



Montenegro

Energy Regulatory Agency

Pursuant to Article 68 paragraph 1 of the Energy Law (OGM 5/16 and 51/17), Article 7 of the Rules on Certification of Transmission System Operators (OGM 50/2016) and Article 12 paragraph 1 item 6 of the Statute of the Energy Regulatory Agency (OGM 15/16), acting in the decision-making procedure in respect of the Request for certification of the Crnogorski Elektroprenosni Sistem AD Podgorica (Montenegro Electrical Transmission System JSC Podgorica), number 6788 dated 20 June 2017, the Board of the Agency, at its session held on 20 October 2017, adopted an interim

## **DECISION**

1. Joint stock company Crnogorski Elektroprenosni Sistem, with registered office in Podgorica, Bulevar Sv. Petra Cetinjskog no. 18, registration number with the Central Registry of Business Entities 4-0008972, TIN (ID registration number): 02751372, is issued a certification as an electricity transmission system operator.
2. This Decision is delivered to the Energy Community Secretariat to provide its opinion thereon.
3. Following the receipt of the opinion from the Energy Community Secretariat, the Agency shall render a decision in respect of the request for certification and publish it along with the opinion of the Secretariat in the Official Gazette of Montenegro and on the website of the Agency.

## **Reasoned Statement**

### *1. Legal Grounds for Rendering the Certification Decision*

The Law on Cross-Border Exchange of Electricity and Natural Gas (OGM 42/16) envisages that cross-border transmission of electricity may be carried out solely by a certified transmission system operator that has international system cooperation established and provides conditions for operations in energy interconnection.

Article 68 paragraph 1 of the Energy Law (OGM 5/16 and 51/17) envisages that the Agency may issue a certification to an electricity transmission system operator that is licensed to carry out transmission activity and fulfils the independence requirements envisaged in Article 136 of this Law, paragraph 2 envisages that the fulfilment of the conditions under this Article shall be determined in a certification procedure, paragraph 3 envisages that the certification procedure is to be initiated upon a request filed by a transmission system operator, paragraph 4 envisages that a certificate nominates a transmission system operator and confirms that the transmission system operator fulfils the conditions in terms of unbundling and independence, the conditions related to financial, material, technical and staff capabilities, as well as any other conditions envisaged by this Law, and paragraph 5 envisages that the contents of the certification application form, evidence accompanying the application form, contents of the certification decision, substance and form of the certificate and deadline for the certificate finalisation are to be regulated in more details by the rules to be passed by the Agency.

The Rules on Certification of the Transmission System Operators (OGM 50/16) (hereinafter: Rules) entered into force in August 2016.

## *2. Procedure Description*

Along with the document number 6788 dated 20 June 2017, registered with the Agency on the same date under 17/1967-1, Crnogorski Elektroprenosni Sistem AD Podgorica (CGES) filed a request for initiating a procedure of the transmission system operator certification.

The following documents have been enclosed to the Request:

- 1) S Form – Certification Application no. 6789 dated 20 June 2017,
- 2) Memorandum of Association,
- 3) Decision on Restructuring through Spin-Off rendered by the Shareholders Assembly of Elektroprivreda Crne Gore AD Nikšić, no. 10-00-3204 dated 23 March 2009;
- 4) Articles of Association of the Crnogorski Elektroprenosni Sistem AD, Podgorica, June 2012;
- 5) Extract from the Central Register of Business Entities, evidence S-IV-2;
- 6) Act on Assigning the Performance of Activities of Common Interest, evidence S-IV-3;
- 7) Annual Financial Report with auditor's report, evidence S-IV-4;
- 8) Ownership and other rights over the network, evidence S-IV-5;
- 9) List of licences, permits and/or other authorisations of the CGES to carry out energy business in Montenegro and/or other countries, evidence S-IV-6;
- 10) List of co-owners/shareholders, evidence S-IV-7;

- 11) List of co-owners/shareholders from third countries, evidence S-IV-8;
- 12) List of legal entities directly or indirectly controlled by the CGES, evidence S-IV-9;
- 13) List of other energy entities related to the CGES, evidence S-IV-10;
- 14) List of licences, permits and/or other authorisations possessed by the parties under 7) and 8) of the Certification Application (S Form) to carry out energy business in Montenegro and/or other countries, evidence S-IV-11;
- 15) Acts regulating work organisation of the management body of the Crnogorski Elektroprenosni Sistem AD, evidence S-IV-12;
- 16) List of the members of the management body referred to in items 7 and 8 (Certification Application – S Form), evidence S-IV-13;
- 17) Decision on election of the members of the Board of Directors of the Crnogorski Elektroprenosni Sistem AD, evidence S-IV-14;
- 18) Decision on appointment of the Chief Executive Officer of the Crnogorski Elektroprenosni Sistem AD, evidence S-IV-15;
- 19) Statement on the Director and other persons authorised to act as representatives, evidence S-IV-16;
- 20) Rulebook on Business Secrecy of the Crnogorski Elektroprenosni Sistem AD Podgorica, evidence S-IV-17;
- 21) Statement on Employees, evidence S-IV-18;
- 22) Statement on the representatives of public authorities having direct or indirect control or interest right with the CGES, evidence S-IV-19;
- 23) Method for fulfilling the provisions on independence (Article 135 and 136 of the Energy Law), evidence S-IV-20;
- 24) Specification of energy facilities comprising the transmission system, evidence S-IV-21;
- 25) SE/G Form – Certification Request, and
- 26) Evidence SE/G-2, Statement on the control and ownership over the transmission system operator.

Following the filing of the Request, the 7<sup>th</sup> regular session of the Shareholders Assembly of the CGES was held on 29 June 2017, when acts different from those filed along with the Request were adopted, and for this reason the filer of the Request was asked to provide the amended data and documents.

Along with the act no. 8051 dated 20 July 2017 registered with the Agency under 17/1967-5, the CGES submitted additional documents, as follows:

- 1) Extract from the Tax Authority Central Register of Business Entities no. 4 - 0008972/014 dated 10 July 2017 (Evidence S-IV-2):

- 2) Financial Statements of the CGES for 2016, including the auditor's report (Evidence S-IV-4);
- 3) Decision by the Shareholders Assembly on the election of the members of the Board of Directors no. 10-00-7203/1 dated 29 June 2017 (Evidence S-IV-14);
- 4) Statement on the Director and other persons authorised to act as representatives, (Evidence S-IV-16/1);
- 5) Statement on the representatives of public authorities having direct or indirect control or interest right with the CGES /Evidence S-IV-19/, and
- 6) Act by the Ministry of Finance no. 01-10677 dated 29 June 2017, as evidence that pursuant to the provisions of Article 135, paragraph 3 of the Energy Law, this authority autonomously and directly proposed the members of the management body of the transmission system operator.

In another three occasions - on 28 September and 6 and 12 October the Agency asked for additional documents, which the CGES submitted along with the letters registered with the Agency under 17/1967-12, 17/1967-13 and 17/1967-15, as follows:

- 1) Statement on Independence of the TSP IT system in relation to energy undertakings carrying out electricity generation and supply activities;
- 2) Supplement to Evidence S-IV-9 (List of legal entities under direct or indirect control of the CGES);
- 3) Qualification structure of the employees showing the level and type of educational-vocational qualifications;
- 4) Evidence of passed professional exams, or work capability exams, and
- 5) Request for facility registration, no. 10738/1 dated 9 October 2017, registered with the Real Estate Administration RU Kotor under 5954-106-268 dated 13 October 2017.

Having reviewed the submitted documentation, the Agency drew a conclusion that the Request analysis for rendering an interim decision may commence.

### *3. Request Analysis*

#### *3.1. CGES Basic Information*

Until the end of March 2009, the business and management activities of the electricity transmission system were carried out within the vertically integrated undertaking - Elektroprivreda Crne Gore AD Nikšić (EPCG), as the only undertaking in Montenegro where all energy activities were carried out.

The joint stock company Prenos Podgorica was established by virtue of the Decision on Restructuring through Spin-Off passed by the EPCG Shareholders Assembly on 23

March 2009. The restructuring was carried out in accordance with the provisions of the Law on Business Organisations, in the way that the EPCG transferred a part of property and proportional part of liabilities to the newly established company, which in turn issued shares to EPCG shareholders.

Total legal and ownership unbundling was completed pursuant to the Decision on Restructuring through Spin-Off, so the EPCG from which the new company segregated is not a member of the new company and has no financial, management or other rights over the newly established company or its shareholders.

The company acquired the capacity of a legal entity on 27 March 2009 when it was registered with the Central Register of Business Entities under 4-0008972/001 and named – Joint Stock Company Prenos Podgorica.

The Law on Business Organisations envisages that a joint stock company is a company of physical persons or legal entities established for the purpose of carrying out business activities, and its equity is split into shares. This company is a legal entity which is fully detached from shareholders in terms of its assets and liabilities and is liable for its obligations to the extent of all its assets. Shareholders are not to forgo their assets to cover the liabilities of the company.

The CGES shareholders have property and non-property rights proportional to the ownership interest in the CGES equity, so there is no legal or statutory option for third legal entities or physical persons, save the shareholders themselves, to perform de facto and de jure control over the performance and operations of the CGES.

At the first regular session of the Shareholders Assembly held on 25 June 2010 a decision was passed on the change of the name of the Company, and thus, since 2 July 2010, when this change was registered with the Central Register of Business Entities, the filer of the Request has been operating as a joint stock company “Crnogorski Elektroprenosni Sistem“. The registered office of the Company is in Podgorica, at Bulevar Svetog Petra Cetinjskog no. 18. The prevailing business of the Company is electricity transmission – business activity code: 3512.

The Extract from the Central Register of Business Entities no. 4-0008972/014 dated 10 July 2017 has been reviewed.

The Energy Law establishes that energy business activities may be carried out based on a license issued by the Agency.

The CGES is a holder of the Licence for carrying out the business activity of electricity transmission, entered in the register of issued licences under L–E–007 with validity expiry date 29 July 2019.

The License for performance of electricity transmission activities establishes that it is issued for carrying out the electricity transmission activities and includes the conditions that an energy undertaking has to fulfil when carrying out the activities for which the license is issued. The License establishes that the license holder may also perform additional activities if approved by the Agency. The Agency shall issue such an approval

if it assesses that the proposed additional activity shall not cause the following to the License Holder: adverse financial impact on performance of its core i.e. licenced activity or adverse impact on its personnel or technical capacities.

The Agency has legal authorisations to monitor and supervise the work and operations of energy undertakings in terms of meeting the conditions established in the license.

### 3.2. CGES Bodies

In line with the Law on Business Organisations, the CGES bodies are as follows: Shareholders Assembly, Board of Directors, Chief Executive Officer and Secretary of the Company.

**Assembly of a joint stock company** is a body of owners, and its establishing is mandatory. This Assembly is not elected, has no term mandate and may not be dissolved. It is comprised of shareholders, as owners of invested equity, or their representatives and its authority and legitimacy are not underpinned by election majority but ownership. Such a composition determines the Assembly as hierarchically the highest body of the company. The hierarchical position of the Assembly is confirmed and manifested through its powers. Legally, its position derives from its status (appointment and dissolution of the body, status changes of the company) and property (disposal and distribution of capital and profit) authorisations, which are capital in terms of importance. But, although the assembly is hierarchically the highest body of the company, it does not mean it is the most important body for the operations of the company. It is not an expert leading body, given that it is not an expert, professional body. Authorities of the Assembly are, by nature, periodical and extraordinary, not current or operational. The position of the highest body of the company does not give a right to the Assembly to assume under its powers what is by law or statute established as powers of another body which is subordinated to it in terms of status. Therefore, the hierarchical position of the Assembly, although ownership-based and undisputable, is functionally limited.

**The Shareholders Assembly of the CGES** is comprised of the shareholders of the Company. Every shareholder has a number of votes equal to the number of shares they own. Shareholders Assembly meetings are attended by shareholders personally or by their proxies.

The powers of the Shareholders Assembly of the CGES are envisaged by the Law and Articles of Association of the Company, which are submitted as an attachment to the Request. The Articles of Association of the CGES regulates the issues of significance for business operations and organisation of this company, i.e. issues that are by the Law on Business Organisations specified to be regulated by the Articles of Association, as well as the issues of joint interest for the Company and its shareholders.

Exclusive right of the Shareholders Assembly is to: adopt the Articles of Association of the Company and its amendments; elect and discharge the members of the Board of

Directors; elect and discharge the Company's Auditor; appoint and discharge the liquidator of the Company; render decisions on disposing of the Company's assets (purchase, sale, lease, replacement, acquisition or other way of disposal) with the value exceeding 10% of the book value of the Company's assets (high value assets); render the decision on issue of bonds, options or other securities or instruments allowing the right of subscription and/or the right of ownership over the Company's shares or any other party under its control, or grant the right to purchase shares of the Company or any other entity under its control; render decision on distribution of profit (dividends), reserves or assets of the Company to shareholders or on dividend policy, or redemption of equity securities of the Company and coverage of losses; render decision on the increase or decrease of the Company's equity and replacement of shares of one class for shares of another class; adopt the annual financial statement and operating statement of the Company; adopt decision on establishing new business organisations with initial capital amounting over 1% of the core capital of the Company; render decision on restructuring of the Company; render decision on voluntary liquidation of the Company or submission of the proposal for initiating a bankruptcy procedure or initiating another procedure in accordance with the law regulating bankruptcy procedure; render decision on the remuneration policy and the remunerations to the members of the Board of Directors; render decision on restricting or annulling the right of pre-emption of shareholders to subscribe or acquire replaceable bonds; approve entering into agreements with regard to the purchase of assets from the founder or a majority shareholder of the Company in all cases where disbursements exceed 10% of the book value of the Company's assets; dispose of the Company's operations or any other part of Company's operations, or in any other way dispose of any part of the Company or establish security over any part of the Company's assets, which exceed 10% of the Company's assets, or any other entity controlled by the Company, as shown in the current balance sheet of the Company, i.e. entity controlled by the Company, confirmed by the Auditor; render investment decisions of value over 10% of the book value of the Company's assets; decide about delisting of the Company's shares from the stock exchange; upon the request of the Board of Directors consider issues under its power related to the operations of the Company; adopt its Rules of Procedure; decide on other issues as established by the Law and the Articles of Association.

Pursuant to the Law on Business Organisations, **Board of Directors** is a governing and managing body of the company, whose decisions are executed by the company's secretary and the chief executive officer. This provision determines the nature of the Board of Directors as a mandatory body of a joint stock company. It is determined as a governing and managing body of the company. Thus, the Board of Directors is the most important body for the operations of the company.

The CGES Board of Directors has seven members, of which four are the government representatives, two are Terna representatives and one is a representative of minority shareholders.

The CGES Board of Directors is empowered to govern and manage the Company, supervise the current operations and have the central role in the corporate management system. The powers of the Board are determined by the law and the Articles of Association.

The Board of Directors has the following powers to: convene the Annual and Extraordinary Shareholders meetings; prepare proposal decisions for the Shareholders meetings and execute its decisions; adopt the Company's Business Plan or any material amendments thereof and provide guidance for its implementation; adopt annual budget of the Company or any material amendment thereof and provide guidance for its execution; adopt investment development plans of the Company, including construction plans (and any material changes) relating to the Associated Network Infrastructures and the Additional Network Infrastructures, including but not limited to any provisions of such plans for the procurement of relevant materials; determine the internal organisation and systematisation of the Company; determine the structure and composition of the management and administration of the Company; adopt periodical and establish annual financial statements of the Company; establish annual business report of the Company; propose the distribution of profit, dividends, reserves, assets and coverage of losses; approve any transaction (investment, disposal of assets, loan borrowings) the value of which does not exceed 10% of the book value of the Company's assets; approve entering into agreements that are not under the powers of the Shareholders Assembly; adopt general acts under its powers; elect the Chairman and Deputy Chairman of the Board of Directors; appoint and discharge the Chief Executive Officer and the Secretary of the Company; propose the Auditor of the Company and change of the Auditor before the expiry of their terms; appoint, discharge and determine the authorities and responsibilities of the management members; appoint the members of the Audit Board; adopt the report on the inventory of the Company's assets and liabilities; propose establishment of new business organisations whose initial capital is less than 1% of the Company's equity; appoint representatives to the Company's corporate bodies and give them binding guidelines and instructions to adhere to; decide on business cooperation and connectivity with other companies; adopt its Rules of Procedure; appoint working bodies and committees of the Board of Directors; decide on other issues not specified in the Law on Business Organisations and the Articles of Association as attributed to the exclusive powers of the Shareholders Assembly, the Chief Executive Officer or the Secretary.

Pursuant to the Law on Business Organisations, the mandate of the members of the Board of Directors expires on the first following ordinary annual Shareholders Meeting.

Article 50 of the Company's Articles of Association envisages that the Board passes decisions by simple majority of votes of the Board members attending the session unless the decisions of the Board are related to reserved matters, in which case minimum six members are required to vote in favour of a decision. The domain of the reserved matters includes the decisions of the Board that are, inter alia, related to the approval of the Company's Business Plan, annual budget, development plan, construction plan, financial borrowings of any kind exceeding €250,000 and other decisions referred to in the mentioned Article.

Accordingly, it is established that material management decisions are passed if supported by the votes of minimum six members of the Board, implying that government



representatives may not autonomously decide in respect of such decisions although they have majority in the Board.

The Chief Executive Director is appointed and discharged by the Board of Directors.

**Chief Executive Officer** manages the Company and organises day-to-day operations of the Company, represents the Company and acts on its behalf, ensures and is responsible for the legality of the Company's operations. The powers and responsibilities of the Chief Executive Officer are established by the law, the Articles of Association and a special agreement entered into with the CGES Board of Directors. Chief Executive Officer is to execute instructions given by the Board of Directors and implement its decisions related to the CGES operations and is accountable to the Board of Directors for his/her work.

The submitted documents include the Statement on the powers of the Chief Executive Officer established by the Articles of Association, job description of the Chief Executive Officer and the statement of the Chief Executive Officer that he/she is not involved in carrying out electricity and/or gas generation and/or supply business activities.

### *3.3. Ownership over the Transmission System / Technical Capabilities*

The Energy Law establishes as follows:

- the electricity transmission system operator is an energy undertaking carrying out the electricity transmission activity, which is responsible for operation, maintenance and development of the transmission system in a given area and its interconnection with other systems, as well as for ensuring long-term ability of the system to meet demands for transmission of electricity in an economically feasible way;
- electricity transmission system operator is to carry out transmission of electricity business activity and manage the electricity transmission system under the conditions specified in the license and certificate based on principles of impartiality, transparency and non-discrimination;
- electricity transmission system is comprised of 110 kV installations, 110/x kV/kV transformers and 110 kV lines, as well as of installations, transformers and lines of higher voltage level, extending to the connection points of system users, and it is comprised of facilities, telecommunication and IT equipment and other infrastructure required for its functioning;
- Electricity Transmission System Operator is not to carry out both the activity of generation of electricity and the activity of electricity supply;
- Article 112 of the Energy Law envisages that the Transmission System Operator is to:
  - given the system condition and system exploitation level, establish a ten-year transmission system development plan that is updated on yearly basis, including investment projects schedule and submit it to the **Agency for approval** no later

than 1 July of the year preceding the first year of the period to which the plan refers to, harmonised with the: Energy Development Strategy and Action Plan, taking into account projects for construction of electricity generation plants, and particularly projects related to use of energy from renewable sources; development plans of neighbouring transmission systems, taking into account projects of common interest for the Community (note: refers to the Energy Community); requirements of the distribution system development for performance of the transmission system operator activities.

- In accordance with the system user requirements, pursuant to the spatial planning documents, establish a three-year investment plan and submit it to the **Agency for consent**, as an integrated part of the development plan, which includes: investments for which the decision has already been made, new investments to be executed within the following three years, for each year individually.

It is important to point out that the Energy Law envisages that the activities specified by law in the energy area are carried out by the Agency as an autonomous, non-profit organisation, legally and functionally independent from the state authorities and energy undertakings, and while performing public authorities it is to act in a fair and transparent way: perform activities independently of any market interest; must not accept or seek instructions from governmental or other authorities and organisations or other parties in the course of performing activities specified in this Law. This means that Agency shall not seek any opinions from the government authorities in the course of giving consent to the acts adopted by the CGES.

This Company is technically capable, which can be concluded based on the evidence related to facilities and capacities it possesses and ownership and other rights over them, and it possesses the following:

- 23 substations: SS 400/220/110kV Pljevlja 2, SS 400/110kV Podgorica 2, SS 220/110/35kV Podgorica 1, SS 400/110/35kV Ribarevina, SS 220/110/35kV Mojkovac, SS 110/35kV Nikšić, SS 110/35kV Herceg Novi, SS 110/35KV Tivat, SS 110/35kV Budva, SS 110/35kV Bar, SS 110/35kV Ulcinj, SS 110/35kV Cetinje, SS 110/35kV Danilovgrad, SS 110/10kV Podgorica 3, SS 110/10kV Podgorica 4, SS 110/35KV Berane, SS 110/35kV Pljevlja 1, SS 110/35kV Vilusi, SS 110/35kV Andrijevica, SS 110/35kV Virpazar, SS 110/10kV Podgorica 5, SS 110/35kV Kotor and SS 110/10kV Kličevo;
- five 400kV overhead power lines in the total length of 284.3 km: Podgorica – Trebinje, Podgorica 2 – Ribarevine, Ribarevine - Kosovo B, Ribarevine - Pljevlja 2 and Podgorica – Tirana;
- eight 220kV overhead power lines in the total length of 337.4 km: HPP Perućica – Trebinje, Podgorica 1 - HPP Perućica, Podgorica 1 – Albania, Podgorica 1 – Mojkovac, Mojkovac - Pljevlja 2, Piva - Pljevlja 264, Piva - Pljevlja 265 and Piva - Lukavica (Buk Bijela);

- twenty-eight 110kV overhead power lines, in the total length of 505.1 km: Podgorica 2 – Virpazar, Virpazar – Bar, Podgorica 2 – Budva, Podgorica 1 - Podgorica 3, Podgorica 2 - Podgorica 4, Podgorica1 - Podgorica 2, I, Podgorica1 - Podgorica 2, II, Podgorica 2 - KAP I, Podgorica 5 - KAP I, Podgorica 2 - KAP II, Podgorica 2 - KAP III, Bar – Budva, Bar – Ulcinj, Budva – Cetinje, Budva – Tivat, Podgorica 2 – Cetinje, Tivat - Herceg Novi, Herceg Novi – Trebinje, Perućica – Danilovgrad, Perućica - Nikšić 3, Podgorica – Danilovgrad, Podgorica - EVP Trebešica, EVP Trebešica – Andrijevica, Andrijevica – Berane, Berane – Ribarevine, Ribarevine – Mojkovac, Nikšić – Bileća and Pljevlja 1 - Pljevlja 2;
- 110kVm cable line, 3.6 km long: Podgorica 3 - Podgorica 5;
- two double circuit 110kV overhead lines, in the total length of 58.9 km: Perućica – Podgorica lines II and III and Perućica - Nikšić lines I and II, and
- five 110kV overhead power lines, which temporarily operate under the voltage of 35 kV, in the total length of 121.2 km: Pljevlja 1 - Čajniče (Goražde), Nikšić – Brezna, Pljevlja 1 – Žabljak, Berane – Rožaje and Ribarevine – Nedakusi.

For the mentioned facilities the CGES submitted Deeds of Title as ownership evidence, within the evidence S-IV-5, Ownership and other network-related rights. The Law on State Survey and Cadastre envisages that the data on immovable property and rights over them registered with the real estate cadastre are deemed accurate and no one may suffer adverse effects in immovable property transactions or other relations using such data.

For two substations, SS 110/35 kV Kotor and SS 110/10 kV Kličevo, the construction of which completed in 2017, Deeds of Title have not been submitted for the reason that the registration procedure with the Real Estate Cadastre is undergoing. Based on the CGES Investment Plan 2012-2014 approved by the Agency and the Report on the Completion of the Investment Plan 2016, it is evident that the construction of the subject substations was financed by the CGES, therefore the subject facilities will be registered as CGES ownership after the legal procedure of registering with the Real Estate Cadastre has been completed. For this reason, the Agency has not conditioned the passing of this decision by a request for the Deeds of Title for the mentioned substations to be submitted.

Also, the filer of the request presented a list of cable lines within the Evidence S-IV-5. It was pointed out that Montenegro administrative authority in charge of administration affairs has not established a cadastre of power lines, so the Agency has accepted the fact that the cable lines are registered as fixed assets in the Balance Sheet as evidence that they are under the ownership of CGES.

### *3.4. HR Capabilities*

In order to carry out the activities of a transmission system operator, pursuant to the Energy Law, the CGES is required to have HR capabilities to perform such activities.

Through continuous supervising of the work and operations of the CGES, the Agency monitors functioning of the transmission system from the aspect of ensuring a secure, reliable and continuous provision of electricity transmission services.

Having reviewed the systematisation and qualification structure of employees, it has been determined that CGES has sufficient number of employees who are professionally capable to carry out specific electricity transmission assignments.

In order to demonstrate HR capabilities the following has been submitted: certificates of passed professional exams for operating and managing energy plants, as well as certificates of passed professional exams related to work capabilities of persons employed to maintain and handle energy plants, devices and equipment. Based on the submitted documents it has been established that such structure facilitates smooth performance of transmission system operator activities.

### *3.5. Financial Capabilities*

Pursuant to authorities provided by the Energy Law, for the CGES as a regulated undertaking, the Agency establishes regulatory allowed revenue and prices for use of the transmission system as to ensure operating conditions, i.e. financial viability of the company.

CGES provides the financial resources required for regular business operations through:

- Charges for provided services in the form of a fee for engaging the electricity transmission capacities, which is payable by producers directly connected to the transmission system, buyers directly connected to the transmission system and the distribution system operator;
- Charges for use of cross-border transmission capacities in case of congestion;
- Borrowings in the financial markets.

The aforementioned has been established based on the review of the following documents: Audit Reports for 2014, 2015 and 2016 and the Agreement on Use of Transmission Network, as well as the decisions of the Regulator approving the CGES Investment Plan 2017-2019 and establishing regulatory allowed revenue for the period 2017-2019.

### *3.6. Conditions related to Unbundling and Independence*

The provisions of the Directive 2009/72/EC of the European Parliament and Council of 13 July 2009 concerning common rules for the internal market in electricity relating to the ownership unbundling are transposed into the Energy Law.

The Energy Law fully transposed the provisions of the Directive and Article 136 envisages that the independence of Electricity Transmission System Operator is ensured in the way that the same person or persons is/are not authorised as follows:

- 1) to directly or indirectly control energy undertakings which perform activities of electricity generation or supply, and at the same time directly or indirectly control or have other authorities over the Transmission System Operator or Transmission System;
- 2) to directly or indirectly control the Transmission System Operator or Transmission System and at the same time directly or indirectly control or have other authorities over energy undertakings that perform activities of electricity generation or supply;
- 3) appoint members of the Board of Directors or other bodies or legal representatives of the Transmission System Operator and at the same time directly or indirectly control energy undertakings performing the activities of electricity generation or supply, and
- 4) concurrently be members of the Board of Directors or other bodies or legal representatives of the Transmission System Operator and energy undertakings performing the activities of electricity generation or supply.

The same Article envisages that the mentioned provisions are particularly related to:

- 1) use of voting rights;
- 2) the right to appoint members of the Board of Directors or other bodies or legal representatives, or
- 3) ownership over the majority package of shares.

The Law includes a clear provision saying that the electricity transmission system operator must not carry out both the activity of electricity generation and the activity of electricity supply, and also that energy undertakings that perform electricity generation or electricity supply activities must not directly or indirectly control the transmission system operator organised as a separate legal entity.

The Law provides a definition that the control is direct or indirect impact on decisions of an energy undertaking based on ownership right or right to use the overall or a part of fixed assets, i.e. decisive impact on the composition, voting or decision-making of the energy undertaking's bodies.

### *3.7. Performance of the Operations of the Transmission System Operator*

The following have been reviewed: evidence S-IV-10, the List of other energy undertakings related to the CGES, i.e. the list of undertakings whose financial statements are subject to consolidation and/or undertakings belonging to the same owners. Based on the submitted evidence, it has been concluded that in addition to the EPCG, the entities related to the CGES are Crnogorski Operator Distributivnog Sistema doo (Montenegro Distribution System Operator LLC) (CEDIS), Crnogorski Operator Tržišta doo (Montenegro Market Operator LLC) (COTEE) and Montenegro Bonus DOO.

The State of Montenegro is a founder of COTEE and Montenegro Bonus DOO, and EPCG is a founder of CEDIS. Pursuant to the Energy Law, the CGES entered into the following agreements with the mentioned energy undertakings:

- 1) Agreement on Connecting to the Transmission System;
- 2) Agreement on Use of Transmission System;
- 3) Agreement on Use of Transmission System for the Needs of Electricity Producers;
- 4) Agreement on Provision of Ancillary Services and System Balancing, and
- 5) Balance Responsibility Agreement.

### 3.8. Management Control

In the process of determining whether requirements for an independent transmission system operator are met, the following is relevant:

- **The Constitution of Montenegro**, in its Article 100, defines, *inter alia*, that the Government shall enforce laws, other regulations and general acts; Article 102 stipulates that the Government shall consist of the Prime Minister, one or several Deputy Prime Ministers and the ministers. The Prime Minister represents the Government and manages its work;
- **The Law on State Property** stipulates in Article 2 that the state property consists of the State ownership right on movable and immovable things, monetary funds, securities, and other property rights belonging to Montenegro; Article 3 stipulates that competent authorities are obliged to handle things and other goods being state property with due care of a prudent businessman and shall be accountable for it; while Article 4 paragraph 1 states that Montenegro is the owner of things being state property; Article 4 paragraph 3 states that ownership authorizations over the things being State Property shall be carried out by other entities as well: state authorities, authorities of local self-government and public services established by Montenegro or a local self-government, and other authorities and organisations using budget funds or managing state property, in accordance with the law and other regulations adopted under law.

Article 6 of the same Law stipulates that the Government of Montenegro shall exercise property rights and authorisations with regard to the State Property, **unless otherwise provided by a special law**. This means that the Law envisages the possibility of departing from the general rule that the Government exercises ownership authorisations if specified by a special law. In the specific case, this special law is the Energy Law. In accordance with the legal principle that a special law derogates the general one - *lex specialis derogate legi generalis*, in this specific case the Energy Law applies (Article 135 paragraph 3) as the special law in relation to the Law on State Property;

- Article 135, paragraph 3 of the **Energy Law** stipulates that the state authority competent for financial affairs is to propose members of the body for managing the Transmission System Operator, without seeking opinion or instructions from the Government and is to assign a proxy for the shareholders meeting of the Transmission System Operator.
- Article 33 paragraph 3 of the **Law on Business Organisations** stipulates that the proxy is obliged to act in accordance with the given instructions and if the power of attorney does not contain the instructions, the proxy is to vote conscientiously, at his/her own discretion and in the best interest of the shareholder who is the principal in the power of attorney; while paragraph 5 states that if the state or a local self-government unit owns shares, the rights arising from such shares are to be exercised by an authorized officer or persons who are issued the power of attorney to exercise such rights.
- Article 44 of the **Law on Business Organisations** stipulates that the obligations of the Board of Directors are to be specified by law and Articles of Association of the company, whereby one of the core obligations is to act conscientiously and work for the benefit of the company as a whole.

Starting from the above stated, the CGES meets the requirements concerning the independence as set by the Law:

- CGES is a company with the State of Montenegro as a majority owner. The company's ownership structure as of 31 December 2016 is as follows:
  - State of Montenegro is the owner of 55.00%;
  - Terna Rete Elettrica Nazionale S.p.A. is the owner of 22.0889%;
  - AD Elektromreže Srbije – Beograd is the owner of 10.0141% (the shares of this company are recorded in the statement from the Central Depository Agency register at the NM – Summary Custodial Account 7);
  - Other custodial accounts, funds and other legal persons own 5.3407% of the share capital,
  - While natural persons own 7.5563% of the share capital.

Considering the ownership structure in the specific case, minority shareholders with impact on decision making are Terna Rete Elettrica Nazionale S.p.A ("Terna") with 22.0889% shares and Elektromreža Srbije a.d. Beograd ("EMS") with 10.0141% shares of the Company. Terna is an independent certified electricity transmission system operator in the Republic of Italy, while EMS is an independent and certified electricity transmission system operator in the Republic of Serbia.

Based on the review of the ownership structure of the Elektroprivreda Crne Gore (EPCG), which performs electricity generation and supply activities, it has been established that the State of Montenegro is the owner of 57.02% of shares, Italian company A2A S.p.A. is the owner of 41.75% and minority shareholders are the owners of 1.23%. The above stated implies that Terna and EMS are not related to the electricity generation and/or supply sector.

As for the other minority shareholders, the ownership structure is clear that they cannot have deciding impact, as the total percentage of the shares belonging to minority shareholders is 13%. Therefore, the other minority shareholders cannot influence the adoption of the most important decisions of the Shareholders Assembly, given that their adoption requires majority of 77% of votes of all issued shares (other minority shareholders would need to have more than 23% of votes).

Hence, the same person (in this specific case the State) at the same time owns majority stake in the capital of the transmission system operator and the energy undertaking performing electricity generation and supply activities. As it was stated, the Law on State Property stipulates that the owner of things belonging under the State ownership is Montenegro, while the Government of Montenegro exercises the property rights and authorisations concerning the State property, unless otherwise stipulated by a special law. On the other hand, the Energy Law stipulates that members of the managing body of the transmission system operator are proposed directly and independently by the state administration authority in charge of financial affairs (Ministry of Finance), without seeking an opinion or instructions from the Government and that the same authority assigns a proxy for the Shareholders Assembly of the Transmission System Operator.

The Constitution of Montenegro stipulates that the Government consists of the Prime Minister, one or several Deputy Prime Ministers and the ministers, and that the Prime Minister manages its work, which means that the Ministry of Finance is a part of the Government. The Constitution also stipulates that the Government is responsible for enforcement of laws, in this specific case the Law on State Property and the Energy Law. Thus, the provision of Article 135, paragraph 3 of the Energy Law which stipulates



authorities for the Ministry of Finance is binding for the Government, which means that the control over the transmission system operator on one hand and the control over the undertakings engaged in electricity generation and supply on the other hand are institutionally unbundled.

The filer of the Request has submitted the document no. 01-10677/1 dated 29 June 2017, where the Ministry of Finance, pursuant to the provisions of Article 135 paragraph 3 of the Energy Law, proposed four members of the Board of Directors of CGES. The same document also proposed a proxy of the Ministry of Finance for the CGES Shareholders meetings.

As for the EPCG, which is engaged in the electricity generation and supply, the representative of the state capital i.e. the proxy for the Shareholders meeting of EPCG is appointed by the Government of Montenegro (evidence: Conclusion of the Government of Montenegro on appointing proxy of 24 January 2017).

As regards the unbundling between the administration authority which controls and has managing powers over the CGES and the administration authority which controls and has managing powers over the energy undertaking engaged in electricity generation and/or supply, the Agency is of the view that the Transmission System Operator is independent from the energy undertaking – EPCG which performs electricity generation and/or supply activities, and which is under the control of the Government of Montenegro.

Moreover, it should be taken into account that the Energy Law stipulates powers for the Ministry of Economy in the energy sector, as follows: *“monitors implementation and makes analysis of the energy balance realization and investments in electricity and gas generation, transmission and distribution in the previous year for the purpose of assessing security in supply.”* In addition to the above mentioned, the Ministry of Economy also has other authorisations related to the energy sector, such as overseeing implementation of the Government Programme concerning the long-term energy development objectives, energy development strategy, action plan for energy development strategy, and other. Namely, such authorisation is reasonably envisaged for the Ministry of Economy, as the ministry in charge of energy activities and it falls under the role of the Ministry of Economy solely with respect to the general energy policy. This authorisation does not fall in the area of conflict of interests between the ministries in charge of activities in the area of electricity transmission from one side and electricity generation/supply from the other side, and is not of such nature to represent an obstacle for their efficient unbundling.

Thus, there is no mutual control between the Ministry of Economy and the Ministry of Finance, or between the Ministry of Finance as the body that controls the Transmission System Operator and the Government of Montenegro as the authority that controls the energy undertaking engaged in electricity generation and supply.

In terms of independence of the members of the CGES managing bodies, the Law on Business Organisations stipulates that members of the Board of Directors are obliged to comply with the principle conscientiousness and act with due care of a prudent businessman. The Energy Law stipulates that members of the managing bodies must not seek or accept instructions or guidance from the Government in the process of making decisions of the transmission system operator.

Hence, the mentioned laws regulate the obligation of the members of the managing bodies to act and decide autonomously and independently from the electricity generation and/or supply sector.

Based on the Decision by the Shareholders Assembly on the election of the members of the Board of Directors of the Crnogorski Elektroprenosni Sistem AD, No 10-00-7203/1 dated 29 Jun 2017, evidence S-IV-14, it has been established that the persons proposed by the Ministry of Finance were elected as the members of the Board of Directors. The Agency has reviewed the records of the Central Registry of Business Entities publicly available, for the purpose of determining whether the same persons are the members of both the Board of Directors of CGES and the Board of Directors of EPCG, and thus fulfilled the requirement specified in Article 136 of the Energy Law.

Based on the review of evidence S-IV-9 – List of legal persons under direct or indirect CGES control, it has been established that CGES has control and impact on operations commensurate to the ownership interest in capital of the following legal entities:

- Invest Banka Montenegro AD Podgorica, as the owner of 4140 of shares with nominal value EUR51.1292, which makes 1.5290% in the capital of the bank;
- Elektroenergetski Koordinacioni Centar doo (EKC), with registered office in Belgrade, where it has equal interest as other founders in the amount of EUR49,548.31 and represents a share of 25.00% in the total value of the core capital of EKC;
- SEE CAO DOO Podgorica, where it has equal interest as other founders in the amount of EUR 40,000.15 and represents a share of 12.5% in the total value of the core capital;
- *Centar za Koordinaciju Sigurnosti* - SCC DOO (Security Coordination Centre) with registered office in Belgrade, where it has equal interest as other founders in the

amount of EUR 34,765.00, and represents a share of 33.33% in the total value of the core capital; and

- *Berza Električne Energije DOO* (Electricity Exchange), with registered office in Podgorica, where it has equal share as other founders in the amount of EUR 49,995.00, and represents a share of 33.33% % in the total value of the core capital.

As a result of interest in ownership of the above listed legal entities, the CGES has control over the operations and decision-making of those entities through its representatives in managing bodies and voting rights commensurate to its share in the capital.

Regardless of the proportionality principle, the CGES has the veto right when deciding on the matters that require unanimity in decision making pursuant to the Memorandum of Association.

Proportionally to its participation interest, the CGES also has the following rights:

- 1) right to dispose of the participating interest, in accordance with law and the Memorandum of Association;
- 2) property rights, including distribution of profit and distribution of the liquidation estate balance; and
- 3) other rights arising from the Memorandum of Association and/or other documents of the mentioned legal entities.

The aforementioned participating interest of CGES in the capital of legal persons under direct or indirect control of CGES is meaningless compared to the core activity of CGES and the value of its assets, and therefore it has no impact on independence of the transmission system operator.

Based on the review of the evidence S-IV-17 – Acts and procedures preventing disclosure of confidential or other commercially sensitive information of energy undertakings engaged in electricity and/or natural gas generation and/or supply, it has been established that the filer of the Request has submitted a Rulebook on Business Secret of the Crnogorski Elektroprenosni Sistem AD no. 10-00-9373 dated 31 July 2015, which designates documents and data (information) representing a business secret of the Crnogorski Elektroprenosni Sistem AD Podgorica, the disclosure of which to unauthorised persons would damage its interests and/or its business reputation, as well as interests of monetary and economy policy of the State of Montenegro.

It is further explained that disclosure of confidential information and other commercially sensitive information of energy undertakings engaged in electricity generation and/or supply has been banned.

Also, the CGES submitted the Statement on TSO IT system independence in relation to IT systems of energy undertakings that perform the activities of electricity generation and supply, where it is stated that the TSO IT system is independent and it may not be accessed or used by energy undertakings performing the electricity generation and supply activities, or their related parties.

Based on the review of the evidence S-IV-11, the List of licenses, permits and/or other authorisations of co-owners/shareholders and co-owners/shareholders from third countries for carrying out energy activities in Montenegro and/or other countries, the following has been established:

The shareholders of the Crnogorski Elektroprenosni Sistem AD, possessing license, permit and/or other authorisations for performance of energy activities on the national territory are as follows:

1. Terna Rete Elettrica Nazionale S.p.A., owning 22.0889% of share capital of CGES possesses concession for performance of energy activities of electricity transmission and dispatching on the national territory, issued by the Ministry of Economic Development of the Republic of Italy;
2. Joint stock company Elektromreže Srbije – Belgrade owning 10.0141% of share capital of the CGES, has a license for performance of energy activities:
  - 2.1. electricity transmission issued by the Energy Agency of the Republic of Serbia, license registration number: 020/06-LE-3 and
  - 2.2. managing electricity transmission system issued by the Energy Agency of the Republic of Serbia, license registration number: 019/06-LE-3.

The shareholders of the Crnogorski Elektroprenosni Sistem AD from third countries are as follows:

1. ROBOTTI GLOBAL FUND UNITED STATES OF AMERICA, owning 1,235,000 shares, which makes 0.84486687% of share capital of the CGES.
2. LANGSTON SHIPHOLDING LTD - LIBERIA, owning 3,727 shares, which makes 0.00254965% of share capital of the CGES.

The CGES clarified that based on the information from the register of the Central Depository Agency they were in no position to establish what the business activity of this shareholder was, so they sought in writing this entity to provide a list of licenses, permits and/or other authorisations for performance of energy activities, if there were any. However, there was no reply received by the submission date of the Request.

The Request filer provided evidence S-IV-18, the Statement by the Chief Executive Officer that the CGES has no employees who performed managing operations or used to be members of management bodies in legal entities performing the activities of generating or supplying electricity or gas in the period of six months prior to the submission of the certification request.

The CGES provided Evidence – SE/G-2, Control and ownership over the transmission system operator, including a list of all the parties that directly or indirectly control the transmission system operator, a list of all the parties active in the energy market of Montenegro (electricity market or natural gas market) that are directly or indirectly controlled by the transmission system operator, i.e. parties having ownership over the transmission system and a list of all companies performing the generating or supplying activities in the electricity or gas market in case the same party indirectly or directly controls or has any kind of rights over the transmission system operator and such companies.

The Agency has reviewed the Statement of the CGES Chief Executive Officer given under full material and criminal liability that all the statements and information provided in this form are correct.

### *3. Conclusion*

Based on the all above-mentioned, demonstrated evidence and facts identified, the Agency has drawn a conclusion that CGES in all fulfils the conditions prescribed in the Energy Law which includes the provisions transposed from the Directive 72/2009, i.e.:

- it has a transmission system under its ownership,
- it performs the transmission system operator activities, and
- the control is unbundled from the control over the supplier and producer,

and therefore it has been decided that CGES is to be certified as an electricity transmission system operator of Montenegro.

Number: 17/1967-17

Podgorica, 20 October 2017

**Board Chairman**

**Branislav Prelević**