natural gas transmission services for entry points to gas transmission system and exit points from the gas transmission system.

The required revenue is determined on the basis of regulatory parameters and is calculated in accordance with the provisions of Methodology for the determination and calculation of tariffs for natural gas transmission services for entry points and exit points on the basis of multi-year incentive regulation, approved by the NEURC regulation of 30 September 2015 No. 2517.

Estimated required revenue from carrying out natural gas transmission is calculated with taking into account the following components:

- estimated controlled operating costs of natural gas transmission;
- estimated uncontrolled operating costs of natural gas transmission (taxes and fees defined by law);
- estimated costs related to the purchase of natural gas, used to ensure production and technological losses, normalized losses of natural gas;
- the estimated depreciation;
- the estimated profit on the regulatory asset base;
- the estimated income tax.

In accordance with the terms and conditions of Standard natural gas transmission agreement, approved by NEURC decision No. 2497 of 24 September 2015, payment for provided services for natural gas transmission shall be made by the transmission services customers on the prepayment condition, except for transmission services customer on which in accordance with the Cabinet of Ministers of Ukraine decision adopted pursuant to Article 11 of the Law, special obligations are imposed to supply natural gas, to the extent of its performance of special duties, or gas distribution system operator.

On 11 October 2019, LLC Gas TSO of Ukraine submitted to NEURC an application for setting tariffs for natural gas transmission services for entry and exit points and respective documents.

In accordance with paragraph 6 of Article 4 of the Law, tariffs shall be set taking into account the requirements of the integrity of the gas transmission system, based on the economically justified and transparent costs of the corresponding natural gas market entity and taking into account the appropriate level of profitability.

With this, in accordance with paragraphs 2 and 11 of the Action Plan, it is envisaged to:

take measures to increase the authorized capital of LLC Gas TSO of Ukraine by 1 December 2019 to ensure that the Company is able to perform functions of gas transmission system operator by means of alienation the JSC Ukrtransgaz own non-current and current tangible assets used in the process of natural gas transmission activities through main pipelines;

by 1 January 2020 ensure the process of transferring from JSC Ukrtransgaz to LLC Gas TSO of Ukraine of contracts for the purchase of goods, works and services necessary to ensure the uninterrupted functioning of gas transmission system objects, as well as the implementation as of 1 January 2020 replacement of a party to obligations under such agreements in accordance with the procedure established by the Civil Code of Ukraine.

It should be noted that National Joint Stock Company "Naftogaz of Ukraine" has adopted by its decision No. 309 of 21 November 2019 as the shareholder of JSC Ukrtransgaz, that JSC Ukrtransgaz is allowed to make transactions to alienate its own non-current and current tangible assets used in the process of natural gas transmission activities through main pipelines (according to the list determined by the Conclusion on the value (in accordance with inventory) of the report with determination of the market value of the JSC Ukrtransgaz assets for the purpose of transferring the assets to

LLC Gas TSO of Ukraine authorized capital) by making additional contribution in non-monetary form to LLC Gas TSO of Ukraine authorized capital.

Therefore, by 1 January 2020, LLC Gas TSO of Ukraine will receive for usage the property (fixed assets) necessary to perform functions of gas transmission system operator, in particular: main gas infrastructure (gas pipelines, compressor stations and pumping stations, gas stations (measurement and distribution), other network equipment, metrology, communications and telemetry equipment), buildings and structures, vehicles, IT equipment, equipment related to diagnostics, repair and maintenance, supplies, IT services.

In addition, the Unbundling Law introduced amendments to the Law of Ukraine “On licensing of types of business activities” and “On the permitting system in the field of business activity” which provide that:

if the state-owned objects used by the licensee in the process of business activity are transferred by the subject of management of state-owned objects under the right of economic management, and such business entity carries out the type of economic activity, to which the licensee was licensed, and was certified by an authorized body in accordance with the requirements set by law for unbundling and independence of such business entity, specified business entity has the right to carry out, within a period not exceeding one year, a corresponding type of business activity on the basis of a previously issued license to ensure the completion of organizational measures related to obtaining a new license. After expiration of this period, a previously issued license shall be revoked”;

in cases where the property or part of the property which is the state property object and with the presence of which is connected the issuance of permits, by the decision of the subject of management of state-owned objects is transferred to another business entity under the property right, defined by law, such business entity has the right to carry out activities on the basis of permits issued to the previous business entity within the period of their validity until the issuance of permits to the successor such business entity.

Thus, the Applicant has the right to use permits and licenses obtained by the JSC UKRTRANSGAZ for carrying out gas transmission business activities, until the Company obtains its own licenses and permitting documents in accordance with the law.

In accordance with the information provided by the Applicant, the number of employees of LLC Gas TSO of Ukraine as of the date of submission of the request is 9 739 permanent units, which is sufficient for the functioning of LLC Gas TSO of Ukraine during the transitional period from the date of submission of request until 1 January 2020 and will enable the performance of all tasks necessary for unbundling and designation of an independent operator, in particular, will ensure the possibility to perform its obligations under the SLA Agreement.

As of 1 January 2020 the number of employees of LLC Gas TSO of Ukraine will be 11 500 permanent units, a number that will be sufficient for the proper performance of LLC Gas TSO of Ukraine functions assigned to it by the Law, in particular, in terms of ensuring reliable and safe operation, maintenance and development of the gas transmission system.

Therefore, given the postponed nature of the entry into force of the relevant transactions for the transfer of property to LLC Gas TSO of Ukraine, ensuring the transfer of contracts for the purchase of goods, works and services that are necessary to ensure the uninterrupted functioning of the gas transmission system objects, the replacement of the parties to obligations under such agreements, as well as the transfer from JSC Ukrtransgaz to the Company of employees, **the adoption of the final decision on certification is possible exclusively subject to submission to NEURC of the following:**

1) information and documents confirming the increase in the authorized capital of the LIMITED LIABILITY COMPANY "GAS TRANSMISSION SYSTEM OPERATOR OF UKRAINE" through alienation by JOINT STOCK COMPANY UKRTRANSGAZ of own non-current and current tangible assets used in the process of natural gas transmission activities through main pipelines, including Statement of acceptance and transfer of these assets, indicating the date of acceptance and transfer;

2) information and documents confirming the replacement of the party to contracts for the purchase of goods, works and services from the JOINT STOCK COMPANY UKRTRANSGAS to the LIMITED LIABILITY COMPANY "GAS TRANSMISSION SYSTEM OPERATOR OF UKRAINE" in order to ensure the uninterrupted functioning of the gas transmission system objects, indicating the date of such replacement;

3) information and documents confirming the transfer from the JOINT STOCK COMPANY UKRTRANSGAZ to the LIMITED LIABILITY COMPANY "GAS TRANSMISSION SYSTEM OPERATOR OF UKRAINE" of all employees necessary to carry out natural gas transmission activities efficiently.

4.3. Relations between the Applicant and the gas transmission system owner

As noted above, in accordance with the terms and conditions of the Agreement on the transfer under economic management right of state owned property and used in the process of carrying out natural gas transmission activities through main pipelines, approved by the resolution of Cabinet of Ministers of Ukraine No. 942 of 15 November 2019, and Agreement on the transfer of state-owned property under economic management right and used in the process of carrying out natural gas transmission activities through main pipelines dated 21 November 2019 No. 13010-05/197 (hereinafter referred to as the Transfer Agreement) signed between the Ministry of Finance of Ukraine and LLC Gas TSO of Ukraine, from 1 January 2020, to LLC Gas TSO of Ukraine shall be transferred under the right of economic management state-owned objects used in the process of carrying out natural gas transmission activities through main pipelines.

In accordance with the current legal status of the use of objects, their transfer is carried out under the terms of termination of obligations of National Joint Stock Company "Naftogaz of Ukraine" and JSC Ukrtransgaz, in the part related to the return of objects that were transferred to such business entities or entities whose successors they are, by concluding additional agreements to Agreement on the use of state property that is not subject to privatization of 4 February 1999 No. 76 and the

Agreement on the use of state property that is not subject to privatization of 17 June 1999 No. 19/275.

At the same time, the relations between the asset owner and GTS operator, the scope of rights and obligations between them will be determined by the provisions of the Transfer Agreement, Article 136 of the Commercial Code and Article 1029 of the Civil Code of Ukraine.

In particular, the owner, represented by Ministry of Finance of Ukraine, transfers to the User property based on the right of economic management for the purpose of performance by LLC Gas TSO of Ukraine of the GTS operator functions in accordance with the Law and Directive 2009/73/EC.

In order to prevent the use of powers of the authorized management body to intervene with the functions of the gas transmission system operator in relations with LLC Gas TSO of Ukraine to which the property will be transferred under the right of economic management, the Unbundling Law introduced amendments to Article 136 of the Commercial Code of Ukraine, which provides that:

business entity to which the state-owned objects have been transferred in order to designate a transmission system operator or a gas transmission system operator based on right of economic management shall be completely independent in decision-making on usage, operation, maintenance, planning, development and financing thereof in accordance with the Law Of Ukraine "On the natural gas market", the Law of Ukraine "On the electricity market".

the owner of the transmission system or the gas transmission system represented by authorized subject of management of state-owned objects shall not refuse the financing by the transmission system operator or the gas transmission system operator to whom the property is transferred under the right of economic management, or other interested person, investments approved by the National Energy and Utilities Regulatory Commission. When approving such investments, the National Energy and Utilities Regulatory Commission shall in particular be guided by the necessity to ensure the security of natural gas supply.

At the same time, in accordance with the terms and conditions of the Transfer Agreement, the Ministry of Finance of Ukraine has no right to intervene in business activity of LLC Gas TSO of Ukraine, except in cases determined by legislation of Ukraine regarding the exercise of its property rights, exercise of the right to manage corporate rights, determined by statutory documents and legislation of Ukraine, as well as in connection with the User's violation of procedure to use property under this Agreement.

Therefore, the duties of the owner do not provide with the right the Minister of Finance to intervene with the operational and economic activities of LLC Gas TSO of Ukraine.

In addition, pursuant to Article 29 of the Law, the gas transmission system owner is obliged to develop and implement a compliance program that defines measures to avoid discriminatory actions and influence on the activities of the gas transmission system operator and monitor the implementation of such measures. A compliance program must determine the functional responsibilities of its employees to achieve these goals.

It should be noted that Ministry of Finance of Ukraine has not submitted an approved compliance program.

Given the postponed nature of entry into force of the relevant transactions regarding the transfer of property to LLC GAS TSO OF UKRAINE, **the adoption of the final decision on certification is possible exclusively subject to submission to NEURC of the following:**

1) copies of documents confirming the termination of obligations of JOINT STOCK COMPANY "NATIONAL JOINT STOCK COMPANY "NAFTOGAS OF UKRAINE" and JOINT STOCK COMPANY UKRTRANSGAZ in part concerning the return of objects that have been transferred to such business entities or to the entities whose successors they are, by concluding additional agreements to the Agreement on the use of state property that is not subject to privatization of 4 February 1999 No. 76 and the Agreement on the use of state property that is not subject to privatization of 17 June 1999 No. 19/275;

2) a copy of the compliance program approved by the Ministry of Finance of Ukraine, which determines measures to avoid discriminatory actions and influence on activities of the gas transmission system operator and monitoring the implementation of such measures, functional responsibilities of its employees to achieve these goals.

5. Conclusions

Taking into account the documents, data and information submitted by the Applicant, other stakeholders and organizations, NEURC, in general, has established the possibility to make a preliminary decision on certification of LLC Gas TSO of Ukraine.

With this in view, taking into account the need to ensure the above-mentioned measures necessary for the adoption of final decision on certification of the transmission system operator, by 17 December 2019, the following shall be submitted to NEURC:

1) in connection with the concluded Agreement on purchase and sale of share in the authorized capital of LIMITED LIABILITY COMPANY "GAS TRANSMISSION SYSTEM OPERATOR OF UKRAINE" in the amount of 100 percent of the authorized capital between JOINT STOCK COMPANY UKRTRANSGAZ and JOINT STOCK COMPANY "MAHISTRALNI GAZOPROVODY UKRAINY" from 22 November 2019 No. 1911000192:

copy of the permission of the Antimonopoly Committee of Ukraine for the concentration in connection with the transfer to the LIMITED LIABILITY COMPANY "GAS TRANSMISSION SYSTEM OPERATOR OF UKRAINE" under economic management right of state-owned property that is used in the process of carrying out natural gas transmission activities through main pipelines and acquisition by the JOINT STOCK COMPANY "MAHISTRALNI GAZOPROVODY UKRAINY" of a share in the authorized capital of the LIMITED LIABILITY COMPANY "GAS TRANSMISSION SYSTEM OPERATOR OF UKRAINE";

duly executed Statement of acceptance and transfer of share in the authorized capital of the LIMITED LIABILITY COMPANY “GAS TRANSMISSION SYSTEM OPERATOR OF UKRAINE”, indicating the date of acceptance and transfer;

2) information and documents confirming the increase of the authorized capital of the LIMITED LIABILITY COMPANY “GAS TRANSMISSION SYSTEM OPERATOR OF UKRAINE” through alienation by JOINT STOCK COMPANY UKRTRANSGAZ of own non-current and current tangible assets used in the process of natural gas transmission activities through main pipelines, including Statement of acceptance and transfer of these assets, indicating the date of acceptance and transfer;

3) information and documents confirming the replacement of the party to contracts for the purchase of goods, works and services from the JOINT STOCK COMPANY UKRTRANSGAZ to the LIMITED LIABILITY COMPANY “GAS TRANSMISSION SYSTEM OPERATOR OF UKRAINE” in order to ensure the uninterrupted functioning of the gas transmission system objects, indicating the date of such replacement;

4) information and documents confirming the transfer from the JOINT STOCK COMPANY UKRTRANSGAZ to the LIMITED LIABILITY COMPANY “GAS TRANSMISSION SYSTEM OPERATOR OF UKRAINE” of all employees necessary to carry out natural gas transmission activities efficiently;

5) copies of documents confirming the termination of obligations of JOINT STOCK COMPANY “NATIONAL JOINT STOCK COMPANY “NAFTOGAS OF UKRAINE” and JOINT STOCK COMPANY UKRTRANSGAZ concerning the return of objects that have been transferred to such business entities or to entities whose successors they are, by concluding additional agreements (contracts) to the Agreement on the use of state property that is not subject to privatization of 4 February 1999 No. 76 and the Agreement on the use of state property that is not subject to privatization of 17 June 1999 No. 19/275;

6) the duly executed Statement of acceptance and transfer of property with the date of acceptance and transfer drafted in accordance with Agreement on the transfer under economic management right of state-owned property and used in the process of carrying out natural gas transmission activities through main pipelines dated 21 November 2019 No. 13010-05/197;

7) a copy of the compliance program approved by the Ministry of Finance of Ukraine, which determines measures to avoid discriminatory actions and influence on activities of the gas transmission system operator and monitoring the implementation of such measures, functional responsibilities of its employees to achieve these goals.