

Decision N28/3

July 7, 2022

Tbilisi

On Refusal of Certification of JSC Georgian State Electrosystem as the Electricity Transmission System Operator

On April 28, 2022, the Georgian National Energy and Water Supply Regulatory Commission (hereinafter – the Commission) adopted a Decision N18/5 “On Refusal of Preliminary Certification of JSC Georgian State Electrosystem as the Electricity Transmission System Operator”.

The Commission notified the Energy Community Secretariat (hereinafter - the Secretariat) of a refusal of preliminary certification of JSC Georgian State Electrosystem and based on paragraph 2 of Article 50 of the Law of Georgia on Energy and Water Supply (hereinafter – the Law), sent the Commission’s Decision N18/5 of 28 April 2022 (hereinafter – the Preliminary Decision), to the Secretariat to deliver its opinion. On June 24, 2022, the Secretariat submitted “Opinion 1/22 pursuant to Article 3(1) of Regulation (EC) No 714/2009 and Article 10(6) of Directive 2009/72/EC – Georgia – Certification of GSE” (hereinafter – the Opinion).

In its opinion the Secretariat agrees with the Commission’s decision and notes that currently JSC "Georgian State Electric System" (hereinafter - the Applicant) should not be certified due to the following circumstances:

The Applicant does not comply with the unbundling and independence requirements. According to the Secretariat's assessment, the Ministry of Economy and Sustainable Development of Georgia (hereinafter - the Ministry) - the same public institution within the meaning of Article 9(6) of the Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity (hereinafter – the Electricity Directive), exercises control within the meaning of Articles 9(2)(b) and 9(2)(c) of the Electricity Directive over the electricity transmission system operator - the Applicant and the other undertakings active in generation and/or supply of electricity or natural gas. Therefore, the Applicant does not comply with the requirements of Article 14(2) of the Electricity Directive and should not be certified as a transmission system operator.

Based on the information provided in the Preliminary Decision, the Secretariat concludes that the Applicant does not comply with the unbundling requirements in circumstances where its sole shareholder - the state - also controls the undertakings active in the generation and/or supply of electricity or natural gas. Moreover, the Applicant is directly and indirectly controlled by the same public institution that also controls state-owned undertakings performing any of the functions of generation or supply of natural gas/electricity.

The Secretariat, therefore, agrees with the Commission's assessment and conclusions that the Applicant does not comply with the requirement of separation of control under Article 9(1)(b),(c),(d),(2),(3),(6),(7) and (12) of the Electricity Directive.

The Secretariat also agrees with the Commission's position regarding the conflict of interest of the member of the Supervisory Board (Leontina Galdava) of the Applicant and points out, that Article 9(1)(d) of the Electricity Directive provides that the same person is not entitled to be a member of the supervisory board of both - an undertaking performing any of the functions of generation or supply and a transmission system operator. In accordance with the Opinion, the circumstance mentioned in the Preliminary decision – that during the period 17 May 2021 to 18 February 2022, a member of the Supervisory Board of the Applicant, Ms Leontina Galdava, was also a representative of the Partnership Fund in the Supervisory Board of TPP LLC Gardabani Power Plant and JSC Georgian Oil and Gas Corporation and is currently on the position of director of several hydropower plant projects under construction, in particular LLC Mtkvari HPP – constitutes a violation of the provisions of Articles 9(1)(d) of the Electricity Directive, according to which to avoid any conflicts of interest for board members, the same person is not entitled to be a member of the board of both - a generation or supply undertaking on the one hand and a transmission system operator on the other hand. In its Opinion, the Secretariat also notes that although Ms Leontina Galdava is no longer a supervisory board member of TPP LLC Gardabani Power Plant and JSC Georgian Oil and Gas Corporation, she is still a member of the supervisory board of both - a transmission system operator and a company (soon to be) active in a generation.

The Secretariat, therefore, agrees with Commission's assessment and conclusions that the Applicant does not comply with the requirement of avoidance of conflict of interests under Article 9(1)(d) of the Electricity Directive and the Commission's condition referred to in the preliminary decision - to eliminate the conflict of interest of the member of the supervisory board and to submit documents proving the fulfilment of this condition to the Commission - to be included in the Final Decision.

In its opinion, the Secretariat also agrees with the Commission's assessment and conclusions regarding the relationship between the Applicant and the owner of the

transmission system and points out that in the Preliminary Decision, the Commission confirmed that following the adoption of the Decision N14/3 of 1 April 2021, no amendments were made to the Agreement “On Transfer of the Electricity Transmission Lines and their Components Owned by JSC UES Sakrusenergo to JSC Georgian State Electrosystem (Transmission System Operator) with the right of use with for the unspecified term (by Lease) and for the Provision of Accompanying Repair and Maintenance Services” (hereinafter – the Lease Agreement) and that the parties to the lease agreement duly comply with the rights and obligations enshrined in the agreement. The Secretariat, therefore, agrees with the Commission’s assessment and conclusion that the Applicant complies with the requirement under Article 9(1)(a) of the Electricity Directive.

Regarding the performance of the functions of the transmission system operator by the Applicant, the Secretariat agrees with the position of the Commission and notes that the Applicant complies with the requirement under Article 9(1)(a) of the Electricity Directive and disposes of the necessary (human, technical, financial) resources to act as a transmission system operator in the operation of its own assets and the assets owned by Sakrusenergo and that outsourcing some of the core transmission system operator tasks to it is an efficient decision. The Secretariat also notes that in the Preliminary Decision, the Commission does not report any changes regarding the Applicant’s activities.

Against this background, the Secretariat agreed with the Preliminary Decision of the Commission and suggested that the Commission in its final decision shall refuse certification of the Applicant as an electricity transmission operator under the current circumstances.

The Secretariat also welcomed the requirement included in paragraphs 2 and 3 of the Preliminary Decision, according to those, all measures necessary for compliance with the requirements of paragraph 1, Article 4 of the Transmission System Operator Unbundling Plan adopted by the Government of Georgia through Resolution N682, dated November 13, 2020, shall be implemented by 1 July 2022 and the Applicant shall submit to the Commission all documents required to prove compliance by 8 July 2022.

Taking into consideration the deadlines for receiving the Opinion and the deadlines established by the General Administrative Code of Georgia for the reviewing and adoption of this decision by the Commission at the public hearing, the Commission considers it appropriate to set August 1, 2022, as the deadline for fulfilling the obligations provided for in paragraph 1 of Article 4 of the Unbundling Plan, and August 8, 2022, shall be determined as the deadline for the Applicant to submit to the commission the documents confirming the full implementation of the mentioned obligations.

Taking into consideration all of the abovementioned circumstances, according to paragraph 2 of Article 50 of the Law of Georgia on Energy and Water Supply, as well as according to paragraphs 2 and 3 of Article 9 of Transmission System Operator Certification Rules adopted by the Commission Resolution N9 of March 27, 2020, the Commission

Decides:

1. The decision on refusal of certification of JSC Georgian State Electrosystem as an electricity transmission system operator shall be adopted.
2. By August 1, 2022, all the measures necessary to comply with the requirements of Article 4, paragraph 1 of the Transmission System Operator Unbundling Plan adopted by the Government of Georgia through Resolution N682, dated November 13, 2020, shall be completed, in particular, by August 1, 2022, managing rights for the enterprises under the control of the Ministry of Economy and Sustainable Development of Georgia, listed below shall be reallocated in order to prevent the management by the same State institution and at the same time the joint control by the third parties over energy transmission/distribution on the one hand and generation/supply/trading on the other hand:
 - a) Electricity sector:
 - a.a) JSC Georgian State Electrosystem – transmission (100% of shares);
 - a.b) JSC UES Sakrusenergo – distribution (50% of shares);
 - a.c) LLC Enguri HPP – generation (100% of shares);
 - a.d) LLC Vardnili HPP Cascade – generation (100% of shares);
 - a.e) JSC Electricity System Commercial Operator – trading/supply (100% of shares);
 - a.f) JSC Karchal Energy - registered in Turkey (KARÇAL ENERJİ ELEKTRİK TOPTAN TİCARET A.Ş.), wholesale trading company (100% of shares);
 - b) Natural gas sector:
 - b.a) LLC Georgian Gas Transportation Company – transmission (100% of shares);
 - b.b) JSC Georgian Oil and Gas Corporation – trading (100% of shares).
3. The Applicant shall, by August 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, person/persons with managerial and/or representative authority, management board) of the enterprises mentioned in paragraph 2 subparagraphs “a” and “b” of this Decision, that confirms transfer of management rights of the mentioned enterprises to the relevant State institutions/public bodies, taking into consideration the requirements of allocation of management rights adopted through the paragraph 2 of this Decision.

4. JSC "Georgian State Electrosystem" shall eliminate the conflict of interest of the member of the Supervisory Board according to the Laws of Georgia by August 1, 2022, and submit to the Commission the documents proving the fulfilment of the mentioned activity.

5. It shall be clarified to the JSC Georgian State Electrosystem that in accordance with paragraph 5 of Article 49 of the Law of Georgia on Energy and Water Supply until the Commission makes a final decision on the elimination of inconsistencies described in this Decision, it enjoys temporary authorization to operate as a transmission system operator.

6. It shall be clarified to the JSC Georgian State Electrosystem that in case of violation of the requirements of this Decision, it will be fined up to 10 % of its annual turnover for 2021.

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

8. This Decision may be appealed at the Tbilisi City Court (Tbilisi, Davit Agmashenebeli Alley, №64), within 1 (one) month after its official acquaintance (delivery of the decision to the parties).

9. Control over the implementation of This Decision should be entrusted to the Legal Department of the Commission.