



Number: 01-334-8/19

Date: 28.04.2020

**Energy Community Secretariat**

**Am Hof 4 Level 5-6**

**1010 Vienna**

**Austria**

**Subject: Submission of the Decision Proposal on certification of the natural gas transport system operator number 01-334-6/19/P-142-91 dated 28.04.2020 for the opinion getting**

Dear Madam/Sir,

Please find attached the document – Decision Proposal on certification of the natural gas transport system operator number 01-334-6/19/P-142-91 adopted by the Regulatory Commission for Energy of the Republic of Srpska in its 142<sup>nd</sup> regular session held on 28.04.2020 for the purposes of the initial opinion getting.

Respectfully Yours,

President  
Vladislav Vladicic



Annex : Decision proposal on certification of the natural gas transport system operator number 01-334-6/19/P-142-91

Submitted to:

- above named
- a/a

<b>Energy Community RECEIVED</b>						
Date: <b>18. Mai 2020</b>						
BH-REG/I/142/01/18-05-2020						
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Number: 01-334-6/19/P-142-91

Date: 28.04.2020

Pursuant to the provision of Article 21 paragraph 1 point 2 and Article 44 paragraph 4 of the Gas Law ("Official Gazette of the Republic of Srpska" number 22/18), Article 17 paragraph 1 of the Rule book on certification of the natural gas transport system operator ("Official Gazette of the Republic of Srpska" number 31/19) and Article 33 paragraph 1 point g) of the Procedural Rules of the Regulatory Commission for Energy of the Republic of Srpska ("Official Gazette of the Republic of Srpska" number 59/10), Regulatory Commission for Energy of the Republic of Srpska, in its 142<sup>nd</sup> regular session held on 28<sup>th</sup> April 2020 in Trebinje, determined

#### **DECISION PROPOSAL**

##### **on certification of the natural gas transport system operator**

1. Application of the joint-stock company for transport and natural gas transport system control "GAS PROMET" Pale is accepted for certification of the natural gas transport system operator number 01-688/19 dated 12<sup>th</sup> September 2019 applying the unbundling model – ownership unbundling.
2. Joint-stock company for transport and natural gas transport system control "GAS PROMET" Pale is certified as the natural gas transport system operator.
3. Decision becomes effective on the day it is made, and will be published, along with the opinion of the Energy Community Secretariat in the "Official Gazette of the Republic of Srpska" and at the website of the Regulatory Commission for Energy of the Republic of Srpska.

#### **Rationale**

The joint-stock company for transport and natural gas transport system control "GAS PROMET" Pale (hereinafter: Applicant) submitted to the Regulatory Commission for Energy of the Republic of Srpska (hereinafter: Regulatory Commission), in the prescribed form OB.C.04.01 with the accompanying documents, the Application for certification of the natural gas transport system operator – ownership unbundling number 01-688/19 dated 12<sup>th</sup> September 2019 (hereinafter: Application). The Application was registered under the number 01-334-1/19 at the Regulatory Commission on 16<sup>th</sup> September 2019.

The Applicant, when applying, held the license for doing the activity of the natural gas transport system control and license for doing activity of the natural gas transport, issued by

Decisions number 01-238-11/14/P-88-222 and 01-239-5/14/P-88-223 dated 30.07.2014 for the validity period of five years. Decision made by the Regulatory Commission number 01-488-7/18/P-102-13 dated 07.02.2019 extended the license validity period pursuant to provisions of the Gas Law till 23.03.2020.

Having analyzed the submitted Application, it was determined that the Application was not regular, namely that it contained certain failures preventing further actions regarding it, so that the Applicant was requested to remove the failures determined and modify the Application by submitting the documents as follows:

1. Originals or verified copies of the Decision made by the Board of Directors YO-60-30-353/19 dated 15.05.2019 and Decision of the Assembly of shareholders dated 08.05.2019 based on which the Statute of the Applicant was adopted;
2. Originals or verified copies of the Decisions based on which the Contract on organizing "GAS PROMET" AD Pale (cleaned text) dated 22.05.2019 was adopted;
3. List of shareholders of the Central Registry of Securities on 28.04.2019, as integral part of the Contract on organizing;
4. Contract on concession or statement on how the respective energy activity, as the activity of general interest, was assigned, as well as the legal document defining it;
5. Statement on ownership, namely legal base for using the natural gas transport system controlled by the Applicant, with a list of structures, facilities, equipment and devices with the mentioned technical parameters and evidences on ownership, namely a legal base for using all parts and elements of the natural gas transport system stated in the initial statement, which were issued by the competent authority;
6. List of all energy undertakings with which the Applicant has the contract signed for the last three years and information on other non-contractual relationships with the energy undertakings, with the data on the type of relationship and level of cooperation in the Republic of Srpska, Bosnia and Herzegovina and the Republic of Serbia;
7. List of licenses and/or other competences possessed by the co-owners/shareholders of the Applicant, for doing energy activity in the Republic of Srpska, Bosnia and Herzegovina and/or other countries;
8. List of the controlling bodies of co-owners/shareholders with the stated names of the controlling body depending on the method of organizing (directors, Board of Directors, Supervisory Board and others);
9. Decision on appointment of the Applicant's manager (including the managing directors), Decision on appointment of the Board of Directors and Decision on selection of the bodies of the Assembly of shareholders;
10. Information regarding certification of the JP "Srbija gas" Novi Sad, doing the activity of the natural gas transport system operator in the Republic of Serbia;
11. List of persons that directly or indirectly control or have some other rights over the natural gas transport system operator and information on the way each of the mentioned person realizes his/her control, voting right, veto, majority share, rights to

appoint the Supervisory Board members/Board of Directors and the applicant's director, etc.

The Applicant submitted to the Regulatory Commission amendments to the requested documents, registered at the Regulatory Commission under the number 01-334-3/19. Having analyzed the submitted amendments, namely the requested documents, the Regulatory Commission, pursuant to provision of the Article 14 of the Rule book on certification of the natural gas transport system operator (hereinafter: Rule book), on 27.01.2020, informed the Applicant on the properly submitted Application for certification and published the Notice for the public at its website, notice board and in the daily newspapers "GLAS SRPSKE". In the Notice for the public, basic pieces of information were given on the Application, the way how the interested parties may obtain additional information and have a insight in the Application, ways and term for submission of the comments of the interested persons, and information related to a possibility of participation of the interested parties in the proceedings if they have a special right or legal interest to participate in the proceedings. During the proceedings, there weren't either submitted comments or submitted applications of the interested persons for participation in the proceedings.

Having in mind that during the proceedings there weren't submitted comments or submitted applications of the interested parties for participation in the proceedings, that there were not disputable issues regarding the certification of the transport system operator and that during the proceedings the evidences were submitted, based on which the assessment of the criteria fulfillment for certification can be done, in a sense of the provision of Article 16 of the Rule book, the public hearing was not held.

Provision of Article 37, paragraph 1 of the Gas Law prescribed that the energy undertaking possessing the system for the natural gas transport in the Republic, or some of its separate part, may do the activity of transport and transport system control and be the transport system operator, if:

- it carries the activity of the natural gas transport through the pipeline ( $p \geq 16$  bars) which do not include the penstocks from the production fields and penstocks which are primarily used for the natural gas distribution, with the aim of their delivery to end users, including the supplying,
- while carrying out its obligations and carrying out the tasks, pursuant to the law, it is independent from all other activities related to the natural gas, such as production, distribution, storage, natural gas supplying, from the related commercial interests, except in specific cases, whereby the independence is realized also providing the unbundling of the transport system operator pursuant to the law and
- that the license for doing the activity of transport and transport system control is issued to the certified transport system operator.

Provision of Article 37, paragraph 2 of the Gas Law prescribed that the independence of the transport system operator is ensured in a way that the same energy undertaking or other legal person, namely entrepreneur cannot concurrently:

- directly or indirectly control or have some other rights over the transport system operator or electricity transmission system operator, as well as over the transport system or electricity transmission system,
- directly or indirectly control or have some other rights over the energy undertaking doing the activities of production or supply with natural gas or electricity and
- appoint the members of the energy undertaking bodies or be the member of the energy undertaking body controlling or legally representing the transport system operator or electricity transmission system operator, or the transport system owner or electricity transmission system owner and directly or indirectly control or have some other rights over the energy undertaking doing the activities of production or supply with natural gas or electricity.

The rights over the transport system operator referred to in Article 37 paragraph 2 of the Gas Law include the competences to use the voting right, competences to appoint the members of the energy undertaking body that control or legally represent the energy undertaking or possess the majority share.

Provisions of Article 37 paragraph 4 of the Gas Law prescribe that it is not allowed to the transport system operator or its employees to give confidential data, it has, on the energy undertakings, to the third parties.

Having analyzed the application and the enclosed documents, and particularly:

1. Having inspected the documents:

- Registry of the fixed assets, with the balance on 30.06.2019;
- List of structures, facilities, equipment and TS devices with the technical parameters;
- List of all transport systems or its parts owned by the Applicant in the Republic of Srpska, as well as of interconnectors;
- Contract on arrangement of the property-legal relationships, status-legal issues and capital investment in the AD "Gas promet" Pale concluded between the JP "Srbija gas" Novi Sad, AD "Gas promet" Pale and Investment-development Bank of the Republic of Srpska dated 11.03.2019 and
- Real estate sheet number 1823/2 number 21.21-952.1-2-214/2019 dated 30.08.2019 for the gas station and Decision number 21.21/951-124-2406/2017 dated 16.11.2018 on determination of the content of the real estate on the land and structures for the gas station and gas pipeline Zvornik of the Republican Administration for geodetic and property-legal issues Banja Luka, Cadastral Municipality Zvornik,

it was determined that the Applicant is the owner, namely that it possesses the natural gas transport system. Additionally, it was determined that the Applicant, in the moment of submitting the Application, was the licensee for doing the activity of the natural gas transport

system control and licensee for natural gas transport, namely for the activities of transport and natural gas transport system control.

2. Having inspected the documents:

- Decision on registration of the District Commercial Court in Istocno Sarajevo number 061-0-Reg-19- 000 465 dated 22.05.2019,
- Statement of the manager of the Applicant number 01-695/19 dated 12.09.2019 that as the authorized person he/she does not participate in the doing energy activity of generation and/or supply with electricity and/or natural gas and
- Statement number 01-696/19 dated 12.09.2019 that none of the employees of the Applicant participated in the activity of generation or supply with electricity or natural gas,

it was determined that the Applicant, while carrying out its obligations and doing its tasks, was independent from all other activities related to the natural gas, thus meeting the requirement referred to in Article 37 paragraph 1, namely Article 36 paragraph 3 of the Gas Law.

3. Having inspected the documents:

- Excerpt from the Central Registry of Securities AD Banja Luka number 01-8840/19, file 06-39/05 dated 17.06.2019,
- Report for the Assembly of shareholders on 16.06.2019 and
- Excerpt from the Central Registry of Securities AD Banja Luka number 01-11042/19, file 06-39/05 dated 23.07.2019 from the Book of shareholders of the Applicant on 22.07.2019,

it was determined that the applicant was established as the joint-stock company which shareholders are:

- JP „Srbija gas“ Novi Sad with 39,14% shares,
- Share Fund of the Republic of Srpska with 26,09% shares,
- DUIF Management Solutions –OIAF Aktiva Invest Fond with 16,52% shares,
- PREF AD Banja Luka with 10% shares,
- Restitution Fund of RS, AD Banja Luka with 5% shares,
- DUIF Management Solutions – OIAF Bors Invest Fond with 1,47% shares, and
- small shareholders with, in total, 1,78% shares.

Contract on organizing "Gas Promet" AD Pale (clean text) number YO/60-30-363/19 dated 22.05.2019 and Statute of the "Gas Promet" AD Pale (clean text) number YO/60-30-354/19 dated 15.05.2019 are the fundamental documents of the Applicant and, based on them, competences, method of representation, use of the voting rights, method of appointment of the controlling bodies, which are the Assembly of Shareholders, Board of Directors and Director are prescribed, thus proving the requirements' meeting referred to in Article 37 paragraph 2 of the Gas Law related to the transport system operator independence.

4. Having inspected the documents :

- Contract on organizing 'Gas Promet"AD Pale (clean text) number YO/60-30-363/19 dated 22.05.2019;

- Statute of the "Gas Promet" AD Pale (clean text) number YO/60-30-354/19 dated 15.05.2019;
- Statement number 01-690/19 dated 12.09.2019 that the Applicant has no co-owners/shareholders from the third countries;
- Statement number 01-691/19 dated 12.09.2019 that there aren't any legal persons under direct or indirect control;
- Statement number 01-692/19 dated 12.09.2019 that the Applicant hasn't got a status of the related person to any other energy undertaking;
- Statement number 01-693/19 dated 12.09.2019 that the shareholders of the Applicant from Bosnia and Herzegovina and Republic of Srpska do not carry out the energy activity and accordingly do not have the licenses for doing activity, nor have the status of the related person to any other energy undertaking;
- List of employees of the Applicant dated 20.08.2019 (11 employees in total);
- List of members of the controlling bodies of the Applicant's shareholders, (Supervisory board of the JP "Srbija gas" Novi Sad, Supervisory Board of the Investment-Development bank of the Republic of Srpska, Board of Directors of DUIF Management Solutions Banja Luka and Supervisory Board of the Management company for the Pension Reserve Fund AD Banja Luka)
- Decision of the Assembly of shareholders of the Applicant number C-26-224/19 dated 26.06.2019 on appointment of the Board of Directors;
- Decision of the Board of Directors of the Applicant number YO/58-28-341/19 dated 01.02.2019 on appointment of the acting director of the company;
- Statement number 01-696/19 dated 12.09.2019 that none of employees of the Applicant participated in the activity of generation or supply with electricity or natural gas;
- Statement of the manager of the Applicant number 01-695/19 dated 12.09.2019 that as the authorized person, he/she does not participate in doing energy activity of generation and/or supply with electricity and/or natural gas;
- Statement number 01-703/19 dated 12.09.2019 that there aren't persons that directly or indirectly control or have some other rights over the company, except the shareholders of the Applicant that do have the voting rights and the right to appoint the Board of Director through the voting right;
- Statement number 01-704/19 dated 12.09.2019 that there aren't persons active in the domestic energy market that are directly or indirectly controlled by the Applicant, nor the persons that have the ownership over the transport system in which the Applicant has the control - the voting right, veto, majority share and other rights;
- List of shareholders of the Central Registry of Securities dated 28.04.2019, as integral part of the Contract on organizing;
- Excerpt from the Central Registry of Securities AD Banja Luka number 01-11042/19, file 06-39/05 dated 23.07.2019 from the Book of shareholders of the Applicant on 22.07.2019;

- Statement number 01-946/19 dated 29.11.2019 with the list of energy undertakings in the contractual relationship with the Applicant in the period from 2016 to 2019: "GAS-RES" d.o.o. Banja Luka, BH-GAS" d.o.o. Sarajevo and JP 'Srbija Gas" Novi Sad – services of transport and natural gas transport system control;
- Statement number 01-945/19 dated 29.11.2019 with the list of energy undertakings in the non-contractual relationships with the Applicant in the period from 2016 to 2019: JP "SRBIJA GAS" Novi Sad - Upstream Gas TSO (Contract on operational regime), "Sarajevo gas" ad Istočno Sarajevo – Downstream Gas OTS, "Zvornik Stan" Zvornik, distributor connected to the transport system, "Alumina" d.o.o. Zvornik – industrial customer, "Prvo gasno drustvo" d.o.o. Zvornik – Compressed gas station, JKP "Drina" Mali Zvornik – distributor connected to the transport system;
- Letter number 01-959/19 dated 03.12.2019 in which there are: List of members of the controlling bodies of the shareholders "Gas Promet" AD Pale (I Company Management and Supervisory Board of the JP "Srbija Gas" Novi Sad, II Management and Supervisory Board of the Investment Development bank of the Republic of Srpska, III Expert Team and UO DUIF "Management solutions" BanjaLuka and IV Management and Supervisory board of the Management company for the Pension Reserve Fund AD Banja Luka);
- Decision on appointment of the acting director of the company number YO/58-28-341/19 dated 01.02.2019;
- Decision on appointment of the managing director for technical issues number YO/38-8-174/14 dated 16.04.2014;
- Decision on giving consent to the contracts to the managing director for economic-legal issues and managing director for technical issues of "Gas promet" AD Istocno Sarajevo Pale number YO/33-3-127/13 dated 31.01.2013;
- List of shareholders of "Gas promet" AD on 22.07.2019 (list of 41 shareholders with the statement that no shareholder has a majority share or control (unique or common), has no right of veto, and have the voting right and right to appoint the Board of Directors through the voting right),

it was determined that the Applicant, apart from the activity of transport and transport system control in the Republic of Srpska, has no direct or indirect control or the right over the transport system operator or transmission system of electricity operator, or over the transport system or transmission system for electricity, energy undertaking which carries out any of the activities of production or supply with natural gas or electricity, thus meeting the requirements referred to in Article 37. paragraph 2, of the Gas Law.

Statement of the authorized representative of the Applicant number 01-697/19 dated 12.09.2019 and number 01-698/19 dated 12.09.2019, also states that none of the public authorities representatives, which in the ownership structure has minority shares with the Applicant, has direct or indirect control or majority share with the Applicant and that the



same representatives of the public authorities haven't concurrent direct or indirect control over the Applicant and energy undertakings dealing with the activities of generation or supply with electricity or natural gas, or transport system operator or electricity transmission system operator and transport system for natural gas and transmission system for electricity either.

Having inspected the Rule book on confidential information number YO/59-29-350/19 dated 15.04.2019, it was determined that the Applicant has the document adopted determining the term and type of confidential information which the transport system operator has, method of their protection confidentiality as well as the sanctions in case of violation of provisions on protection of confidentiality related to shareholders, representatives and members of the Board of Directors thus meeting the requirements referred to in Article 37 paragraph 4 of the Gas Law.

Regulatory Commission, in its 142<sup>nd</sup> regular session, held on 28.04.2020, having analyzed the Application for certification of the natural gas transport system operator applying the ownership unbundling model of the joint-stock company for transport and natural gas transport system control "GAS PROMET" Pale and enclosed documents to it, determined that all independence-related requirements of the transmission system operator prescribed by the provisions of Article 37 of the Gas Law, required for certification of the natural gas transport system operator, have been met, so, pursuant to provisions of the Article 44 paragraph 4 of the Law Gas, it was decided as stated in points 1 and 2 of Rationale of this Decision Proposal. Pursuant to Article 44 paragraph 5 of the Gas Law, Decision Proposal on certification of the transport system operator is submitted by the Regulatory Commission to the Energy Community Secretariat for getting its opinion on it. Upon submission of the opinion, Regulatory Commission will, pursuant to provisions of the Article 44 paragraph 8 of the Gas Law, make its final decision.

Pursuant to the provision of Article 44, paragraph 11 of the Gas Law, and in compliance with the principle of transparency, decision made by the Regulatory Commission on certification of the transport system operator, along with the opinion of the Energy Community Secretariat and possibly rationale of the Regulatory Commission is published in the "Official Gazette of the Republic of Srpska" and at the website of the Regulatory Commission, as determined by point 3 of this Decision rationale.

Lesson on legal remedy: - for final decision

President  
Vladislav Vladicic



To be submitted to:

- Energy Community Secretariat
- a/a