

## Decision N14/3

April 1, 2021

Tbilisi

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

On 4 March 2021, the Georgian National Energy and Water Supply Regulatory Commission (hereinafter – the Commission) adopted a Preliminary Decision N9/10 “On the Certification of JSC Georgian State Electrosystem as a Transmission System Operator for Electricity” (hereinafter - the Preliminary Decision).

On 8 March 2021, the Commission notified the Energy Community Secretariat (hereinafter - the Secretariat) of a 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 N9/10 of March 4, 2021, to the Secretariat to deliver its opinion.

On March 26, 2021, the Secretariat submitted its opinion to the Commission, indicating several circumstances/issues that required further assessment/clarification.

#### **1. Compliance of the lease agreement concluded between JSC Georgian State Electrosystem and JSC UES Sakrusenergo with the requirements of the ownership unbundling**

In its opinion the Secretariat focused on and, therefore, called on the Commission to assess in details in its final decision, whether relations between JSC Georgian State Electrosystem (hereinafter - the Applicant) and JSC United Energy System Sakrusenergo (hereinafter - JSC UES Sakrusenergo), regarding to leasing of the transmission network assets, meets the criteria of unbundling in accordance with the ownership unbundling model. The Secretariat referred to criteria that must be met by 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):

- the Transmission System Operator has the transmission system assets featured on its balance sheet and can use them as a guarantee (collateral) in acquiring financing on the capital market;
- the lessee is responsible for exercising all of the Transmission System Operator’s tasks, which include the planning, construction, operation and maintenance of the entire infrastructure and the financing thereof;

- upon the expiry of the lease or concession, the lessor compensates the Transmission System Operator with an amount equivalent to the corresponding value of the lease or concession assets.

Based on the lease agreement, the current transmission licensee - JSC UES Sakrusenergo undertakes the obligation to transfer transmission system assets and their components to the Applicant for perpetual use and in exchange for appropriate consideration, in case the Applicant is certified as an electricity transmission system operator and obtains a license for operation of transmission system; 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.

The Applicant currently does not have the transmission system assets (transferred under the lease agreement) featured on its balance sheets, as the lease agreement enters into force only after the Applicant obtains a license for operation of the transmission system and its entry into force. Under International Financial Reporting Standards, the procedures to feature the assets transferred to the Applicant for perpetual use, with referring the grounds for possession of such assets, can be initiated only upon the entry into force of the lease agreement.

European Commission's Opinion of April 2014, pursuant to Article 3(1) of Regulation (EC) No 714/2009 and Article 10(6) of Directive 2009/72/EC and to Article 3(1) of Regulation (EC) No 715/2009 and Article 10(6) of Directive 2009/73/EC - Portugal - Certification of REN Rede Eléctrica Nacional S.A. and REN Gasodutos S.A., also Secretariat's Opinion pursuant to Article 3(1) of Regulation (EC) No 714/2009 and Article 10(6) of Directive 2009/72/EC – Republic of Moldova – Certification of Moldelectrica, refers that featuring of the transferred assets on the balance sheet of the transmission system operator is important as far as that is the prerequisite for using these assets as a guarantee (collateral) in acquiring financing on the capital market. The lease agreement explicitly provides for the right to encumber the transferred assets by the Applicant, regardless of whether or not it is featured on the Applicant's balance sheet, allowing the Applicant to use the transferred assets as a guarantee (collateral) in accordance with the requirements of the European Commission and the Secretariat.

Under Article 10.1.6 of the lease agreement, upon the Applicant's written request and in case the requirements of corporate procedures defined by the Charter of Sakrusenergo are met (in case of Sakrusenergo's consent), [Sakrusenergo] shall ensure the use of the transferred assets as collateral in favor of the Applicant and/or the third party specified by it. According to Article 8.5.2 of the Charter of JSC UES Sakrusenergo, decision to encumber the assets transferred under the lease agreement, shall be made by the Supervisory Board of JSC UES Sakrusenergo.

To determine the scope and content of the powers transferred to the Applicant by JSC UES Sakrusenergo, as well as to prevent unjustified limitations of these powers, it is advisable to assess whether there is a risk that the implementation of the corporate procedures provided for in the Charter

of JSC "Sakrusenergo" will prevent the Applicant from exercising the powers of the owner of the transmission system assets, inter alia for using such assets a collateral.

The Charter of JSC UES Sakrusenergo does not provide for the grounds and/or procedure for refusing a decision on encumbrance of assets. Nevertheless, Article 2.5 of the lease agreement directly stipulates the obligation of JSC UES Sakrusenergo not to exercise ownership rights and/or other means in a manner, which delays, restricts, or makes it less effective for the Applicant to fulfill functions of the transmission system operator under the lease agreement. In addition, under Article 10.1.2 of the lease agreement, JSC UES Sakrusenergo shall not allow actions which prevent the Applicant from exercising rights and fulfilling obligations under the lease agreement. Due to the above, in the absence of specific grounds, the refusal of the Supervisory Board of JSC UES Sakrusenergo to use the assets as a collateral in acquiring financing on the capital market, should be considered as the exercise of ownership rights in a manner which is directly prohibited by Article 2.5 of the lease agreement and in addition prevents the Transmission System Operator from exercising rights and fulfilling obligations under the Georgian legislation, as it is stipulated in Article 10.1.2 of the lease agreement. Consequently, the provisions of the lease agreement severely limit the cases when the Applicant's intention to use the assets as a collateral may be refused by the Supervisory Board of JSC UES Sakrusenergo.

In addition, it should be taken into consideration that the electricity transmission lines owned by JSC UES Sakrunergo do not exceed 20% of the assets of the transmission system of Georgia. Therefore, the fact that mentioned part of the transmission system assets remains in the ownership of JSC UES Sakrusenergo, taking into consideration of the transfer of its unlimited operation and encumbrance rights to the transmission system operator and the non-implementation of energy activities by JSC UES Sakrusenergo, will not jeopardize the stability of the internal energy market of Georgia and will not negatively affect the creation of a free and competitive environment for electricity trade.

In accordance with Paragraph 1 of Article 170 of the Civil Code of Georgia, an owner may, within the limits of legal or other, namely contractual restraints, freely possess and use any property (thing), exclude others from using the property, and dispose it, unless doing so would violate the rights of neighbours or other third persons or unless such act constitutes abuse of rights.

The Commission considers that the powers transferred to the Applicant by the lease agreement are fully in line with the rights of use and possession, which is necessary for the transmission system operator to fulfill its obligations under the law. Since the assets owned by JSC UES Sakrusenergo were transferred to the Applicant based on a lease agreement in exchange for appropriate consideration, the Applicant is not entitled to dispose of the transferred property. Nevertheless, the Applicant is authorized to manage and operate the assets of the transferred transmission system without restriction, to encumber in favor of a third party, and, at the same time, to independently plan and carry out its development.

Accordingly, the combination of the lease agreement and the charter of JSC UES Sakrusenergo provides the proper legal and factual basis for the Applicant to perform the functions of a transmission system operator and to exercise powers over transmission system assets characteristic for the owner,

such as encumbrance in favor of a third party. This is in line with the above-mentioned views of the Council of Europe and the Secretariat, according to which, the operation of the networks on the basis of a concession/lease agreement is not an obstacle for the certification of the applicants under the ownership unbundling provisions. Based on the above, the Commission considers that under the lease agreement JSC UES Sakrusenergo has transferred to the Applicant rights equivalent of the owner.

In accordance with Paragraph 1 of Article 53 of the Law, a transmission system operator shall develop a 10-year transmission network development plan and update it annually; under Paragraph 5 of the same Article, after preparing a 10-year transmission network development draft plan through consultations with interested parties, a transmission system operator shall submit it to the Ministry of Economy and Sustainable Development of Georgia (hereinafter – the Ministry) and the Commission not later than 1 October in the respective year.

According to Article 5.1 of the lease agreement, in order to increase transmission network reliability, safety, sustainable development, adequate quality of electricity and the Country's export and transit capabilities, a 10-year transmission system development plan shall be developed and approved in accordance with the Law and other applicable laws. The law does not contain the definition of "interested party", although according to Article 2, paragraph 1, sub-paragraph "b" of the General Administrative Code of Georgia, "interested party is any natural or legal person, or administrative body to whom an administrative act has been issued, as well as those whose legal interests are directly and immediately affected by an administrative act or by an action of an administrative body." Accordingly, for the purposes of the 10-year transmission network development plan, all natural or legal persons whose legitimate interests are affected by this plan should be considered as such.

The Commission considers that JSC UES Sakrusenergo, as the owner of the transmission system, should be considered as an interested party, which authorized by law to submit opinions on the 10-year transmission network development plan to the Applicant. The lease agreement does not contain a substantially new authority in favor of the transmission system owner that is different from the Law, but Paragraph 5.2 only sets out an additional procedural requirement for the Applicant to submit a draft ten-year transmission network development plan to JSC UES Sakrusenergo. The lease agreement does not stipulate the obligation of the Applicant to take into consideration the remarks, opinions and recommendations of JSC UES Sakrusenergo. Accordingly, Paragraph 5.2 of the Lease Agreement only reinforces the obligation of the transmission system operator set forth in Paragraph 5 of Article 53 of the Law to consult with interested parties and does not jeopardize the decision of the transmission system operator to make independent decisions for the development of the transmission network.

Article 2 of the lease agreement distinguishes the fundamental rights and responsibilities of the parties, according to which JSC UES Sakrusenergo have to provide ancillary repair and maintenance services for the proper functioning of the transmission line. According to Paragraph 2.3. of the lease agreement, only the transmission system operator can operate the assets transferred based on the lease

agreement. Under Paragraph 2.4 when providing maintenance and operation services, JSC UES Sakrusenergo subordinates to the Applicant as to the transmission system operator; Paragraph 5.1. states that the drafting and approval of 10-year transmission network development plan should correspond to the Law and other applicable laws. Article 6 of the Lease Agreement defines the specific conditions of ancillary repair and maintenance services to be carried out by JSC UES Sakrusenergo. Paragraph 6.4 states that JSC UES Sakrusenergo shall carry out repair and maintenance services according to the plan agreed with the Applicant and inform the Applicant about it in advance. Moreover, Article 7 states that within 30 calendar days after the approval of the 10-year transmission network development plan, JSC UES Sakrusenergo should establish and submit a three-year work program to the Applicant. This work program shall follow the form set by the Applicant as well update and submit it every half year. The Applicant shall issue a written consent for the mentioned work plan or written remarks containing mandatory and advisory parts. JSC UES Sakrusenergo must consider the mandatory elements of the remarks as a binding rule. Paragraph 7.7 of the lease agreement sets out the conditions for submitting information on the work performed by JSC UES Sakrusenergo to the Applicant. Article 7.8 refers to the authority of the Applicant to request update of the work plan, which shall be the ground for relevant consultations and work plan adjustment.

Therefore, as the current licensee, the transmission system operator is fully responsible for compliance of the work provided by JSC UES Sakrusenergo and its quality with transmission system needs and the requirements of the 10-year transmission network development plan. Accordingly, only transmission system operator is authorized to make an independent and final decision regarding planning of transmission network infrastructure construction, operation and rehabilitation, through elaboration of 10-year transmission network development plan for Georgia and its implementation. Compliance of carrying out repair and maintenance services by JSC UES Sakrusenergo in more details will be discussed below.

The lease agreement does not contain clause according to which the lessor compensates the transmission system operator with an amount equivalent to the corresponding value of the lease or concession assets. Despite, the costs of the lease service to be paid by JSC UES Sakrusenergo shall be calculated by the Commission in accordance with the principles set out in the "Electricity Dispatching, Transmission, Distribution, Transmission and Consumption Tariff Calculation Methodology", adopted by the Commission Resolution N14 dated July 30, 2014 (hereinafter – Tariff Methodologies). Accordingly, the value of the assets to JSC GS Sakrusenergo shall be compensated annually by the Applicant, based on the net book value, taking into account the relevant depreciation.

Due to all the above, the Applicant will have the opportunity to exercise the powers specified in the lease agreement over the transferred assets during the whole period of authorization as a transmission system operator, and the corresponding value of the transferred assets will be compensated annually.

## **2. Compliance of the use of the service of JSC "Sakrusenergo" by the transmission system operator with the requirements of ownership unbundling**

Under the lease agreement, the Applicant delegates to perform several functions and obligations to JSC "Sakrusenergo" for the development and rehabilitation of the transmission network. In its Opinion, the Secretariat recalls that contracting core services, including to the lessor, is prohibited in principle. As an exception, such outsourcing is possible if the execution of the tasks in question is being sub-contracted under the following conditions:

- contracting out of core TSO functions can only be acceptable either if the transmission system is operated jointly as part of a wider transmission system or if a fully resourced TSO makes an independent commercial decision to sub-contract services on efficiency grounds;

- such contracting out of core TSO functions should be organized in the form of a tender;

- the TSO should itself have sufficient resources to oversee, control and provide instructions to the subcontractor;

- only entities which meet the unbundling requirements for TSO should be eligible to provide such services.

The lease agreement, concluded between the Applicant and JSC UES Sakrusenergo, namely, the decision of Applicant to outsource the repair and maintenance services of the assets owned by JSC UES Sakrusenergo to JSC UES Sakrusenergo itself, shall be assessed, including, whether the Applicant had the opportunity to make independent commercial decision.

In order to arrange repair and maintenance services of the transmission network, the Applicant had chosen JSC UES Sakrusenergo as the service provider. In case of tender, the Applicant should have to, among other requirements, take into account the resources and experience of the transmission system asset repair and operation.

JSC UES Sakrusenergo, as the current electricity transmission licensee, is constantly adopting proper measures for the safe operation of its transmission lines to maintain smooth operation of the system, the uninterrupted transmission of electricity, including transit and adequate functioning with the power systems of neighbouring countries. JSC UES Sakrusenergo operates power transmission lines located in different regions of Georgia and has qualified staff and modern equipment.

In addition, it is important to analyze the economic feasibility, effectiveness and compliance of the decision made by Applicant as well as the future decisions that must be taken according to the applicable laws of Georgia.

According to Paragraph. 3.4 of the lease agreement, the Applicant pays both the lease and the ancillary repair/maintenance service charges to JSC UES Sakrusenergo and therefore, these charges shall be included in the transmission tariff. Accordingly, the transmission system operator provides financing all the costs related to the transmission network infrastructure planning, construction, operation and rehabilitation. According to Article 10.2<sup>1</sup>. of the Tariff Methodologies, while setting the electricity transmission tariff which shall include all reasonable charges, the Commission shall ensure calculation of the appropriate and reasonable cost that has to be compensated to the transmission network owner. The fact that the Commission sets the transmission tariff ultimately guarantees that the charges included in it shall be reasonable and rational. As far as JSC UES Sakrusenergo is the current transmission licensee, charges related to its functioning have been studied in accordance with the rules

and principles established by the Commission and reasonable amount of compensation shall be reflected in the cost of the lease, as well as maintenance and repair of the assets.

Accordingly, the decision of the Applicant to carry out the repair and maintenance services of the transmission network using the services of JSC UES Sakrusenergo shall be considered as an economically reasonable decision that meet the requirements of the applicable Laws of Georgia.

Since Energotrans Ltd. Had been merged with the Applicant, JSC UES Sakrusenergo is the only energy enterprise, except for the Applicant, which owns a transmission network and at the same time has experience in transmission network planning, development and maintenance. Therefore, under the efficient monitoring, there is almost no or very small probability of doubting in high quality of the services performed by JSC UES Sakrusenergo.

As for the Applicant, which also is current transmission licensee, the Commission had assessed its technical, financial and human resources in the process of issuing the license. Therefore, according to the information available to the Commission, the Applicant has sufficient capacity and authority to exercise efficient control over the services performed by JSC UES Sakrusenergo. In particular, electricity transmission tariffs set by the Commission for the current tariff regulation period (2021-2025 years) ensures the stable and smooth functioning of the Applicant, which owns assets consisting of 93 substations with a voltage of 500-330-220-110-35 kV, a total transformer capacity of 14723.74 MW and 4110 km of transmission lines with a voltage of 500-330-220-110-35 kV. The information available to the Commission confirms that the Applicant has an adequate organizational structure, as well as appropriately qualified human resources for the management, planning and operation of the transmission network. In particular, each member of the Board of Management of the Applicant is responsible for the particular activities, and the main functions of the transmission system operator, in addition to ancillary services, are provided by the relevant departments and regional service centers, with the following human resources: SCADA and Metering - 119 employees, Projects - 59 , Construction and Repair - 182, Planning - 17, Operational Management (Dispatch) - 78, Balancing and Interconnection – 27, regional networks (exploitation, operational management) – 594. Regional centers of the Applicant carry out operational management of the conversion station and substations, as well as operation and maintenance of substations, power lines and relay protection systems. The technical direction is staffed with highly qualified engineers and technical experts, who undergo appropriate capacity building/training every year. On-duty staff of high voltage substations (500/220 kV) are fully staffed with highly educated people in electrical engineering. In addition, the preliminary decision states that the Applicant currently manages and operates the assets of the transmission system owned by JSC UES Sakrusenergo (except repair and maintenance services) within the framework of the activities carried out based on the transmission license.

To sum up all the abovementioned information, there is no grounds to doubt that the Applicant, with the technical, human and financial resources at its disposal, will efficiently monitor the maintenance and repair services of JSC UES Sakrusenergo. In addition, the Commission sets the transmission tariff following the Tariff Methodologies Article 10 of which provides reimbursement of costs related to maintaining transmission network assets created through third-party funding

(including ongoing repairs, maintenance and other expenses). Based on the above, the Commission itself ensures that the Applicant is able both to compensate charges and fulfil the obligation under the law – control and monitor the services performed by a third party.

The Secretariat notes that delivery of the repair and maintenance services by the third party which itself meets the requirements of ownership unbundling is important if that third party/transmission system owner continues to operate the network or its shareholders participate in the generation and supply of the electricity, which may have a significant impact on the Georgian energy market. However, the lease agreement shall enter into force and the assets shall be transferred only if the Applicant obtains a transmission license. Accordingly, JSC UES Sakrusenergo and Applicant cannot carry out transmission activity simultaneously. Furthermore, JSC UES Sakrusenergo does not participate in the generation, supply and trading activities and, consequently, does not violate the unbundling requirements of the transmission system operator. However, it must be taken into account, that the State owns 50% of JSC UES Sakrusenergo, and the Ministry exercises the shareholder rights. The Ministry, at the same time, manages the energy enterprises engaged in the generation, supply and electricity trading. In this regard, JSC UES Sakrusenergo does not meet the unbundling requirements. However, it should be taken into account that the fulfilment of the unbundling requirements by JSC GS Sakrusenergo is directly related to the meeting of the same requirements by the Applicant itself, namely, with the implementation of the Unbundling Plan. Currently, implementation of the Unbundling Plan has not been completed as far as the deadline of it is December 31, 2021. Therefore, after expiry of this period, energy enterprises involved in transmission/distribution energy activities, on the one hand, the energy enterprises involved in generation/supply/trade, on the other hand, will be managed by separate state bodies/institutions, and at the same time, control by the same third party over these enterprises will be excluded. As a result, the unbundling requirements will be fulfilled for JSC UES Sakrusenergo as well, and this criterion will be met.

### **3. Compliance of the Applicant with the requirements of ownership unbundling**

In the Opinion, the Secretariat notes that the Applicant does not meet the unbundling requirements set by the Energy Community legislation, as the temporary measure provided through the Unbundling Plan, such as the allocation of the management rights related to the energy enterprises involved in generation/supply/trade activities, on the one hand, and the energy enterprises involved in transmission/distribution activities, on the other hand, between two departments of the same government institution (Ministry) does not allow these structural subdivisions to make independent decisions concerning the enterprises subordinated to them.

The Commission adopted the Preliminary Decision containing the condition that the Applicant fulfils the requirements of the unbundling plan. However, the Secretariat states that this condition is too broad and unclear and calls on the Commission to reflect in the final decision:

- a) what the Applicant is concretely obliged to do;
- b) what extent existing legislation would need to be amended, and if yes,



- c) how the Applicant can influence such amendments to legislation;
- d) The consequence in case of non-compliance of the Applicant with the requirement of unbundling.

According to the Paragraph 1 of Article 4 of the Unbundling Plan, the Ministry should ensure, through negotiations with relevant state bodies or other public institutions and initiation of appropriate amendments, such as reallocation of management rights of companies under its control, that one state authority could not have under its administration the companies engaged both in energy transmission/distribution and, generation/supply/trade activities. According to the Law of Georgia "on the Structure, Powers and Rules of Activity of Georgian Government", the Government of Georgia is the only authority to make a decision related to allocation the particular functions of one ministry to another one or other legal entity. Therefore, the Applicant does not have the power to allocate the managerial rights envisaged by the unbundling plan since the amendment of the applicable legal acts, as well as determining responsible parties/persons and their duties to perform, falls under the sole competence of the Government of Georgia. The Applicant, in turn, should submit the information and respective documents and date to the Commission following the preceding decision.

As far as the LEPL - the National Agency for State Property (hereinafter - the Agency), still has some rights as the owner, the Secretariat calls on the Commission to examine and assess whether the Agency's rights constitute the control in the sense of Council Regulation (EC) No 139/2004 of 20 January 2004 on the Control of Concentrations between Undertakings (the EC Merger Regulation) and whether they cover the rights envisaged by Paragraph 1, subparagraphs "b" and "c" and Paragraph 2 of Article 9 of 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 referred to as the Directive). Furthermore, the Secretariat believes that the Commission should assess to what extent the decisions taken by the Agency as the owner of the enterprises involved in transmission/generation/supply activities and the Ministry's decisions as manager of the same enterprises overlap each other.

Paragraph 3.2. of the Agreement concluded on May 4, 2020, between the Agency and the Ministry on the transfer of state-owned shares in JSC "Electricity System Commercial Operator", JSC "Georgian State ElectroSystem" and JSC "United Energy System Sakrusenergo" (hereinafter - the transfer of shares) the "managing person" (Ministry) has no right to sell the shares of these "Enterprises". The Ministry can do so only with the written consent of the owner. Furthermore, during the term of this Agreement, without the "owner's" permission, the "managing person" cannot launch the liquidation or insolvency proceedings, dispose of, pledge or otherwise encumber the shares and the real estate owned by these "Enterprises". The Agreement also states that the "managing person" cannot remove the property from the "Enterprise's" capital and dispose or encumber the property on its balance sheet without the "owner's" permission. Furthermore, the "managing person" is entitled to invest state property in the capital of "Enterprises", including shares and stocks, only with the "owner's" consent.

The above provisions of the Agreement make it clear that the powers of the Agency as the owner does not include the right of using the assets of the enterprises owned, as well as composition of the governing bodies and to exercise of voting rights. However, the Agency still has the authority to influence the decision regarding strategic transactions of the energy enterprise, such as withdrawal of

shares/capital, encumbrance or selling the assets and/or shares. Hence, the owner has the power to exercise control over the assets of the transmission system in the sense of the EC Merger Regulation and the Directive, which is contrary to the requirements of the independence and unbundling of the transmission system operator.

#### **4. Recertification**

In its Opinion the Secretariat states that in the final decision the Commission should reflect consequences for non-compliance with the requirements of unbundling and re-opening of certification procedure when the requirements set out in the final decision will be met (i.e. not later than January 3, 2022). According to Paragraph 1 of Article 49 of the Law, the Commission shall oversee the continuous compliance of the transmission system operator with the requirements of independence and unbundling, regardless of the required level of independence and/or unbundling model. The law does not provide for the automatic revocation of certification; however, under Article 49, paragraph 2 (b), the Commission is entitled to re-open certification procedure if there is a reasonable doubt of non-compliance with the independence and unbundling requirements of the transmission system operator. According to Paragraph 5 of the same Article, if the Commission considers that the transmission system operator does not comply with the requirements of independence and /or unbundling, the transmission system operator shall eliminate the non-compliance within a reasonable time set by the Commission and submit relevant documents, data and information to the Commission. The transmission system operator shall be granted temporary authorization until a final decision is made by the Commission on the elimination of non-compliance; According to Paragraph 7 of the same Article, if the Commission considers that the transmission system operator has not eliminated the non-compliance with the requirements of independence and/or unbundling, the transmission license might be annulled.

As far as the Preliminary Decision has established and, at the same time, the analysis and assessment above still confirms that the Applicant does not meet all the requirements for independence and unbundling, the Applicant should be given a deadline to meet these requirements and submit all relevant information on adoption of the secondary legal acts that aim to meet the requirements of independence and unbundling to the Commission. After the expiry of this period, it is necessary to re-evaluate the compliance of the transmission system operator with the requirements of independence and unbundling, which is the ground for re-certification procedure based on Article 50 of the Law and the Transmission System Operator Certification Rules approved by the Commission's Resolution N9, dated March 27, 2020.

In the process of re-certification, the Commission shall re-evaluate the compliance of the transmission system operator with the requirements of independence and unbundling. The Commission must ensure the independence of the transmission system operator for re-certification purposes according to the following criteria:

a) The executive bodies of the transmission system operator shall be appointed by the authorized person/body who, at the same time, does not exercise similar authority over the energy enterprises that are not involved in generation/supply/trade activities;

b) The transmission system owner must not assert any influence over the operational and commercial decisions of the transmission system operator;

c) The Energy enterprises, involved in transmission and distribution, on the one hand, and, the energy enterprises engaged in the generation/supply or trading activities, on the other hand, should be managed by state bodies/institutions that, at least in the process of exercising these powers, do not have a common controlling body.

Taking into consideration all of the abovementioned circumstances, according to the paragraphs 2 and 5 of Article 49, Article 50, Paragraphs 6 and 7 of Article 159 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. A decision on certification of JSC “Georgian State Electrosystem” as an electricity transmission system operator shall be adopted, subject to the conditions established in Paragraphs 2, 3 and 4 of this Decision.

2. By December 31, 2021, 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, managing rights for the enterprises listed below shall be reallocated in order to prevent management of energy transmission/distribution on the one hand and generation/supply/trading on the other hand by the same State institution:

a) Electricity sector:

- GSE – transmission (100% of shares)
- LLC Energotrans – distribution (100% of shares)
- JSC UES Sakrusenergo – distribution (50% of shares);
- JSC Telasi – distribution, supply (24.5% 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)

3. The Applicant shall, by January 3, 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. Point out to JSC "Georgian State Electrosystem" that after submission of the documents and information mentioned in Paragraph 2 of this Decision but not later than the deadline set out in the same Paragraph, certification procedure shall be re-opened according to Articles 49 and 50 of the Law of Georgia on Energy and Water Supply, that includes, inter alia, adoption of the Commission's preliminary decision and submission of it for the opinion to the Energy Community Secretariat.

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

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

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