

Georgian National Energy and Water Supply

Regulatory Commission

Decision №18/1

April 28, 2022

Tbilisi

On Taking the Decision on Refusal to Grant a Preliminary Certification to LLC “Georgian Gas Transportation Company”

Georgian National Energy and Water Supply Regulatory Commission (hereinafter - the Commission) held a public hearing on the application of LLC "Georgian Gas Transportation Company" concerning certification as the natural gas transmission system operator.

On February 4, 2022, Georgian Gas Transportation Company LLC (hereinafter - the Applicant) by the letter N1-87 (registered in the Commission: N1545/01) submitted to the Commission the application for certification as a transmission system operator (hereinafter - the Application) with supporting documentation. The Commission reviewed the compliance of the submitted Application with the requirements of Article 78 of the General Administrative Code of Georgia, as well as the requirements of the Transmission System Operator Certification Rules approved by the Commission Resolution №9 of 27 March 2020 (hereinafter – Certification Rules).

The Commission has reviewed compliance of the Applicant with the requirements of independence and unbundling requirements set by the Law of Georgia on Energy and Water Supply (hereinafter - the Law) in 2021, through examining the certification application (hereinafter - the Previous Application) submitted by the applicant for certification by letter N1-1102 on June 10, 2021 and the enclosed documentation. As a result, the Commission took the Decision N38/2, dated September 2, 2021 (hereinafter - the preliminary decision) “on Refusal of Preliminary certification as a natural gas transmission system operator of the Georgian Gas Transportation Company Ltd” (hereinafter - the Preliminary Decision), the Previous Application had not been approved, as far as the Applicant did not submit the lease agreement concluded with the transmission system owner; in the circumstances of the absence of the lease agreement the Applicant was not able to confirm its compliance with the requirements of Article 47, paragraph 1, subparagraphs “a” and “b” of the Law, namely, granting and managing third-party access, including the collection of access charges and congestion charges, for operating, maintaining and developing the transmission system, as well as for

ensuring the long-term ability of the system to meet reasonable demand through investment planning. Accordingly, the Commission considered that the Applicant did not have any legal ground to possess, use and operate the natural gas transmission network and therefore, discharge the TSO's core tasks.

For the moment of taking the Preliminary Decision by the Commission, Charter of the Georgian Natural Gas Transmission System Owner LLC (hereinafter – the Transmission System Owner) also failed to comply with the independence requirements set by the Law. The Applicant did not submit any information regarding to the measures taken by the Ministry of Economy and Sustainable Development of Georgia in order to ensure reallocation of management rights over energy enterprises to separate public bodies as provided by the Article 3, subparagraph 3.1.9 of the “Natural Gas Transmission System Operator Unbundling Plan”, adopted through the Resolution N129 of the Government of Georgia, dated March 25, 2021 (hereinafter – Unbundling Plan), namely: taking into consideration requirements of Article 45, paragraph 5 of the Law, through negotiations with other state institutions or public bodies allocate management rights of the companies that are under the management of the Ministry, listed below, the way to prevent the energy enterprises carrying out transmission/distribution, on the one hand, and generation/supply/trading, on the other hand:

a) Undertakings that carry out energy transmission activities:

a.a) Georgian Gas Transportation Company LLC – (100% of shares);

a.b) Georgian State Electrosystem JSC - (100% of shares);

a.c) UES Sakrusenergo JSC - (50% of shares);

b) Undertakings that carry out energy generation/supply/trading activities:

b.a) Georgia Oil and Gas Corporation JSC – (100% of shares);

b.b) Electricity System Commercial Operator JSC –(100% of shares);

b.c) Enguri HPP LLC – (100% of shares).

The Preliminary Decision had been introduced by the Commission to the Energy Community Secretariat (hereinafter – the Secretariat), according to the Article 50, paragraph 2 of the Law. The Secretariat introduced the Opinion 3/21 pursuant to Article 3(1) of Regulation (EC) No. 715/2009 and Article 10(6) of Directive 2009/73/EC – Georgia – Certification of GGTC (hereinafter – the Opinion) and supported the Preliminary Decision; except the part of the Charter of the TNO, as far as the provisions that did contradict to the independent requirements of the TNO, had been removed for the moment of establishment of the Opinion. Accordingly the Commission had taken Decision on Refusal

of Georgian Gas Transportation Company LLC as the Natural Gas Transmission System Operator on November 11, 2021 (hereinafter – the Final Decision).

The documentation envisaged by Article 6 of the Certification Rules were enclosed to the Application submitted by the Applicant to the Commission on February 4 2022, inter alia, the Unbundling Application of the Transmission System Operator the form of which is approved through Annex N1 of the Certification Rules, information on unbundling (according to the form approved through Annex N2) and completed Form for Independent System Operator (approved through Annex N4 of the Certification Rules); Also, unlike the Previous Application, the Agreement N74-030222-01 on Rent of Main Gas Pipelines and Related Infrastructure (hereinafter – the Lease Agreement) concluded between the Applicant and the Transmission System Owner on February 3 2022, had been submitted.

Based on the submitted documentation and information, the Commission initiated an assessment of the Applicant's compliance with the independence and unbundling requirements established by the Law of Georgia on Energy and Water Supply.

Legal Basis for Certification

In 2014, Georgia signed the Association Agreement between Georgia, on the one hand, and the European Union and the European Atomic Energy Community, and their Member States, on the other, which foresaw the obligation of the State to harmonize Georgian legislation with the European legal acts. On October 14, 2016, Georgia signed the Protocol on the Accession of Georgia to the Treaty Establishing the Energy Community (hereinafter - the Protocol), which was ratified by the Parliament of Georgia on April 21, 2017. The Protocol sets out the terms and conditions for transposition of the Energy Community legislation (acquis communautaire) into Georgian legislation.

On December 20, 2019, the Parliament of Georgia adopted the Law of Georgia on Energy and Water Supply (hereinafter - the Law), which entered into force on December 27, 2019. The Law creates legal framework for consideration and enactment of the EU legal acts through the Georgian legislation, including the Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 on common rules for the internal market in natural gas and repealing Directive 2003/55/EC (hereinafter - the Directive), that aims to ensure the proper implementation of the independence and unbundling of transmission system operators.

The Law sets out, inter alia, the obligation of certification of a transmission system operator, the rules, procedures, and deadlines for certification, as well as the regulatory power/authority of the Commission in the process of certification of a transmission system operator, in particular, Article 50 of the Law establishes the general rule for unbundling of the transmission system operator, while

paragraph 3 of the same Article defines the authority of the Commission to approve the relevant normative act. Based on this, the Commission approved the Transmission System Operator Certification Rules by Resolution N9 of 27 March 2020, which sets out the procedure for unbundling of transmission system operators, including the list of documents and information to be submitted by the Applicant and the procedure and deadlines for reviewing the application by the Commission.

General information about the Applicant and the energy enterprises carrying out transmission activities

At the moment of submitting the Application to the Commission, the Applicant transports natural gas on the territory of Georgia based on the licenses issued by the Commission.

The Applicant is a limited liability company established under the Law of Georgia on Entrepreneurs, which provides natural gas transportation, (inter alia transit) throughout the territory of Georgia based on the natural gas transportation license (N^o004, series 22) issued by the decision N10/2 of the Commission of June 9, 2004. The validity term of the license was amended by the decision N21/1 of the Commission of December 10, 2009, and became permanent. Following paragraph 8 of Article 159, natural gas transportation licenses issued before the entry into force of this Law shall temporarily remain in force, and until the completion of unbundling under the procedures established by this Law, their holders shall continue providing services in respect of the transportation of natural gas, under the normative acts referred to in Article 168 of this Law, however in the case of the revocation of said licenses, following related normative acts adopted based on this Law. The Applicant currently possesses the assets required for the transportation of natural gas based on the Lease Agreement concluded with the Transmission System Owner.

The Applicant was established based on the minutes N1 of the General Meeting of Shareholders of Georgian International Gas Corporation JSC of December 28, 1999, which was registered in the Entrepreneurial Registry by the decision of the Isani-Samgori District Court of Tbilisi city of December 30, 1999. Georgian International Gas Corporation JSC, which in turn was established on June 26, 1997, by the Ministry of State Property Management of Georgia, owned 100% of the shares of Georgian Gas Transportation Company LLC.

On April 6, 2006, the State, represented by the Ministry of Economic Development, established the Georgian Oil and Gas Corporation LLC, and 100% of the shares of Georgian International Gas Corporation JSC were incorporated in its chartered capital. Later, on October 4, 2006, Georgian International Gas Corporation LLC merged with Georgian Oil and Gas Corporation JSC, and as a result,

Georgian Oil and Gas Corporation LLC became the owner of 100% of shares of Georgian Gas Transportation Company LLC.

Based on the Order N169 of the Minister of Energy and Natural Resources of Georgia of August 30, 2011, 100% of shares of Georgian Gas Transportation Company LLC was withdrawn from the chartered capital of Georgian Oil and Gas Corporation LLC and the State became a direct founding partner.

Based on the Resolution on amending the Decree N1051 of the President of Georgia of November 10, 2010 „on transfer of state-owned shares through direct transfer and with the management rights to the Ministry of Energy and Natural Resources of Georgia", also amendments to the Agreement of November 22, 2010 concluded between the Ministry of Economy and Sustainable Development and the Ministry of Energy of Georgia on transfer of state-owned shares, on September 21, 2011, on the basis of an agreement concluded between the Ministries of Economy and Sustainable Development of Georgia and the Ministry of Energy and Natural Resources of Georgia, 100% of the shares of Georgian Gas Transportation Company LLC was transferred to the Ministry of Energy and Natural Resources with the management right; except the liquidation and bankruptcy of the company, the legal encumbrance of the company's assets and the inclusion in the capital of the company of state-owned property, the management of which, according to the Law of Georgia on State Property, was the competence of the owner (i.e. the Ministry of Economy and Sustainable Development).

According to the Law of Georgia on amending the Law of Georgia “on the Structure, Powers and Rules of Activities of the Government” the functions and authorities of the Ministry of Energy of Georgia were transferred to the Ministry of Economy and Sustainable Development of Georgia (hereinafter - the Ministry), which was considered the legal successor of the Ministry of Energy of Georgia. Accordingly, from the mentioned date, the ownership and management of 100% of the shares of Georgian Gas Transportation Company LLC has been carried out by the Ministry. According to the agreement concluded between LEPL National Agency of State Property and the Ministry, on May 22, 2019, amending the Agreement concluded between the Ministry of Economy and Sustainable Development of Georgia and the Ministry of Energy of Georgia on the transfer of state-owned shares, signed on November 22, 2010, as of today, 100% of the shares of the Applicant is owned by the State, which is represented by the LEPL National Agency for State Property, and the managing rights belong to the Ministry.

Unbundling of natural gas transmission system operator

a) *Approval of unbundling plan of natural gas transmission system operator*

According to Article. 44, paragraph 1 of the Law, the Government of Georgia takes a decision on unbundling model of transmission system operator; according to paragraph 2 of this Article, unbundling model of transmission system operator shall be ownership unbundling, regulated by Article 45 of the Law. Article 46, paragraph 1 of the Law states that the Commission is entitled to authorize independent system operator, as an exception, if the conditions stated in Article 44, paragraph 2 of the Law are on face. Article 46, paragraph 2 establishes the circumstances for the authorization of independent system operator.

Article 44 paragraph 1 of the Law establishes adoption procedure of the unbundling plan – The Commission, in agreement with Energy Community Secretariat, submits to the Government of Georgia unbundling model of the transmission system operator and the action plan for its implementation. Article 159 paragraph 4 of the Law promulgates the procedure for the review of the unbundling plan by the Commission. According to paragraph 2 subparagraph “b” of Article 159, within 9 months after adoption of the Certification Rules, the natural gas transportation licensee, shall develop the unbundling plan and submit it to the Ministry and the Commission. The unbundling plan shall include the suggested unbundling model, detailed measures and actions for its implementation, as well as the applicable deadlines. On March 25, 2021, through the Resolution N129, the Government of Georgia adopted the Unbundling Plan.

b) Unbundling plan of the natural gas transmission system operator

According to Article 159 paragraph 5 of the Law, following the adoption of the Unbundling Plan by the Government of Georgia, the dispatch licensee, transmission licensee, transportation licensee or other energy company, which, according to the Unbundling Plan, will be granted the status of a transmission system operator or will be recognized as a transmission system owner, shall implement the Unbundling Plan and report to the Commission on the status of its implementation, in accordance with the conditions established by the Commission.

The Unbundling Plan states measures that shall be taken, namely:

- Registration/accounting and revaluation of the assets owned by Georgian Oil and Gas Corporation JSC, which are used for natural gas transmission activities and submit information to the Ministry; establishment of the new legal entity (transmission system owner) and assign this legal entity the ownership right to the assets which are used for natural gas transmission activities, through putting of these assets into the capital of the transmission system owner; also, ensuring of independence of the transmission system owner from the Georgian Oil and Gas Corporation JSC, at least in term of legal form, organizational structure and decision making, inter alia, through adoption of the charter of the transmission system owner;

- Development of the compliance program by the transmission system owner, which shall establish the measures to prevent discrimination, impact of Georgian Oil and Gas Corporation JSC upon the transmission system owner, regarding the issues related to the transmission network and shall provide sufficient monitoring by the independent compliance officer upon these issues;

- Development of the draft lease agreement by the transmission system owner and the Applicant that shall provide transfer of the transmission system assets to the Applicant (in order to perform functions of transmission system operator); the lease agreement shall grant the Applicant the rights of management, operation, maintenance and planning of the transmission system (except the infrastructural projects listed in the Annex 1 of the Unbundling Plan, that shall transfer to the Applicant upon their completion);

- Conclusion of the lease agreement mentioned in the paragraph 3.1.4 of the Unbundling Plan by the transmission system owner and the Applicant (that shall enter into force from January 1, 2022) and submission of it to the Commission, not later than June 10, 2021;

- According to the Article 45, paragraph 5, by August 9, 2021, on the basis of negotiations with the State institutions or other public entities, reallocation of the management rights of the enterprises that are under the managements of the Ministry, in order to prevent management of the undertakings that are related to the transmission, distribution, on the one hand and undertakings related to the generation/supply/trading – on the other hand, by the same State institution:

a) Undertakings that perform transmission activities:

a.a) Georgian Gas Transportation Company LLC – (100% of shares);

a.b) Georgian State Electrosystem JSC – (100% of shares);

a.c) United Energy System “Sakrusenergo” JSC – (50% of shares);

b) Undertakings that perform generation/supply activities:

b.a) Georgian Oil and Gas Corporation JSC – (100% of shares);

b.b) Electricity System Commercial Operator JSC – (100% of shares);

b.c) Enguri HPP LLC – (100% of shares).

c) Implementation of the Unbundling Plan of Natural Gas Transmission System Operator

According to subparagraph 3.1.1.2 of the Unbundling Plan, Georgian Oil and Gas Company JSC founded the Transmission System Owner on April 29, 2021 and transferred ownership right over the transmission system assets to it. According to the Charter of the Transmission System Owner, the main

activities of the Transmission System Owner are performing the functions of the transmission network owner, established by the Law. These functions include but are not limited to: cooperation with the independent system operator, provision of information to the independent system operator to develop natural gas transmission system development plans and/or investment projects, provision of consent on financing these plans and projects by the third parties, the conclusion of the lease agreement with the transmission system operator (independent system operator), perform and monitor this agreement, in the framework of the competence established by the Law and the lease agreement, participate in decision-making related to the investments carried out by the independent system operator related to the natural gas transportation system.

The Applicant as well as the Transmission System Owner did not submit the compliance program to the Commission nor the information about the development of such plan. As for the Lease Agreement concluded between the Applicant and the Transmission System Owner on February 3, 2022, it had been enclosed to the Application. The Applicant did not submit to the Commission any document or information that would prove taking any measure by the Ministry to implement Article 3, subparagraph 3.1.9 of the Unbundling Plan.

d) Compliance of Unbundling of the Transmission System Operator with the requirements of the Certification Rules

In order to establish compliance of unbundling of the Applicant with the requirements of the Certification Rules, the Commission examined the Application and accompanied documents submitted by the Applicant.

Pursuant to Article 6 paragraph "a" of the Certification Rules, the Applicant is obliged to submit to the Commission certified copies of the Applicant's corporate documents in accordance with the Laws of Georgia and an extract from the Registry of Enterprise and Non-Commercial Legal Entities, indicating the final beneficiary owner of the Applicant. The Applicant submitted the extract from the Registry of the Enterprises and Non-Commercial (Non-Profit) Legal Entities, which proves that the final beneficiary owner of 100% of the Applicant shares is the State, as well as the Charter of the Applicant.

According to paragraph „b“ of Article 6 of the Certification Rules, the Applicant shall submit to the Commission the list of licenses, permits, and/or other types of authorization for energy activities carried out by the Applicant in Georgia and/or other country and certified copies of the documents proving such authorization; according to the paragraph „c“ of the same Article, the Applicant shall submit to the Commission list of those energy activities which are not subject to the licensing, permitting and/or other type of authorization requirement, carried out by the Applicant in Georgia and/or other country, as well as a written justification about the legal basis for carrying out that type

of activity. The Applicant submitted a list of the licenses it holds and also indicated that it doesn't carry out unlicensed energy activities.

Paragraphs "d", "e", and "f" of Article 6 of the Certification Rules oblige the Applicant to submit the information on shareholders/partners, privileged shareholders, and their voting rights, with a precise indication of the percentage of shares. This information was not provided by the Applicant since the Applicant is 100% State-owned.

According to paragraph „g“ of Article 6 of the Certification Rules, the Applicant shall submit to the Commission the list of energy sector participant undertakings which are under direct or indirect control of the applicant with precise indication of control method and relevant rights of the applicant; paragraph "f" of the same Article requires the Applicant to submit the list of energy sector participant undertakings which are not shareholders/partners of the Applicant and exercise direct or indirect control over the Applicant with a precise description of the control method and rights of relevant energy sector participants. The Applicant indicated the undertakings that is controlled by the Applicant directly or indirectly, namely: Inter-Glass Georgia LLC, 40% of the shares of which owned by the Applicant and Georgian Natural Gas Exchange LLC, 50% of shares of which owned by the Applicant.

As for the information referred to in paragraph "h" of Article 6 of the Certification Rules, the Applicant shall submit to the Commission list of the energy sector participant undertakings which are not shareholders/partners of the Applicant and exercise direct or indirect control over the Applicant, indicating method of control as well as rights of these undertakings; According to the Independent System Operator Form, adopted by the Annex N3 of the Certification Rules, the Applicant is obliged to introduce to the Commission additional information about all of the undertakings/individuals that exercise direct or indirect control over the Applicant/the Transmission System Owner; list of all undertakings that carry out their activities in Georgia and are controlled directly or indirectly by the Applicant/the Transmission System owner/other undertakings that are directly or indirectly controlled by the Applicant/the Transmission System Owner; as well as list of undertakings engaged in the production, supply or trade of electricity and/or natural gas, if the same undertaking/individual exercises direct or indirect controls over the Applicant and such undertaking or any other rights in relation to them.

According to the documentation submitted by the Applicant, 100% of its shares owned by the State, and the rights and obligations of the shareholder are exercised by the Ministry based on the Agreement on Transfer of State-Owned Shares; 100% of the shares of the transmission network owner owned by Georgian Oil and Gas Corporation JSC, 100% of the shares of which owned by Partnership Fund JSC, and the shareholder rights and obligations are similarly exercised by the Ministry under the Agreement on Transfer of State-Owned Shares. As for the control of the Transmission System Owner, 100% shares owned by the Georgian Oil and gas Corporation JSC that, on its turn is owned by the

Partnership Fund JSC (100% of shares). Georgian Oil and Gas Corporation JSC carries out supply and trade of natural gas, as well as generation/supply of electricity through its subsidiaries (Gardabani Thermal Power Plant LLC, Gardabani Thermal Power Plant 2 LLC and Gardabani Thermal Power Plant 3 LLC). At the same time, the State controls the energy enterprises carrying out transmission (Georgian State Electrosystem JSC), generation (Enguri HPP LLC, Vardnili Cascade HPP LLC) and trade (Electricity System Commercial Operator JSC) as well as the electricity transmission system owner, through owning 50% of shares (United Energy System Sakrusenergo JSC). As for the information regarding the undertakings that carry out their activities in energy sector of Georgia and/or other country, exercising direct or indirect control over the Applicant not being of the shareholder of the Applicant, the Applicant indicated that it is not directly or indirectly controlled by any energy undertaking registered in Georgia and/or another country. As for the Transmission System Owner, according to the information provided by the Applicant, the Transmission System owner is directly controlled by Georgian Oil and Gas Corporation JSC and indirectly – by the Ministry and Partnership Fund JSC; on its turn, the Transmission System Owner does not control any other undertaking. The Applicant also submitted list of all undertakings, in graphic form, that are managed/controlled by the Ministry/LEPL National Agency of State Property.

Under Paragraph „i“ of Article 6 of the Certification Rules, the Applicant shall submit the list of linked undertakings with the description of the type of relationship between the Applicant and the linked undertaking, including the level of cooperation between the Applicant and linked undertaking in the process of carrying out energy and/or other activities. The Applicant indicated the following linked undertakings: Inter-Glass Georgia LLC which does not carry out energy activities and 40% of the shares of which is owned by the Applicant, performing the rights and responsibilities of the partner; also, Georgian Natural Gas Exchange LLC, which has been established on the basis of the Natural Gas Market Concept Model, adopted through the Resolution N447 of the Government of Georgia, dated September 2 2021, and 50% of the shares of which owned by the Applicant and other 50% by the Georgian Oil and Gas Corporation LLC; also, Transmission System Owner, the Applicant has concluded the Lease Agreement with. The Applicant also submitted list of other linked undertakings that have concluded natural gas transportation contracts with the Applicant and, accordingly, are system users.

Paragraph „j“ of Article 6 of the Certification Rules obliges the Applicant to submit the list of acquired licenses, permits, and/or other types of authorization for energy activities in Georgia by the Applicant's shareholders/partners, energy sector participants envisaged in paragraph “g” and “h” and linked energy undertakings envisaged in paragraph “i” of this Article and certified copies attesting relevant authority in compliance to the legislation in force; and paragraph „k“ of the same Article provides that the Applicant shall submit the list of energy activities in Georgia by the Applicant's shareholders/partners, energy sector participants envisaged in paragraph “g” and “h” and linked energy undertakings envisaged in paragraph “i” of this Article which are not subject of a license, permit, and/or other types of authorization and a written justification about the legal basis for carrying out that type

of activities. The documents and information submitted by the Applicant contains comprehensive information on the energy activities carried out by the linked undertakings. As for the legal basis for carrying out of these energy activities, taking into consideration that all related documents are possessed by the Commission, collection of these documents and submitting certified copies by the Applicant was not required. As for the licenses issued by another body, the Applicant submitted a license issued by LEPL State Agency of Oil and Gas to Bago LLC.

Paragraph „l“ of Article 6 of the Certification Rules obliges the Applicant to submit the Agreement/Charter of the Applicant’s shareholders/partners. The Applicant has submitted the Charter defining the legal form of the Applicant, its activities, main goals and objectives, as well as the competencies of the management bodies of the Applicant. According to Article 6 of the Charter, the management bodies of the Applicant are the General Meeting of Partners and the General Director. According to the first paragraph of Article 7 of the Charter, the General Meeting of Partners is the highest governing body of the company. As for the management and representation authority, according to Article 8, paragraph 1 of the Charter, it is exercised by the General Director unlimitedly and independently; according to the paragraph 2 of the same Article, on the grounds of the delegation act issued by the general director in accordance with the Georgian Legislation, the representative powers of the Applicant may be delegated to another person. According to the Charter, control over the activities of the Applicant is exercised by the General Meeting of Partners.

Paragraph „m“ of Article 6 of the Certification Rules obliges the Applicant to submit the copies of internal organizational acts regulating the activity of collegial bodies (supervisory board, person/persons with managerial and/or representative authority) of the Applicant, including copies of acts determining their right of representation. According to paragraph „n“ of the same Article, the Applicant shall submit the list of members of the Applicant’s collegial body (supervisory board, person/persons with managerial and/or representative authority, managing council), as well as the list of members of the collegial body of shareholders/partners, energy sector participants envisaged by paragraph “g” and “h” and linked energy undertakings envisaged by paragraph “i” of this Article. The Applicant indicated that it has no collegial bodies; as for rights of the person having representation authority of the Applicant, that is determined according to the Law of Georgia on Entrepreneurs, Charter and Statute of the Applicant. The Applicant also submitted the list of members of the collegial bodies of the related undertakings. According to the information provided, the General Director and the persons to whom the management/representation powers are delegated, are not represented in the collegial bodies of the linked enterprises and do not hold any managerial/representative positions.

Paragraphs „o“ and “p” of Article 6 of the Certification Rules require the Applicant to submit the decision of the general meeting of the Applicant’s shareholders/partners or other authorized body (including information on voting) based on which the members of collegial body (supervisory board and/or managing council or representative body) were elected or appointed, and the decision of the

general meeting or other collegial body (supervisory board) of the Applicant based on which authorized persons of the Applicant were appointed on the respective managerial positions. The Applicant submitted Order No.K-5/38 of the Minister of Economy and Sustainable Development of Georgia dated December 9 2019, appointing Mikheil Shalamberidze to the position of General Director of Georgian Gas Transportation Company LLC.

According to paragraph „q“ of Article 6 of the Certification Rules, the Applicant is required to submit the information about authorized persons on managerial position and employees, who are assigned organizational (operational/business, financial) and administrative (management/decision-making) functions of the Applicant and/or information about mandated other persons to whom the above-mentioned functions are assigned. Based on subparagraph „q.a“ of Article 6 of the Certification Rules, the Applicant shall indicate functions and competences delegated to these persons. According to the order N39 of the General Director of the Applicant, dated June 15, 2020, specific powers of management/representation are delegated to the deputy general director, chief engineer, and heads of the relevant departments that are indicated through the information additionally submitted by the Applicant. The Applicant also submitted description of professional and/commercial activities of the persons authorized to manage the Applicant, as provided in subparagraph „q.b“ of Article 6 of the Certification Rules. According to the statements on conflict of interest submitted by the Applicant by subparagraph "q.c" of the Article 6 of the Certification Rules, , the deputy general directors, chief engineer, and heads of the relevant departments, who have been assigned the powers of management/representation based on the above-mentioned powers of attorney, confirm that they do not participate in the activities of energy sector participants related to electricity and/or natural gas generation, distribution, supply and trading activities and are not presented in the structures of such undertakings.

According to paragraph „r“ of Article 6 of the Certification Rules, the Applicant is required to submit the copies of internal organizational acts and procedural rules that ensure confidentiality of commercially sensitive information in compliance to the Georgian legislation in force and forbids the dissemination of this information to those participants of energy sector, who carry out electricity and/or natural gas generation, distribution, supply and trading activities. The Applicant submitted Order N110 of the General Director of 25 May 2021, "on the protection of the confidentiality of information containing commercial secrets of Gas Transportation Company LLC", according to which all employees of the Applicant are obliged, through the duration of the employment contract, as well as in case of its termination, to protect the information containing commercial secrets, about which the employee learned during his employment in the company; and not to disclose such information to enterprises engaged in the generation, distribution, supply and trade of electricity and/or natural gas. For this Order “the information containing commercial secrets” implies the information that has not been made publicly available by the Applicant, relating to technical, commercial, and financial matters/issues of the Applicant's activities, also information on a plan, formula, process, or means of a

commercial value, or any other information used for rendering services, and/or is a novelty or a significant result of technical activity, as well as other information that may cause harm to the Applicant if disclosed and impede fair competition on the energy market. The order also stipulates the obligation to notify the Applicant's staff by e-mail.

Paragraph "s" of Article 6 of the Certification Rules, obliges the Applicant to provide information on the Applicant's management and those employees who had been transferred from other energy enterprises performing electricity/natural gas generation, distribution, supply activities or trading, during the last 6 months prior submission of the Certification Application. The Applicant indicated that during the last 6 months before submission of the Certification Application, none of the above-listed persons/employees have been transferred from other energy enterprises performing electricity/natural gas generation, distribution, supply activities, or trading.

Legal Assessment

Having examined the documents and information submitted by the Applicant, the Commission evaluated compliance of the Applicant with the requirements of the independent system operator established by the Law and the Unbundling Plan.

According to Article 42 paragraph 1 of the Law, transmission is an activity of public interest which encompasses transportation of electricity or natural gas through the transmission network as well as the operation, maintenance and development under economic conditions of the transmission network, and other related activities necessary for secure, reliable and efficient functioning of the electricity and natural gas systems of Georgia. According to paragraph 3 of the same Article, while carrying out its duties and fulfilling its tasks, the transmission system operator shall be independent from any other energy activities, namely production, distribution, supply and trade, and related commercial interests.

Article 43, paragraph 1 of the Law states that transmission system operator shall be authorized by the Commission through issuing a transmission license; according to paragraph 2 of the same Article, transmission license shall be granted only to the transmission system operator that is certified in accordance with Article 50 of the Law.

According to Article 46, paragraph 2 of the Law, the authorization of an independent system operator may be granted only if:

a) candidate for an independent system operator meets the requirements set in Article 45 paragraph 2 of this Law;

b) candidate for an independent system operator has the necessary financial, technical, physical and human resources to fulfill the functions and obligations provided in Articles 51 and 52 of this Law;

c) candidate for an independent system operator undertakes to implement a ten-year transmission network development plan in accordance with Article 53 of this Law;

d) transmission system owner claims that he has proper ability to fulfill the obligations set forth in Article 47, paragraph 3 of this Law, as evidenced by the draft agreements to be concluded in advance with the candidate for independent system operator and other relevant enterprises (if necessary);

e) candidate for independent system operator has proper opportunity to fulfill the obligations related to the transmission system, which means, among other things, cooperation with the transmission system operators at European as well as at regional levels.

According to the Article 45 paragraph 2 of the Law, to ensure independence of the transmission system operator, the same person or persons shall not be entitled at the same time:

a) directly or indirectly to exercise control over an energy undertaking performing any of the activities of production or supply, and directly or indirectly exercise control or exercise any right over a transmission system operator or over a transmission network;

b) directly or indirectly to exercise control over a transmission system operator or over a transmission network, and directly or indirectly exercise control or exercise any right over an energy undertaking performing any of the activities of production or supply;

c) to appoint members of the supervisory board, the management board or bodies legally representing the undertaking, of a transmission system operator or a transmission network, and directly or indirectly exercise control or exercise any right over an energy undertaking performing any of the activities of production or supply; and

d) to be a member of the supervisory board, the management board or bodies representing the undertaking, of both an energy undertaking performing any of the activities of production or supply and a transmission system operator or a transmission network.

The State of Georgia owns 100% of the shares of the Applicant and the rights of the shareholder are exercised by the Ministry. According to the Applicant, as well as the data available through the Registry of Enterprises and Non-Commercial (Non-Profit) Legal Entities of the LEPL - National Agency of Public Registry of Georgia, the State owns 100% of shares of Enguri HPP LLC, Electricity System Commercial Operator JSC, Georgian State Electrosystem JSC, Georgian Energy Development Fund JSC, and the owner of 100% of shares of Georgian Oil and Gas Corporation JSC is Partnership Fund JSC. The listed undertakings are directly managed by the Ministry that is indicated in the extract of Enguri HPP LLC from the Registry of Enterprises and Non-Commercial (Non-Profit) Legal Entities of the LEPL - National Agency of Public Registry of Georgia; in case of Georgian Oil and Gas Corporation JSC – in the Agreement between the Ministry of Energy and Natural Resources of Georgia and Partnership Fund JSC “On the Transfer of Ownership of the Shares owned by Partnership Fund JSC, concluded on

August 31, 2012; in case of Georgian Gas Transportation Company LLC and Georgian Energy Development Fund JSC the managing rights of the Ministry are confirmed by the Agreement concluded on September 21, 2011 between the Ministry and the Ministry of Energy and Natural Resources of Georgia “On Amendment to the Agreement Between the Ministry of Economy and Sustainable Development and the Ministry of Energy and Natural Resources of Georgia on the Transfer of the Ownership of State-Owned Shares, signed on November 22, 2010”. Partnership Fund JSC, in its turn, is a legal entity of private law established under the Laws of Georgia and its portfolio includes large state-owned enterprises; its Supervisory Board is composed of members of the Government of Georgia, in particular, the Supervisory Board is chaired by the Prime Minister, and the members of the Board are the Minister of Regional Development and Infrastructure, the Minister of Environmental Protection and Agriculture, the Minister of Economy and Sustainable Development, and the Minister of Finance.

Taking into consideration that the Ministry directly controls the Applicant, on the one hand and, on the other hand, directly controls the undertakings carrying out the generation (Enguri HPP LLC) and trading (Electricity System Commercial Operator JSC) activities; indirectly controls the undertakings carrying out the generation (Vardnili Cascade HPP LLC), supply (Georgian Oil and Gas Corporation JSC through the supervisory board of the Partnership Fund JSC) and trading (Karchal Energy JSC, established in Turkey, 99% of shares of which owned by Georgian State Electrosystem JSC and GOGC Trading SA, established in Switzerland, 100% of shares of which owned by the Georgian Oil and Gas Corporation JSC) activities; Besides, Minister of Economy and Sustainable Development of Georgia assigns the person representing and managing the Applicant and, at the same time, the Ministry controls undertakings carrying out energy generation, trade and supply activities, the Applicant fails to comply with the independent and unbundling requirements of the transmission system operator provided by Article 45, paragraph 2, subparagraph “a” of the Law and accordingly, Article 3, subparagraph 3.1.9 of the Unbundling Plan has not been satisfied.

The staff list submitted by the Applicant indicates that the Applicant has the employees of sufficient qualification to perform the functions and obligations provided in Articles 51 and 52 of the Law: metering of the natural gas and monitoring, measuring and controlling instruments and metrology, operation of transmission of natural gas, odorization, engineering, and technical support, design-costing and cathodic control, indestructible control, main gas pipelines, and gas distribution stations are managed and operated by specialized structural divisions. The Applicant also has an indestructible control testing laboratory and natural gas testing laboratory as well as sufficiently equipped territorial unities. According to the financial opportunities analysis submitted by the Applicant, the Applicant can accumulate sufficient financial resources to perform the obligations as an independent system operator. In particular, part of the revenue of the Applicant is directed to the performance of the functions related to the main activities of the independent system operator, including to ensure construction, operation, maintenance, and development of a safe, reliable, and

efficient transmission system by the economic conditions; meet reasonable requirements for the transmission of natural gas within a defined area and the appropriate means to meet its service obligations, to protect both the open market and the long-term capacity of the transmission system.

Charter of the Applicant provides that the Applicant meets the criteria stated in Article 46, paragraph 2, subparagraphs “c” and “e”, in particular, the Applicant has the capacity for implementing transmission network 10-year development plan and performing obligations related to it. In particular, according to the paragraph 2.5, the Applicant shall ensure the long-term ability of the system possessed to meet reasonable demand through investment planning; according to the paragraph 2.6, the Applicant shall grant and manage third-party access to the system, including the collection of access charges and congestion charges, for operating, maintaining and developing the transmission system; according to the paragraph 2.8, the Applicant shall cooperate with state institutions, public bodies, energy organizations, natural gas market participants and other transmission system operators at European and regional levels, according to the Law and further Georgian Legislation.

According to the Article 46, paragraph 3 of the Law, if the independent system operator is authorized, the transmission system owner has to:

a) provide all the relevant cooperation and support to the independent system operator for the fulfilment of its tasks;

b) finance the investments decided by the independent system operator and approved by the regulatory authority or give its agreement to financing by any interested party including the independent system operator. In such case any financial agreement has to be approved by the Commission. The Commission, on its turn, shall consult with the independent system operator, transmission system owner and other interested parties;

c) - provide for the coverage of liability relating to the network assets, except the liability related to the tasks of independent system operator;

d) provide guarantees to facilitate financing any network expansions, unless according to subparagraph “b” of this paragraph has been agreed upon financing of the investments by the third party, including independent system operator.

According to the Article 47, paragraph 4 of the Law, independent system operator shall possess assets of transmission system network, on the basis of the consent of the transmission system owner, according to the Laws of Georgia. The Commission approves the lease agreement between the Applicant and the transmission system owner, including the rent for using the assets.

The Lease Agreement concluded by the Applicant and the Transmission System Owner provides functions of both parties, namely: according to the paragraph 3.2.2, the Transmission System Owner shall provide all the relevant cooperation and support to the Applicant for fulfilment of its tasks under the applicable Georgian legislation and the Lease Agreement; also, according to the paragraph 3.2.4, the Transmission System Owner shall provide the Applicant with all kind of information, including the technical information, that is necessary for the proper operation of the transmission system, including any part thereof; according to the paragraph 3.2.6, the Transmission System Owner shall finance the investments under the Ten-year Transmission Network Development Plan for natural gas and other investments to be made in accordance with the Georgian Legislation, including construction of new pipeline or modernization/reconstruction/renovation/capital repair of the transmission system decided by the Applicant and approved by the Commission, in accordance with the applicable Georgian Legislation as well as the Ten-year Transmission Network Development Plan and other investment decisions approved by the Commission. The Lease Agreement also provides independence of the transmission system operator and prevents the Transmission System Owner from intervention in the activities of the Applicant. On the other hand, according to the paragraph 3.3.2 of the Lease Agreement, the Applicant is entitled to finance investments in the transmission system with the consent of the Transmission System Owner and subject to a prior approval by the Commission; according to the paragraph 3.3.3, the Applicant has the right to request the Transmission System Owner to reimburse capital expenditures incurred due to investments in the transmission system financed by the Applicant or withhold that from the rent according to the schedule negotiated by the parties; also, according to the paragraph 3.4.3, the Applicant shall carry out the overall tasks and responsibilities of the transmission system operator for natural gas in accordance with LoEWS, other applicable Georgian legislation and the Charter of the Lessee.

Accordingly, the Lease Agreement provides compliance of the Applicant with the requirements of independent system operator, provided by Article 47, paragraph 1, subparagraphs “a” and “b”, namely, granting and managing third-party access, including the collection of access charges and congestion charges, for operating, maintaining and developing the transmission system, as well as for ensuring the long-term ability of the system to meet reasonable demand through investment planning.

Due to review of the Application and enclosed documents non-compliance of the Applicant with the requirements of Article 46, Paragraph 2, Subparagraph “a” of the Law has been revealed and, accordingly, Article 3, subparagraph 3.1.9 of the Unbundling Plan has not been certified by the Applicant. Thus, the Commission considers that the Applicant should be refused for certification as a natural gas transmission system operator.

Taking into consideration all of the abovementioned circumstances, according to the Article 50, paragraph 2 of the Law of Georgian on Energy and Water Supply, Articles 52 and 53 of the General

Administrative Code of Georgia and Article 9, paragraph 1 of the Transmission System Operator Certification Rules approved by the Commission's Resolution №9 of 27 March 2020, the Commission

Decides:

1. The decision on refusal of preliminary Certification of the Georgian Gas Transportation Company LLC shall be adopted;

2. By July 1, 2022, all the measures necessary to comply with the requirements of Article 3, subparagraph 3.1.9 of the Natural Gas Transmission System Operator Unbundling Plan adopted by the Government of Georgia through Resolution N129, dated March 25, 2021, shall be completed, in particular, managing rights for the enterprises listed below shall be reallocated in order to prevent management of undertakings carrying out energy transmission/distribution activities, on the one hand and, generation/supply/trading activities, on the other hand, by the same State institution:

a) Undertakings carrying out energy transmission/distribution activities:

a.a) Georgian Gas Transportation Company LLC (100% of shares);

a.b) Georgian State Electrosystem JSC (100% of shares);

b) Undertakings carrying out energy generation/supply/trading activities:

b.a) Georgian Oil and Gas Corporation JSC (100% of shares);

b.b) Electricity System Commercial Operator JSC (100% of shares);

b.c) Enguri HPP LLC (100% of shares).

3. The Applicant shall, by July 8, 2022, submit to the Commission the documents, that certify full implementation of the activities listed in Paragraph 2 of this Decision:

a) Sufficient legal acts that certify reallocation of managing rights of the enterprises listed in Paragraph 2, subparagraphs "a" and "b" of this Decision, in the manner that the enterprises involved in energy transmission/distribution activities, on the one hand and energy enterprises involved in generation/supply/trading activities, on the other hand, are not managed by the same State institutions;

b) Corporate documents of the energy enterprises mentioned in Paragraph 2, subparagraphs "a" and "b" of this Decision/extracts from the Registry of Enterprise and Non-Commercial Legal Entities of LEPL Public Registry Agency of Georgia, certifying that these corporate documents have been amended sufficiently;

c) List of members of the collegial bodies (supervisory board, management board or bodies legally representing the undertaking) of the enterprises mentioned in paragraph 2 subparagraphs "a" and "b" of this Decision, confirming that the same person is not a member of the supervisory board,

management board or bodies legally representing the undertaking, of both an undertaking performing any of the functions of generation or supply and a transmission system operator or a transmission system.

4. This Decision enters into force on the day of its announcement at the public hearing of the Commission;

5. This Decision may be appealed at the Tbilisi City Court (Tbilisi, David Aghmashenebeli Alley, №64), within 1 (One) month of service of the decision.