

# **Georgian National Energy and Water Supply**

## **Regulatory Commission**

### **Decision №9/10**

**March 4, 2020**

**Tbilisi**

#### **On Preliminary Certification of JSC Georgian State Electrosystem as the Electricity Transmission System Operator**

Georgian National Energy and Water Supply Regulatory Commission (hereinafter - the Commission) held a public hearing on the application of JSC Georgian State Electrosystem concerning certification of the transmission system operator.

On January 21, 2021, JSC Georgian State Electrosystem (hereinafter - the Applicant) by the letter N124/09 submitted to the Commission the application for certification as a transmission system operator (hereinafter - the Application) with supporting documentation. On January 26, 2021, the Applicant additionally submitted letter N153/9 with the updated documentation.

The Commission reviewed compliance of the submitted Certification 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 informed the Applicant by letter N1/02-5-901 of January 28, 2021, and requested submission of additional documents and information. The Applicant submitted an updated

application to the Commission by the letter N473/09 on February 12, 2021 and additional information and documentation by the letter N582/01 on February 22, 2021.

The Commission considered that the submitted Certification Application met the requirements outlined in Article 78 of the General Administrative Code of Georgia, as well as Article 6 of the Certification Rules, accordingly, based on the submitted documentation and information, the Commission initiated 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 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.

One of the core aims of the *acquis communautaire*, in particular of the Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 on common rules

for the internal market in electricity and repealing Directive 2003/54/EC (hereinafter - the Directive), is to ensure the proper implementation of the independence and unbundling of transmission system operators. 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 Certification Application to the Commission, the Applicant and JSC United Energy System Sakrusenergo (hereinafter - JSC UES Sakrusenergo) transmit electricity on the territory of Georgia based on the licenses issued by the Commission. At the same time, the Applicant is also the sole electricity dispatch licensee and acts as the transmission system operator, based on the Agreement N60-7-115-028 of January 22, 2015 „On Transfer of the Power/authority of Operation and Development Planning of Transmission Network Owned by the Transmission License Holders to the Transmission System Operator (Electricity Dispatch Licensee)“ concluded with the Transmission Licensees - JSC UES Sakrusenergo and LLC Energotrans.

The Applicant is a joint-stock company established under the Law of Georgia on Entrepreneurs, which provides electricity transmission (transportation, transit) throughout the territory of Georgia based on the electricity transmission license (Nº004, series 12) and the electricity dispatch license (004, series 13) issued by the decision N100 of the Commission of December 20, 2002.

The Applicant, as JSC Georgian State Electrosystem, was established based on the reorganization of LLC Georgian State Electrosystem, which, in turn, was established by merging state-owned companies JSC Electrogadatsema and LLC Electrodispecherizatsia 2000 based on the order N1-3/810 of the Ministry of State Property Management of November 8, 2002. By the mentioned order, the LLC State Electrosystem of Georgia was designated as the legal successor of JSC Electrogadatsema and LLC Electrodispecherizatsia 2000. 100% of the shares of LLC Georgian State Electrosystem were owned by LEPL Enterprise Management Agency, which was controlled by the Ministry of Economy and Sustainable Development of Georgia (hereinafter - the Ministry).

On August 18, 2011, on the basis of the Order N160 of the Minister of Energy and Natural Resources of Georgia On Reorganization (Transformation) of LLC Georgian State Electrosystem into a Joint Stock Company, LLC Georgian State Electrosystem was transformed into a joint stock company.

The state owns 100% of the shares of the Applicant. Following the „Agreement on Transfer of Management Rights of State-Owned Shares of JSC Electricity System Commercial Operator, JSC Georgian State Electrosystem and JSC United Energy System Sakrusenergo, concluded between the LEPL National Agency of State Property and the Ministry of Economy and Sustainable Development of Georgia, on May 4, 2020 (hereinafter – the Agreement on Transfer of State-Owned Shares) the Ministry exercises the rights and obligations of a shareholder of JSC Georgian State Electrosystem.

On 28 May 2020, by Decision N39/3 of the Commission, the Applicant was granted the Electricity Market Operation License (N002, Series 17) for the Balancing and Ancillary Services Market segment. The conditions for the licensed activities, the area where the license is applicable, and the location of fixed assets were also promulgated by the mentioned decision.

LLC Energotrans was a subsidiary of the Applicant, 100% of its shares were owned by the State. By the decision of the Commission N26/2 of November 11, 2010 (License №006,

Series 12), LLC Energotrans was granted a preliminary license for electricity transmission with the condition that it would satisfy the requirements established by the legislation by the date foreseen by the decision. By the decision of the Commission N20/2 of August 27, 2013, preliminary license entered into force and the area where the license is applicable was determined. Based on the merger plan of JSC Georgian State Electrosystem and LLC Energotrans approved by the Decree N805 of the Government of Georgia of May 13, 2020, and the Order N1/1-3737 of the Chairman of the State Property Management Agency of December 16, 2020 on Merger of JSC Georgian State Electrosystem and LLC Energotrans, LLC Energotrans merged with the Applicant on January 20, 2021. As a result of this transaction, the Applicant was identified as the legal successor of LLC Energotrans.

JSC UES Sakrusenergo was established on May 27, 1996, under the “Agreement on Cooperation in the Field of Energy”, concluded between the Government of Georgia and JSC Russian United Energy System. The shareholders of the JSC UES Sakrusenergo are the State of Georgia with the 50% of shares, represented by the Ministry and Public Joint Stock Company Federal Grid Company of United Energy System (Russian Federation) with the 50% of shares.

Currently, JSC UES Sakrusenergo carries out electricity transmission on the territory of Georgia based on the electricity transmission license (N001, series 12) issued by the Decision N8 of Commission of February 23, 2000.

## **Unbundling of Transmission System Operator**

### *a) Approval of the Unbundling Plan*

According to Article 44, paragraph 1 of the Law, the Government of Georgia takes 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 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 “a” of Article 159, within 2 months after adoption of the Certification Rules, the electricity dispatch licensee, in agreement with electricity transmission licensees, 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.

The Applicant submitted the draft resolution of the Government of Georgia on Adoption of Transmission System Operator Unbundling Plan (hereinafter – Unbundling Plan) on June 29, 2020 (letter N1790/09); additionally, explanatory note for the draft Resolution was submitted on June 4, 2020 (letter N1854/090). Article 1 of the draft Unbundling Plan set out the unbundling model of the transmission system operator; Article 2 – principles of unbundling; Article 3 established the measures and actions that had to be implemented by the Applicant as well as electricity transmission licensees – LLC Energotrans and JSC UES Sakrusenergo; Article 4 foresaw the obligation of the Ministry to reallocate management rights for the companies through the negotiations with the public institutions and relevant governmental bodies, in order to prevent management by the same State institutions of the companies engaged in energy transmission/distribution/trading on the one hand and the companies carrying out generation/supply/trading activities on the other hand . This letter was accompanied by the consent of the transmission licensees. The Ministry informed the Commission on June 11 2020 (letter N24/3617) that the Unbundling Plan was acceptable to it and asked the Commission to initiate consultations with the Energy Community Secretariat and submit the Unbundling Plan to the Government of Georgia for approval.

The Commission reviewed the Unbundling Plan, which, *inter alia*, included the clause requiring JSC UES Sakrusenergo to conclude paid lease agreement with the Applicant in order to transfer its transmission system assets. On the other hand, the Applicant undertook the obligation to use exclusively the services of JSC UES Sakrusenergo for development of the transmission system, as well as its maintenance. The Commission considered that the abovementioned provisions of the Unbundling Plan were in contradiction with the requirements of Article 51, paragraph 1 and Article 53, paragraph 1 of the Law, according to which development of the transmission system is the responsibility of the system operator, which has to be performed through development of a Ten-Year Transmission Network Development Plan (hereinafter – Ten-Year Plan). Accordingly, drafting and implementation of a Ten-Year Plan shall be the exclusive responsibility of the system operator and implementation of the Ten-Year Plan only through the services of JSC "Sakrusenergo" contradicts the abovementioned provisions of the Law and does not meet the goals of the Unbundling Plan. Accordingly, on June 16, 2020 (letter N1/02-5-3897), the Commission requested the Applicant to amend the Unbundling Plan, in particular, Article 3 paragraph 3, subparagraph "b.b".

The Applicant submitted the amended Unbundling Plan to the Commission on July 6, 2020 (letter N2261/09). As to the deadlines foreseen by the Unbundling Plan, the measures established by Articles 3 and 4 of the Unbundling Plan had to be implemented no later than August 31, 2020. Since according to the Article 159 paragraph 1, subparagraph "a" of the Law, the requirements of independence and unbundling of the transmission system operator had to be fulfilled no later than December 31 2020, whereas the authorization procedure for the transmission system operator included certification, licensing, as well as the setting transmission tariff by the Commission, it would have been impossible to complete all of the above by December 31, 2020. Therefore, on July 13, 2020 the Commission (letter N1/02-5-4790) requested amendment of the deadlines foreseen by the Unbundling Plan.

The Applicant submitted the updated Unbundling Plan on July 16, 2020, with the letter N2387/09. The Commission submitted the Unbundling Plan to the Government of Georgia on July 20, 2020 with the letter N1/02-1-4967 and asked for its adoption in shortest time possible. In the letter the Commission additionally stated the following:

Article 3 paragraph 1, subparagraph "b.c" of the Unbundling Plan provided that for repair and maintenance of the transmission system the Applicant should exclusively use the service of JSC UES Sakrusenergo - the owner of the transmission system, unless otherwise agreed between the parties. At the same time, Article 3 paragraph 1, subparagraph "b.b" foresaw the possibility of the Applicant to exercise its development planning authority over the transferred assets freely. The Commission, according to the Article 159, paragraph 3 of the Law, consulted with the Energy Community Secretariat, which stated that the transmission system operator shall take an independent commercial decision to sub-contract services on efficiency grounds having sufficient resources to oversee, control and provide instructions to the subcontractor as well as ensuring subcontractor is not active in generation/supply.

On August 18, 2020 the Applicant submitted the updated Unbundling Plan to the Commission accompanied with the updated explanatory note (letter N2897/09), which reflected the potential legal consequences of reorganization and/or transfer of assets of energy companies in relation to the unbundling plan. On August 19, 2020 (letter N1/02-1-5789) the Commission submitted the Unbundling Plan to the Government of Georgia.

On November 12, 2020 the Applicant submitted the updated Unbundling Plan with the letter N3975/09. Since the deadlines established by the previous version of the Unbundling Plan had been already expired, the updated Unbundling Plan promulgated new deadline - December 1, 2020 - for fulfillment of the requirements set by Article 3 of the Unbundling Plan, in relation to LLC Energotrans and JSC Sakrusenergo, including the right of the Applicant to use the assets of LLC Energotrans as a collateral, as well as the rights related to planning, maintenance and development of these assets; also, transmission system infrastructure assets owned by JSC UES



Sakrusenergo to be transferred to the Applicant for possession and operation in exchange for appropriate consideration, in a manner in which the Applicant shall possess, fully operate and use these assets as a collateral (provided that the Applicant has submitted the relevant written application and the shareholders of JSC UES Sakrusenergo have adopted the necessary prior decision in accordance with the company's Charter); as well as the Applicant shall freely exercise the right to plan development of transferred assets. As for the reallocation of the Ministry's management rights to the energy companies, this measure had to be completed through negotiations with the relevant State institutions and public bodies, no later than December 31, 2021.

Before completion of negotiations in order for the purposes of reallocate the management rights, as a temporary measure, defined by Article 4 of the Unbundling plan, the Ministry was asked to reallocate managing rights of energy undertakings included in the system of the Ministry, at least between the divisions of the Ministry, no later than December 1, 2020.

The Commission submitted the corrected Unbundling Plan to the Government of Georgia on November 12, 2020 (letter N1/02-1-7680). The Government of Georgia adopted the Unbundling Plan through the Resolution N682 on November 13, 2020. This Resolution had been published and accordingly, entered into force on November 17, 2020.

On January 6, 2021 the Parliament of Georgia adopted amendments to the Law. Accordingly, the deadline for the implementation of the requirements of independence and unbundling of transmission system operator was moved to July 1, 2021.

#### *b) Implementation of the Unbundling Plan*

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. In response to the Commission's letter N1/02-5-8897 of December 29, 2020, the Applicant submitted information on status of implementation of the Unbundling Plan on January 12, 2021 (letter N59 / 09).

*b.a) In relation to LLC Energotrans:*

According to Article 3 paragraph 2 of the Unbundling Plan, the Applicant and LLC Energotrans were required to amend the Charter of the LLC Energotrans in order to ensure the authority of the Applicant to exercise operation of the transmission system freely and submit the updated Charter to the Registry of Enterprises and Non-Commercial (Non-Profit) Legal Entities of the LEPL – National Agency of Public Registry of Georgia. The deadline for implementation of these measures was set by December 1, 2020.

The decision to make amendments to the Charter of LLC Energotrans was made at the partners' meeting on December 1, 2020; the Charter of LLC Energotrans had been updated on the same day at the Registry of Enterprises and Non-Commercial (Non-Profit) Legal Entities of the LEPL – National Agency of Public Registry of Georgia. According to the amendments, the Applicant, as the only partner of the LLC Energotrans, was granted unlimited authority to manage and operate the assets of LLC Energotrans, including using these assets as a collateral and exercise planning, maintenance and development rights.

Additionally, on January 20, 2021, merger of LLC Energotrans with the Applicant was completed, accordingly, all of the assets of LLC Energotrans were transferred to the Applicant as to the owner.

*b.b) In relation to JSC UES Sakrusenergo:*

According to Article 3, paragraph 3 of the Unbundling Plan, after shareholders of JSC UES Sakrusenergo have adopted the necessary preliminary decision in accordance with the

company's Charter, the Applicant and JSC UES Sakrusenergo shall enter into a lease agreement in exchange for appropriate consideration within 22 days after adoption of the Unbundling Plan, i.e. no later than December 9, 2020. The terms of the agreement shall foresee full transfer of the rights related to management and operation of the transmission system assets by JSC UES Sakrusenergo to the Applicant, without transfer of ownership rights.

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) was concluded between the Applicant and JSC UES Sakrusenergo on January 4, 2020. This transaction was approved by the Ministry through the correspondence N23/8005 of December 17, 2020. According to the Lease Agreement, JSC Sakrusenergo transferred the assets to the Applicant for possession and operation, in a manner in which the Applicant shall possess, fully operate and use these assets as a collateral (provided that the Applicant has submitted the relevant written application and the shareholders of JSC UES Sakrusenergo have adopted the necessary prior decision in accordance with the company's Charter). The Lease Agreement was signed after the General Meeting of Shareholders of JSC UES Sakrusenergo made a relevant decision based on the Charter and registered it at the LEPL - National Agency of Public Registry of Georgia on January 4, 2021.

*b.c) In relation to the Ministry:*

According to Article 4 of the Unbundling Plan, the Ministry has to reallocate the management rights of the following energy companies:

a) Electricity sector:

- JSC Georgian State Electrosystem – transmission (100% of shares)

- LLC Energotrans – distribution (100% of shares)
- JSC UES Sakrusenergo – distribution (50% of shares);
- LLC Enguri HPP – generation (100% of shares)
- LLC Vardnili HPP Cascade – generation (100% of shares)
- JSC Electricity System Commercial Operator – trading, supply (100% of shares)
- JSC Karchal Energy – registered in Turkey, wholesale trading company (100% of shares)

b) Natural gas sector:

- LLC Georgian Gas Transportation Company – transmission (100% of shares)
- JSC Georgian Oil and Gas Corporation – trading (100% of shares)

On December 2, 2020, the Minister of Economy and Sustainable Development of Georgia (hereinafter - the Minister) issued Order N1-1/521 on “Establishing a Different Rule for Assigning and Reallocation of the Functions among the Divisions of the Ministry of Economy and Sustainable Development of Georgia”. According to this Order, Department of Energy Policy and Investments of the Ministry shall carry out the rights and obligations of the partner/shareholder of the Applicant, JSC UES Sakrusenergo, LLC Georgian Gas Transportation Company and JSC Energy Development Fund of Georgia, whereas the Department of Energy Reforms and International Relations of the Ministry shall carry out the rights and obligations of the partner/shareholder of JSC Electricity System Commercial Operator, JSC Georgian Oil and Gas Company and LLC Engurhesi HPP.

*g) 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 requirement of the Certification Rules, the Commission examined the certification 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 extract from the Registry of the Enterprises and Non-Commercial (Non-Profit) Legal Entities, Charter, extract from the share registry and the extract from the Registry of the Enterprises and Non-Commercial (Non-Profit) Legal Entities, which proved the merger of LLC Energotrans with 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 100% of the shares of the Applicant are owned by the State.

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. According to the documentation submitted by the Applicant, 100% of its shares are 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. The State owns 50% of the shares of JSC UES Sakrusenergo, which is also the acting electricity transmission license holder and the owner of the transmission network assets, and the shareholder rights and obligations are similarly exercised by the Ministry under the Agreement on Transfer of State-Owned Shares. At the same time, the State controls the energy enterprises carrying out production (LLC Enguri HPP, LLC Vardnili Cascade HPP) and trade (JSC Electricity System Commercial Operator). In its turn, the Applicant owns 99% of the shares of Karchal Energy, a company registered in the Republic of Turkey, trading on electricity wholesale market (hereinafter – JSC Karchal Energy), the remaining 1% of JSC Karchal Energy, according to the Charter, is owned by LLC Enguri HPP, LLC Vardnili Cascade HPP and JSC Electricity System Commercial Operator. As for the information referred to in paragraph “h” of Article 6 of the Certification Rules, list of the energy sector participant undertakings which are not shareholders/partners of the Applicant and exercise direct or indirect control over the Applicant - the Applicant indicated that it is not directly or indirectly controlled by any energy undertaking registered in Georgia and/or another country.

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 listed the following energy undertakings as the linked undertakings: JSC UES Sakrusenergo, LLC Enguri HPP, JSC Electricity System Commercial Operator, LLC Georgian Gas Transportation Company, JSC Georgian Energy Development Fund, JSC Georgian Oil and Gas Corporation. 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 relationship type is as follows: the State owns 100% of shares of LLC Enguri HPP, JSC Electricity System Commercial Operator, LLC Georgian Gas Transportation Company, JSC Georgian Energy Development Fund, and the owner of 100% of shares of JSC Georgian Oil and Gas Corporation is JSC Partnership Fund. The listed undertakings are directly managed by the Ministry that is indicated in the extract of LLC Enguri HPP 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 JSC Georgian Oil and Gas Corporation – in the Agreement between the Ministry of Energy and Natural Resources of Georgia and JSC Partnership Fund “On the Transfer of Ownership of the Shares owned by JSC Partnership Fund”, concluded on August 31, 2012; in case of JSC Georgian Gas Transportation Company and JSC Georgian Energy Development Fund 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”. JSC "Partnership Fund", 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.

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 materials submitted by the Applicant contains comprehensive information on the 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.

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 Chairman of the Management Board and the General Meeting of Shareholders. The latter, according to the first paragraph of Article 7 of the Charter, is the highest governing body of the company. As for the management and representation authority - it is exercised by the Chairman of the Management Board, who acts and makes decisions within the powers defined by the Charter, the Laws of Georgia, and



the General Meeting of Shareholders. As for the Management Board, according to Article 9 of the Charter, it is the collegial body assisting with the daily economic activities of the Chairman of the Management Board, which operates following the internal regulation approved by the Chairman of the Management Board. According to the Charter, control over the activities of the Applicant is exercised by the General Meeting of Shareholders, which at the same time is authorized to decide on the establishment of the Supervisory Board. The Applicant currently does not have a Supervisory Board.

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 submitted the Internal Regulation of the Management Board (hereinafter - the Internal Regulation) approved by the Chairman of the Management Board by the Decree N4 of January 25, 2021, according to which the Management Board makes decisions only within the powers assigned to it by the Chairman of the Board. Each member of the Management Board, according to the field of subordination, carries out and directly supervises the activities of the structural subdivision subordinated to this particular member. The Applicant also submitted the list of members of the collegial bodies of the linked undertakings. According to the information provided, the members of the Applicant's Management Board 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 the Minister's Order of 1-1/9 of January 20, 2021 "On Approval of the New Version of the Charter of JSC Georgian State ElectroSystem and the Appointment of the Chairman of the Management Board”, based on which the members of the Management Board were appointed as well. The list of members of the Applicant's collegial bodies referred to in Paragraph “n” of Article 6 of the Certification Rules is presented in the above-mentioned Order.

According to the Applicant's Charter, management and representation powers are exercised by the Chairman of the Management Board. According to Paragraph 1 of Article 4 of the Internal Regulation, in the absence of the Chairman of the Management Board, his/her duties are performed by the First Deputy Chairman of the Management Board, and in his/her absence - by a member of the Management Board, specified in the governing document issued by the Chairman of the Management Board.

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, in particular, according to the powers of attorney issued by the Chairman of the Management Board and submitted by the Applicant based on subparagraph „q.a”, specific management/representation powers are assigned to the members of the Management Board. These persons, according to

the information provided based on subparagraph "q.b", do not carry out other commercial activities, including energy activities, except for the First Deputy Chairman of the Management Board, who owns an alcoholic beverage production company. According to the statements submitted by the Applicant in accordance with subparagraph "q.c" on conflict of interest, each member of the Management Board, who has 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 6 of Article 45 of the Law, neither commercially sensitive information held by a transmission system operator which was part of a vertically integrated undertaking, nor the personnel of such a transmission system operator, shall be transferred to undertakings performing any of the activities of production or supply. Paragraph 4 of the Form of Ownership Unbundling approved by Annex N3 of the Certification Rules (hereinafter Form of Ownership Unbundling) obliges the Applicant to briefly describe procedures that ensure confidentiality of commercially sensitive information and limit the transfer of employees to the undertakings carrying out generation, supply and/or trading activities, referring relevant regulatory framework and norms. Based on these requirements, the Applicant submitted a form of "Confidentiality and Non-Disclosure Agreement with the Employees" (hereinafter - Confidentiality Agreement) approved by N220 order of the Chairman of the Management Board of March 26, 2018, signed by all employees of the Applicant and the Order N19 of the Chairman of the Management Board of March 2, 2021 "On Restriction of Transfer of Personnel to Electricity Enterprises for Production, Supply and/or Trade of Electricity and/or Natural Gas and Non-disclosure of Information" (hereinafter – the Order Restricting of Transfer of Personnel and Non-Disclosure of Information).

The submitted Confidentiality Agreement ensures protection of confidential information from disclosure. The Confidentiality Agreement defines confidential information, that “the term "Confidential Information" implies that the information and data are not known outside the enterprise, relates to the employer or employer's activities and technical information, including, *inter alia*, patent applications, inventions, discoveries, products, calculations, system designs, testing procedures and results, consumer list, supplier identities, financial information, business plans, values, and other concepts and ideas related to the employer’s current or future activities, or information received by the employer, towards which there is a bona fide, contractual or other obligation on the part of the employee, that it will not disclose the same.” The Confidentiality Agreement sets out the employee's obligation not to use confidential information for the benefit of any person other than the employer, at any time during or after the expiry of the employment contract. In addition, the Order On the Restriction of Transfer of Personnel and Non-Disclosure of Information stipulates the employee's specific obligation in the event of termination of the employment contract, to protect information containing commercial secrets that the employee received during the employment period and not to disclose such information to the energy undertakings carrying out the production, distribution, supply, and/or trade of electricity and/or natural gas. As for the restriction of transfer of the Applicant’s personnel, according to the Order on the Restriction of Transfer of Personnel and Non-Disclosure of Information, each employee of the Applicant in case of intention to be employed in energy undertakings engaged in production, supply, and/or trade of electricity and/or natural gas, is required to notify the Applicant's manager and the Department of Human Resources Management and Organizational Development immediately, but no later than 30 days before the termination of the employment contract.

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. According to the information provided, the First Deputy Chairman of the Management Board of the Applicant until January 1, 2021 was employed in the enterprise the main activity of which was production of ferroalloys; the consultant employed by the Applicant on November 26, 2020, was employed in the NATO Energy Security Innovation Center. None of these enterprises carry out energy activities based on a license issued by the Commission, nor are they included in the registry of the Commission as an enterprise that carries out supply, generation or trading of electricity and/or natural gas. As for the employees transferred from the enterprises involved in energy activities, a specialist of the Electricity Balancing and Ancillary Services Market Management Department was transferred from LLC Gardabani TPP on November 26, 2020; the driver of the Logistics Department of the Applicant was transferred from LLC Energotrans on July 1, 2020. Accordingly, only one of the listed employees - the specialist in the Balancing and Ancillary Services Market Management Department - was employed in an energy enterprise carrying out electricity generation activities.

In addition, the Applicant submitted Unbundling Application of the Transmission System Operator the form of which is approved through Annex N1 of the Certification Rules and information on unbundling (according to the form approved through Annex N2) and completed Ownership Unbundling Form (approved through Annex N3 of the Certification Rules).

***The relationship between the Applicant and the transmission system owner***

Based on the agreement concluded between JSC UES Sakrusenergo and the Applicant, in case the Applicant is certified as an electricity transmission system operator and obtains a license for the transmission system operation, the existing transmission licensee - JSC UES Sakrusenergo undertakes the obligation to transfer transmission system assets and their components to the Applicant for the unspecified term and in exchange for appropriate

consideration; JSC UES Sakrusenergo also undertakes the obligation to carry out accompanying repair-maintenance services for the proper functioning of the electricity transmission lines, except for the electricity transmission lines and their components located on the territory of the Russian Federation. During the provision of accompanying repair-maintenance services, JSC UES Sakrusenergo is subordinated to the Applicant as the transmission system operator. According to paragraph 3.4 of the lease agreement, “the cost of the lease and accompanying repair-maintenance services [...] shall be determined by the Commission based on the tariff (temporary tariff) set for the Applicant for the relevant tariff period.”

Under the Lease Agreement, JSC UES Sakrusenergo shall not use the right of ownership and/or other opportunities in a way that hinders or makes less effective for the Applicant to perform the functions of a transmission system operator in accordance with the Laws of Georgia. According to the Lease Agreement, JSC UES Sakrusenergo also undertakes the responsibility to ensure the use of transferred assets as a collateral in favor of the Applicant or the third parties nominated by the Applicant in a written form. According to paragraph 4.1 of the Lease Agreement, JSC UES Sakrusenergo has the right to attend/observe the process of connection of new customers to the transmission network and is also entitled to submit written opinions to the Applicant, provided that the transmission system operator is the one taking all the decision in relation to the connection process. According to subparagraph "a" of paragraph 4.2 of the Lease Agreement, the process of connection to the transmission network is fully managed by the transmission system operator. Article 5 of the Lease Agreement regulates the process of drafting of the Ten-Year Plan, according to which, the draft Ten-Year Plan is initially sent to JSC UES Sakrusenergo for the review, which, in turn, is authorized to submit remarks and opinions to the Applicant. The Applicant shall review the received remarks and opinions jointly with JSC UES Sakrusenergo and, upon the request of JSC UES Sakrusenergo, shall prepare a substantiated response to the remarks and opinions received. Article 6 of the Lease Agreement sets out the obligations of JSC UES Sakrusenergo and the rights of the Applicant in relation to provision of repair-maintenance services for the transmission network,

in particular, according to paragraph 6.4, JSC UES Sakrusenergo annually submits a plan-schedule of works to be performed during the next calendar year and notifies the Applicant at least 5 days before the start of work, also, JSC UES Sakrusenergo should not deviate from the agreed plan-schedule without the prior consent of the Applicant. In turn, the Applicant is entitled to cancel the given consent at least 3 days before the start of the works. In addition, Article 7 of the Lease Agreement regulates the issue of submission of a three-year work program to the Applicant, developed/elaborated by JSC UES Sakrusenergo based on the Ten-Year Plan, after the approval of the latter. The Applicant, in turn, consents to the submitted work program or submits written comments/remarks to JSC UES Sakrusenergo. According to the first paragraph of Article 8 of the Lease Agreement, loading of electricity transmission lines (voltage supply), as well as load limitation (cut of supply) is the sole competence of the Applicant, at the same time, according to Article 9, in case of an emergency in the transmission network or the presence of such possibility, the Applicant is entitled to give relevant instructions to the JSC UES Sakrusenergo regarding the performance of repair/emergency works.

### **Legal Assessment**

Having examined the documents and information submitted by the Applicant, the Commission evaluated compliance of the Applicant with the requirements of the ownership unbundling established by Article 45 of the Law as well as the requirements of the Unbundling Plan.

According to paragraph 1 of Article 42 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 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 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 Commission considers that the present state of unbundling of the Applicant complies with the requirements of the Unbundling Plan and is in line with temporary measure established by Article 4, paragraph 2 of the Unbundling Plan, due to the following reasons:

The State of Georgia owns 100% of the shares of the Applicant and the rights of the shareholder are exercised by the Ministry. Accordingly, the highest management body of the Applicant is the State, whereas the Minister appoints the Chairman of Management Board (management/representative authority), as well as the Management Board – the collegial body of the Chairman of the Management Board. The State owns also 100% of shares of electricity producers – LLC Enguri HPP and LLC Vardnili HPP Cascade. The shareholder rights to LLC Enguri HPP are also exercised by the Ministry. Ministry also exercises management rights to the supplier of natural gas – JSC Georgian Oil and Gas Corporation as well as to the trader of the electricity – JSC Electricity System Commercial Operator.

In order to ensure independence of the transmission system operator from generation and supply activities, according to the Article 4, paragraph 2 of the Unbundling Plan, the Government of Georgia determined a temporary measure, according to which the Ministry shall reallocate management rights to the energy enterprises at least among the structural divisions of the Ministry. In order to meet this obligation, in accordance with the Order of the Minister N1-1/521, the shareholder/partner rights to the mentioned enterprises were divided between the Department of Energy Policy and Investment Projects and the Department of Energy Reforms and International Relations of the Ministry.

According to Article 15, paragraph 4 of the Law of Georgia on the Structure, Powers and Rules of Activities of the Government, the ministries are based on one-person rule, unless otherwise provided by the Laws of Georgia. According to paragraph 5 of the same Article, the authority of the ministry is determined by the Laws of Georgia and/or by the Government

resolution. According to the first paragraph of Article 18, the ministries shall be divided into structural divisions in accordance with the statute of the respective ministry; According to paragraph 2 of the same Article, the authority of the structural division of the ministry shall be determined by the statute of the ministry and the statute of this structural division, which shall be approved by the minister; According to paragraph 1 of Article 20, the ministry is headed by a minister who shall take decisions within the competences as determined by the Laws of Georgia.

In accordance with the Article 6, paragraph 2, subparagraph “n” of the Statute of the Ministry of Economy and Sustainable Development of Georgia (hereinafter - the Statute of the Ministry) approved by the Resolution N70 of the Government of Georgia, dated on February 11, 2016, the Minister shall issue orders according to the Laws and other normative acts of Georgia; According to paragraph 6 of the same Article, the Minister is authorized to establish a different rule for the reallocation of functions between the structural divisions defined by the Statute of the Ministry, through the order of the Minister.

Although the Minister did reallocate the management rights of energy enterprises between the structural divisions of the Ministry, in accordance with the Laws of Georgia, the one-person rule principle shall be still considered. This principle implies the sole responsibility of the Minister on decision-making. Order N1-1/521 of the Minister, which established the different rules for reallocation of management rights of energy enterprises, does not establish any special powers of decision-making for the Deputy Minister, structural divisions of the Ministry and/or their heads.

Article 4 paragraph 2 of the Unbundling Plan clearly indicates that reallocation of the rights of management of the energy enterprises among the structural divisions of the Ministry is a temporary measure. Therefore, it should not be considered as a ground for refusal of preliminary certification. Article 4, paragraph 3 of the Unbundling Plan foresees the obligation of the Ministry to ensure reallocation of the management rights of energy enterprises within

the system of governance of the Ministry in a manner achieving the goals of independence and unbundling requirements provided by the Law, no later than December 31, 2021. Taking into consideration the abovementioned circumstances, a decision on preliminary certification of an electricity transmission system operator shall be taken provided that the transmission system operator meets the requirements of Article 4, paragraph 1 of Unbundling Plan no later than December 31, 2021 and submits the relevant information to the Commission.

As for the independence of the Applicant from energy trading activities, compliance of commercial interests of the Applicant towards JSC Karchal Energy with the requirements of the Law should be analyzed.

According to the information provided by the Applicant through the letter N473/09, dated February 12, 2021, JSC Karchal Energy currently does not carry out trading activities; in addition, procedures are pending nowadays, aiming to remove the shares of JSC Karchal Energy from the Applicant's capital and transfer it to the JSC Energy Development Fund of Georgia.

The Commission considers that owning the shares of JSC Karchal Energy by the Applicant should not be assessed as violation of the requirements of independence and unbundling of a transmission system operator. JSC Karchal Energy was founded and licensed in the Republic of Turkey, according to the Laws of the Republic of Turkey; the Applicant, in case of certification, will carry out the activities of transmission system operator within the borders of Georgia. Commercial interests of the Applicant in relation to JSC Karchal Energy may be considered virtually non-existent, since, according to the Applicant, the activities of JSC Karchal Energy are presently suspended; Furthermore, even if there were any commercial interests in place, they would be fully eliminated following finalization of the ongoing procedures related to transfer of the shares of JSC Karchal Energy to the JSC Energy Development Fund of Georgia. Accordingly, the unbundling of the transmission system operator is not endangered under these conditions.

According to Article 45 paragraph 6 of the Law, transmission system operator that was part of a vertically integrated undertaking, shall not be allowed to transmit commercially sensitive information or personnel to an energy enterprise carrying out generation or supply activities.

The confidentiality agreement submitted by the Applicant, which includes a prohibition on the disclosure of confidential information by the Applicant's employee to any third party, also implies/includes prohibition of transfer of commercially sensitive information to the undertakings carrying out energy generation or supply activities under Article 45, paragraph 6 of the Law. In addition, in case of termination of the employment contract between the Applicant and the employee, the Order Restricting Transfer of Personnel and Non-disclosure of Information also provides protection of the confidentiality of commercially sensitive information. Therefore, submitted Order explicitly foresees the employee's obligation not to disclose confidential information and meets the requirements of the Law related to prohibition of transfer of commercially sensitive information.

With regard to prohibition of transfer of personnel established by Article 45, paragraph 6 of the Law, the Order Restricting of Transfer of Personnel and Non-disclosure of Information obliges the employee to inform the Applicant about the intention of being employed in the undertaking carrying out energy generation or supply activities immediately.

The Commission considers that the prohibition of "transfer of personnel" for the purposes of Article 45 Paragraph 6 of the Law does not imply absolute restriction for the employees of the Applicant to be employed by the energy enterprise which carries out energy generation and/or supply activities. According to paragraph 1 of Article 26 of the Constitution of Georgia, freedom of labor shall be guaranteed. Everyone has the right to free choice of employment. According to Article 2, Paragraph 2 of the Organic Law of Georgia Labor Code of Georgia (hereinafter referred to as the Labor Code), an employment relationship arises on the basis of equality of the parties as a result of a free will and equality. According to Article 38, paragraph 2 of the Labor Code, if termination of the employment contract is initiated by the employee,

he is obliged to notify the employer at least 30 calendar days in advance by a written notice. According to the Order on Restriction the Transfer of Personnel and Non-disclosure of the Information provided by the Applicant, the employee shall inform the manager of the Applicant and Department of about the intention of being employed in the enterprise carrying out energy generation and/or supply activities but in case of termination of employment contract the term established by the Labor Code shall be considered.

The Commission considers that the Order on Restriction the transfer of Personnel and Non-disclosure of the Information complies with the requirements of the Laws of Georgia. According to the applicable legislation, imposition of additional restrictions upon employees by the Applicant, including restriction on employment in an energy enterprise carrying out production and supply, would be considered unenforceable. Pursuant to Article 7 paragraph 3 of the Organic Law of Georgia on Normative Acts, the Constitution of Georgia and the Organic Law of Georgia shall prevail over the law of Georgia. Accordingly, it is inadmissible to restrict the rights and freedoms guaranteed by the Constitution of Georgia and the Labor Code through the Law as well as secondary legislation adopted in accordance of the Law. Currently, the Labor Code of Georgia does not provide for any term during which the employer has the right to restrict the employee's freedom on employment. The only restriction determined through Article 46 paragraph 3 of the Labor Code, applies only to using the knowledge and qualifications of the employee acquired during the fulfillment of the terms of the employment contract for the benefit of a competing employer and no longer than 6 months. Since the obligations foreseen by the Order on Restriction of the Transfer of Personnel and Non-disclosure of the Information arise from the moment such intention appears and apply to the period following termination of the employment contract with the Applicant, the Commission considers that the Applicant is able to take measures to prevent disclosure of the confidential information, *inter alia*, by restricting access of the employees concerned to the confidential information. Accordingly, the Order ensures achievement of the goal/purpose provided in paragraph 6 of Article 45 of the Law.

The rights set by paragraph 4.1 of the lease agreement between the Applicant and the transmission system owner – JSC UES Sakrusenergo, which allow the transmission system owner to attend/observe the transmission network connection, as well as to submit written comments to the Applicant, do not include participation rights of the transmission system owner in the connection process. As for paragraph 5.2 of the Lease Agreement regarding the submission of the initial draft of the Ten-Year Plan to JSC UES Sakrusenergo by the Applicant for its review, it is noteworthy, that Article 31 paragraph 1, subparagraph “c” of the Law states that the system operator and system owner shall agree on the draft Ten-Year Plan prior to its submission to the Commission only in case of independent system operator model. The Commission considers that the transmission system owner enjoys such right in case of ownership unbundling model as well, it does not contradict the independence and unbundling requirements. Moreover, according to the paragraph 5.2 of the lease agreement, transmission system operator is not obliged to take into consideration the opinions of the system owner; in addition, according to the Article 53 paragraph 5 of the Law, the transmission system operator is obliged to consult with the stakeholders regarding the Ten-Year Plan and the stakeholders mentioned also include the system owner. Accordingly, the rights of the system owner granted through the lease agreement comply with the requirements of the Law. As for the Applicant’s decision to choose the services of JSC UES Sakrusenergo for maintenance of the transmission system, that is commercially efficient decision, considering paragraph 3.4 of the lease agreement, according to which the cost of the lease and accompanying repair-maintenance services shall be reflected in the tariff set by the Commission for the Applicant. According to Article 10, paragraph 2<sup>1</sup> of the Methodology for Calculating Tariffs for Electricity Dispatching, Transmission, Distribution, Transmission and Consumption approved by the Commission Resolution N14 of July 30, 2014, the Commission shall provide an estimation of the reasonable costs to be reimbursed to the transmission system owner. On the other hand, under the Lease Agreement and considering the available technical and human resources, the Applicant has

the full opportunity and authority to exercise control over the works performed by JSC UES Sakrusenergo.

Taking into consideration all of the abovementioned circumstances, according to Article 50, paragraph 2 and Article 159 paragraphs 6 and 7 of the Law of Georgia on Energy and Water Supply, as well as according to the Article 8 of Transmission System Operator Certification Rules adopted by the Commission Resolution N9 of March 27, 2020, the Commission

**Decides:**

1. The decision on preliminary certification of JSC Georgian State Electrosystem as an electricity transmission system operator shall be adopted, subject to the following conditions:
  - a) by December 31, 2021, 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;
  - B) by January 3, 2022, the documents certifying full implementation of the measures foreseen by subparagraph "a" of this Article shall be submitted to the Commission.
2. This Decision enters into force on the day of its announcement at the public hearing of the Commission.
3. This Decision may be appealed at the Tbilisi City Court (Tbilisi, D. Aghmashenebeli Alley, №64), within 1 (one) month of service of the decision.
4. Control over the implementation of This Decision shall be entrusted to the Legal Department of the Commission.