

Georgian National Energy and Water Supply

Regulatory Commission

Decision №18/5

April 28, 2022

Tbilisi

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

Georgian National Energy and Water Supply Regulatory Commission (hereinafter - the Commission) on April 28, 2022 held a public hearing on the application of JSC Georgian State Electrosystem (hereinafter - the Applicant or JSC Georgian State Electrosystem) concerning certification of the transmission system operator.

On March 4, 2021, the Georgian National Energy and Water Supply Regulatory 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 March 8, 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. Taking into account the opinion of the Secretariat, on April 1, 2021, the Commission adopted Decision №14/3 On the Certification of JSC Georgian State Electrosystem as a Transmission System Operator for Electricity (hereinafter - the Final Decision) and JSC Georgian State Electrosystem was instructed to complete the implementation of all measures envisaged by the Preliminary Decision. Also, unlike the Preliminary Decision, the Final Decision defined the detailed list of documents that were to be submitted by JSC Georgian State Electrosystem by January 3, 2022 in order to confirm the full implementation of the abovementioned measures.

In particular, the JSC Georgian State Electrosystem had to submitted the following documents to the Commission: a) Sufficient legal acts that certify reallocation of managing rights of the enterprises under its control (envisaged by the final 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 envisaged by the final 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 envisaged by the final 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 final decision.

By the Final Decision, JSC Georgian State Electrosystem was also explained that after submission of the documents and information envisaged by this Decision, 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.

The Applicant has not submitted to the Commission the information and documents specified in Articles 49 and 50 of the Law and the final decision for the purposes of repeated certification of the company as the transmission system operator for the date specified in the final decision – by 3 January 2022. By the letter N1/ 02-5-53 of the Commission dated January 6, 2022, the Applicant was once again instructed for the purposes of repeated certification as a transmission system operator, to submit to the Commission the documents envisaged by the final decision no later than January 31, 2022, in accordance with Articles 49 and 50 of the Law and the “Transmission System Operator Certification Rules” approved by the Commission's Resolution (hereinafter – the Certification Rules). The Commission re-applied to the Applicant by the letter 1/02-5-981 of February 2, 2022, indicating that in the event of failure to submit the documents required by the final decision to the Commission by 3 February 2022, the Commission would consider imposing a statutory sanction on the company.

In violation of the deadlines set by the Final Decision of the Commission, on February 3, 2022 (one month after the deadline set by the Final Decision) by the letter N402/01, the Applicant submitted the following documents to the Commission for repeated certification of

JSC Georgian State Electrosystem as a transmission system operator: The Order N1-1/180 of the Minister of Economy and Sustainable Development of Georgia of May 13, 2021, on approval of the new version of the Charter of JSC Georgian State Electrosystem and election of the members of the Supervisory Board; Updated charter of the Applicant; extract from the Registry of the Enterprises and Non-Commercial (Non-Profit) Legal Entities; Protocol N1 of the Supervisory Board of the Applicant; Letter N23/2957 of the Ministry, according to which the appointment of the General Director of the Applicant was approved; powers of attorneys for granting representative powers to members of the Board of Directors; Statements on the absence of conflict of interest of the directors of the Applicant; Order of the Applicant on termination of employment contract with one of the members of the Board of Directors, Davit Chanturia; Information on the transfer of employees of the Applicant; Letter N4022 01 of the Applicant to the Ministry of Economy and Sustainable Development on the withdrawal of the share/shares (99.4%) of the Applicant (99.4%) from its capital; Letter N23/7046 of the Ministry of October 21, 2021 on the consent to unbundle the electricity generation and supply activities and to remove the shares belonging to the Applicant from the capital of JSC Karchal Energy; Letter N5223/01 of the General Director of the Applicant to the Supervisory Board, dated November 16, 2021, regarding JSC Karchal Energy.

It should be noted that the Unbundling Application of the Transmission System Operator (approved through Annex N1 of the Certification Rules), information on unbundling (according to the form approved through Annex N2 of the Certification Rules) and completed Ownership Unbundling Form (approved through Annex N3 of the Certification Rules) was not submitted in accordance with the Law and the Certification Rules. The Applicant was notified of this by the letter N 1/02-5-1505 of the Commission, dated February 11, 2022 and it was instructed that in order to manage the repeated certification process of the transmission system operator smoothly, a complete application should be submitted by February 18, 2022.

In breach of the deadlines set by the Commission, on February 21, 2022 by the letter N618/1, the Applicant submitted the following documents for the purposes of repeated certification as a transmission system operator (hereinafter – the Certification Application): Transmission System Operator Unbundling Application; updated extract from the register of entrepreneurs and non-entrepreneurial (non-commercial) legal entities; Minutes of the meeting of the Supervisory Board of the Applicant #4 (agenda of the meeting): 1) Resignation of Ucha Uchaneishvili from the position of General Director of JSC Georgian State Electrosystem 2) Appointment of the General Director of JSC Georgian State Electrosystem; Letter #1940/12 of the Chairman of the Supervisory Board of JSC Georgian State Electrosystem,

dated February 17, 2022 to the Ministry of Economy and Sustainable Development of Georgia; Letter #23/853 of the Ministry of Economy and Sustainable Development of Georgia dated February 17, 2022 to JSC Georgian State Electrosystem; Statements on the absence of conflict of interest of the members of the Supervisory Board of the Applicant; Order N 1-1/180 of the Minister of Economy and Sustainable Development of Georgia of May 13, 2021 on the approval of the new version of the Charter of JSC Georgian State Electrosystem and the election of the members of the Supervisory Board; Updated charter of JSC Georgian State Electrosystem; Extract from the register of entrepreneurs and non-entrepreneurial (non-commercial) legal entities; Minutes of the Supervisory Board N1; Letter N 23/2957 of the Ministry, according to which the appointment of General Director was agreed; powers of attorneys granting representative powers to members of the Board of Directors; Statements on absence of conflict of interest of the Directors; Order on termination of employment contract with Davit Chanturia; Information on transfer of Employees; Letter N4022/01 of the Applicant to the Ministry on the withdrawal of the Applicant's owned shares (99.4%) in JSC Karchal Energy from the Applicant's capital at book value; Letter N23/7046 of the Ministry of October 21, 2021 to the Applicant on consent on unbundling of the production and supply of electricity and the removal of shares owned by the Applicant from the capital of JSC Karchal Energy; Letter N 5223/01 of the General Director of November 16, 2021 to the Supervisory Board concerning JSC Karchal Energy.

However, the Applicant has not yet submitted the documents envisaged by the Final Decision, confirming that the Ministry ensures reallocation of managing rights of the enterprises under control of state bodies 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, which also would have ensured the independence of the public bodies governing the transmission system operators from other public bodies governing the natural gas and/or electricity generation/supply/trade enterprises.

The Commission reviewed compliance of the submitted Certification Application with the requirements of Article 78 of the General Administrative Code of Georgia, as well as the requirements of the Certification Rules; and assessment of the Applicant's compliance with the independence and unbundling requirements established by the Law of Georgia on Energy and Water Supply.

Legal Basis for Certification

In 2014, Georgia signed the Association Agreement between Georgia, on the one hand, and the European Union and the European Atomic Energy Community, and their Member States, on the other, which foresaw the obligation of the State to harmonize Georgian legislation with the European legal acts. On October 14, 2016, Georgia signed the Protocol on the Accession of Georgia to the Treaty Establishing the Energy Community (hereinafter - the Protocol), which was ratified by the Parliament of Georgia on April 21, 2017. The Protocol sets out the terms and conditions for transposition of the Energy Community legislation (*acquis communautaire*) into Georgian legislation.

On December 20, 2019, the Parliament of Georgia adopted the Law of Georgia on Energy and Water Supply (hereinafter - the Law), which entered into force on December 27, 2019. The Law sets out, inter alia, the obligation of certification of a transmission system operator, the rules, procedures, and deadlines for certification, as well as the regulatory power/authority of the Commission in the process of certification of a transmission system operator.

One of the core aims of the *acquis communautaire*, in particular of the Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 on common rules for the internal market in electricity and repealing Directive 2003/54/EC (hereinafter - the Directive), is to ensure the proper implementation of the independence and unbundling of transmission system operators. Article 50 of the Law establishes the general rule for unbundling of the transmission system operator, while Paragraph 3 of the same Article defines the authority of the Commission to approve the relevant normative act. Based on this, the Commission approved the Transmission System Operator Certification Rules by Resolution N9 of 27 March 2020, which sets out the procedure for unbundling of transmission system operators, including the list of documents and information to be submitted by the Applicant and the procedure and deadlines for reviewing the application by the Commission.

General information about the Applicant

The Applicant is a joint-stock company established under the Law of Georgia on Entrepreneurs, which provides electricity transmission (transportation, transit) throughout the territory of Georgia based on the electricity transmission license (N°008, series 12) issued by the by the decision of the Commission N20/ 1 of May 13, 2021.

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

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

Unbundling of Transmission System Operator and the Unbundling Plan

According to Article 44, paragraph 1 of the Law, the Government of Georgia takes decision on unbundling model of transmission system operator; according to paragraph 2 of this Article, unbundling model of transmission system operator shall be ownership unbundling, regulated by Article 45 of the Law.

Article 44 paragraph 1 of the Law establishes adoption procedure of the unbundling plan – The Commission, in agreement with Energy Community Secretariat, submits to the Government of Georgia unbundling model of the transmission system operator and the action plan for its implementation. Article 159 paragraph 4 of the Law promulgates the procedure for the review of the unbundling plan by the Commission. According to paragraph 2 subparagraph “a” of Article 159, within 2 months after adoption of the Certification Rules, the electricity dispatch licensee, in agreement with electricity transmission licensees, shall develop the unbundling plan and submit it to the Ministry and the Commission. The unbundling plan shall include the suggested unbundling model, detailed measures and actions for its implementation, as well as the applicable deadlines.

Implementation of the Unbundling Plan

According to Article 159 paragraph 5 of the Law, following the adoption of the Unbundling Plan by the Government of Georgia, the dispatch licensee, transmission licensee, transportation licensee or other energy company, which, according to the Unbundling Plan, will be granted the status of a transmission system operator or will be recognized as a

transmission system owner, shall implement the Unbundling Plan and report to the Commission on the status of its implementation, in accordance with the conditions established by the Commission.

The requirements of the Transmission System Operator Unbundling Plan adopted by the Government of Georgia through Resolution N682, dated November 13, 2020 (hereinafter - Unbundling Plan)" have been fulfilled, beside the obligation envisaged Article 4 of the Unbundling Plan, according to which the Ministry have to reallocate management rights for the companies through the negotiations with the public institutions and relevant governmental bodies, in order to prevent management by the same State institutions of the companies engaged in energy transmission/distribution/trading on the one hand and the companies carrying out generation/supply/trading activities on the other hand. According to Article 4 of the Unbundling Plan, the Ministry has to reallocate the management rights of the following energy companies:

a) Electricity sector:

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

b) Natural gas sector:

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

In order to ensure independence of the Applicant from the supply and generation activities, in accordance with Article 4, Paragraph 2 of the Unbundling Plan, on December 2, 2020, the Minister of Economy and Sustainable Development of Georgia (hereinafter - the Minister) issued Order N1-1/521 on “Establishing a Different Rule for Assigning and Reallocation of the Functions among the Divisions of the Ministry of Economy and Sustainable Development of Georgia". According to this Order, Department of Energy Policy and Investments of the

Ministry shall carry out the rights and obligations of the partner/shareholder of the Applicant, JSC UES Sakrusenergo, LLC Georgian Gas Transportation Company and JSC Energy Development Fund of Georgia, whereas the Department of Energy Reforms and International Relations of the Ministry shall carry out the rights and obligations of the partner/shareholder of JSC Electricity System Commercial Operator, JSC Georgian Oil and Gas Company and LLC Engurhesi HPP. It should be noted that the validity of this order was set for December 31, 2021. Consequently, the order currently is invalid and as the per the documentation submitted by the Applicants, the Ministry did not issue another document in replacing tis order, which would have relocated the management rights of the energy enterprises under control of the Ministry.

Compliance of Unbundling of the Transmission System Operator with the requirements of the Certification Rules

In order to establish compliance of unbundling of the Applicant with the requirement of the Certification Rules, the Commission examined the Certification Application and accompanied documents submitted by the Applicant.

Pursuant to Article 6 paragraph "a" of the Certification Rules, the Applicant is obliged to submit to the Commission certified copies of the Applicant's corporate documents in accordance with the Laws of Georgia and an extract from the Registry of Enterprise and Non-Commercial Legal Entities, indicating the final beneficiary owner of the Applicant. The Applicant submitted extract from the Registry of the Enterprises and Non-Commercial (Non-Profit) Legal Entities, amended Charter, in particular, the Charter of JSC Georgian State Electrosystem approved by the Order N1-1/180 of the Minister of Economy and Sustainable Development of Georgia of May 13, 2021; and extract from the share registry.

According to paragraph „b“ of Article 6 of the Certification Rules, the Applicant shall submit to the Commission the list of licenses, permits, and/or other types of authorization for energy activities carried out by the Applicant in Georgia and/or other country and certified copies of the documents proving such authorization; according to the paragraph „c“ of the same Article, the Applicant shall submit to the Commission list of those energy activities which are not subject to the licensing, permitting and/or other type of authorization requirement, carried out by the Applicant in Georgia and/or other country, as well as a written justification about the legal basis for carrying out that type of activity. The Applicant submitted a list of the licenses it holds and also indicated that it doesn't carry out unlicensed energy activities.

Paragraphs “d”, “e”, and “f” of Article 6 of the Certification Rules oblige the Applicant to submit the information on shareholders/partners, privileged shareholders, and their voting rights, with a precise indication of the percentage of shares. This information was not provided by the Applicant since 100% of the shares of the Applicant are owned by the State.

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

Under Paragraph „i“ of Article 6 of the Certification Rules, the Applicant shall submit the list of linked undertakings with the description of the type of relationship between the Applicant and the linked undertaking, including the level of cooperation between the Applicant, and linked undertaking in the process of carrying out energy and/or other activities. The Applicant listed the following energy undertakings as the linked undertakings: JSC UES Sakrusenergo, LLC Enguri HPP, JSC Electricity System Commercial Operator, LLC Georgian

Gas Transportation Company, JSC Georgian Energy Development Fund, JSC Georgian Oil and Gas Corporation. According to the Applicant, as well as the data available through the Registry of Enterprises and Non-Commercial (Non-Profit) Legal Entities of the LEPL - National Agency of Public Registry of Georgia, the relationship type is as follows: the State owns 100% of shares of LLC Enguri HPP, JSC Electricity System Commercial Operator, LLC Georgian Gas Transportation Company, JSC Georgian Energy Development Fund, and the owner of 100% of shares of JSC Georgian Oil and Gas Corporation is JSC Partnership Fund. The listed undertakings are directly managed by the Ministry that is indicated in the extract of LLC Enguri HPP from the Registry of Enterprises and Non-Commercial (Non-Profit) Legal Entities of the LEPL - National Agency of Public Registry of Georgia; in case of JSC Georgian Oil and Gas Corporation – in the Agreement between the Ministry of Energy and Natural Resources of Georgia and JSC Partnership Fund “On the Transfer of Ownership of the Shares owned by JSC Partnership Fund”, concluded on August 31, 2012; in case of JSC Georgian Gas Transportation Company and JSC Georgian Energy Development Fund the managing rights of the Ministry are confirmed by the Agreement concluded on September 21, 2011 between the Ministry and the Ministry of Energy and Natural Resources of Georgia “On Amendment to the Agreement Between the Ministry of Economy and Sustainable Development and the Ministry of Energy and Natural Resources of Georgia on the Transfer of the Ownership of State-Owned Shares, signed on November 22, 2010”. JSC "Partnership Fund", in its turn, is a legal entity of private law established under the Laws of Georgia and its portfolio includes large state-owned enterprises; its Supervisory Board is composed of members of the Government of Georgia, in particular, the Supervisory Board is chaired by the Prime Minister, and the members of the Board are the Minister of Regional Development and Infrastructure, the Minister of Environmental Protection and Agriculture, the Minister of Economy and Sustainable Development, and the Minister of Finance.

Paragraph „j“ of Article 6 of the Certification Rules obliges the Applicant to submit the list of acquired licenses, permits, and/or other types of authorization for energy activities in Georgia by the Applicant’s shareholders/partners, energy sector participants envisaged in paragraph “g” and “h” and linked energy undertakings envisaged in paragraph “i” of this Article and certified copies attesting relevant authority in compliance to the legislation in force; and paragraph „k“ of the same Article provides that the Applicant shall submit the list of energy activities in Georgia by the Applicant’s shareholders/partners, energy sector participants envisaged in paragraph “g” and “h” and linked energy undertakings envisaged in paragraph “i” of this Article which are not subject of a license, permit, and/or other types of authorization and a written justification about the legal basis for carrying out that type of activities. The

materials submitted by the Applicant contains comprehensive information on the activities carried out by the linked undertakings. As for the legal basis for carrying out of these energy activities, taking into consideration that all related documents are possessed by the Commission, collection of these documents and submitting certified copies by the Applicant was not required.

Paragraph „l“ of Article 6 of the Certification Rules obliges the Applicant to submit the Agreement/Charter of the Applicant’s shareholders/partners. The Applicant has submitted the amended Charter defining the legal form of the Applicant, its activities, main goals and objectives, as well as the competencies of the management bodies of the Applicant. According to Article 6 of the Charter, the management bodies of the Applicant are the Supervisory Board, the Director General and General Meeting of Shareholders; the latter, according to the first paragraph of Article 7 of the Charter, is the highest governing body of the company. As for the management and representation authority - it is exercised by the Director General (members of the Board of Directors on the basis of the relevant power of attorney), who acts and makes decisions within the powers defined by the Charter, the Laws of Georgia, and the General Meeting of Shareholders.

According to the Charter of the Applicant, control over the activities of the Applicant is exercised by the General Meeting of Shareholders; as for the Supervisory Board, the submitted documents demonstrate that the Applicant has made amendment to the documents, data and information submitted for the purposes of certification of the transmission system operator, that will be discussed below in detail.

Paragraph „m“ of Article 6 of the Certification Rules obliges the Applicant to submit the copies of internal organizational acts regulating the activity of collegial bodies (supervisory board, person/persons with managerial and/or representative authority) of the Applicant, including copies of acts determining their right of representation. According to paragraph „n“ of the same Article, the Applicant shall submit the list of members of the Applicant’s collegial body (supervisory board, person/persons with managerial and/or representative authority, managing council), as well as the list of members of the collegial body of shareholders/partners, energy sector participants envisaged by paragraph “g” and “h” and linked energy undertakings envisaged by paragraph “i” of this Article. The Applicant submitted the Order № 1-1/180 of the Minister of May 13, 2021 "On approval of the Amended Version of the Charter of JSC State Electrosystem and Election of the Members of the Supervisory Board". According to the Amended Charter, among other functions, the Supervisory Board ensures supervising of the management of the company, supervises the Director General (appoints and resigns him at any

time), approves the long-term goals and commercial investment strategy of the company, approves the annual budget of operational and capital expenditures. Minutes of meeting N1 of the Supervisory Board of 13 May 2021, as well as the Minutes of meeting N4 of the Supervisory Board of 17 February 2022 were submitted by the Applicant, Minutes of the meeting stating that the Supervisory Board had satisfied the request of the Director General Ucha Uchaneishvili to resign from the position of Director General and that Giorgi Gigineishvili (ID - 01008020573) had been appointed to this position by the decision of the Board. According to the Charter, the Director General is the person authorized to manage and represent the company; he manages the current, day-to-day administrative, economic and commercial activities of the company. The Director General acts and makes decisions within the requirements and powers granted by the legislation of Georgia, the Charter, the General Meeting of Shareholders and the Supervisory Board, and he reports to the Supervisory Board. In accordance with the Charter, a Board of Directors is to be established with the General Director, which acts in accordance with the statute of the Board of Directors adopted by the Director General with the approval of the Supervisory Board. The Certification Application states that a draft statute of the Board of Directors of the Applicant has been drafted, and has been submitted to the Supervisory Board for approval; the mentioned statute has not been submitted to the commission so far. Also, the Applicant has submitted the powers of attorneys issued by the Director General on May 18, 2021 to the members of the Board of Directors: (Giorgi Amuzashvili ID 01003007597), Vakhtang Kinkladze (ID 01017014604), Davit Vardiashvili (ID 01008015866), by which they were given representative powers. The Applicant also stated in the Certification Application that on January 24, 2022, the employment contract with a member of the Board of Directors, the Director for Project Management, and the First Deputy General Director, David Chanturia, was terminated.

Paragraphs „o“ and “p” of Article 6 of the Certification Rules require the Applicant to submit the decision of the general meeting of the Applicant’s shareholders/partners or other authorized body (including information on voting) based on which the members of collegial body (supervisory board and/or managing council or representative body) were elected or appointed, and the decision of the general meeting or other collegial body (supervisory board) of the Applicant based on which authorized persons of the Applicant were appointed on the respective managerial positions. The Applicant submitted the Order № 1-1/180 of the Minister of May 13, 2021 "On approval of the Amended Version of the Charter of JSC State Electrosystem and Election of the Members of the Supervisory Board". The list of members of the Applicant's collegial bodies referred to in Paragraph “n” of Article 6 of the Certification Rules is presented in the above-mentioned Order.

According to paragraph „q“ of Article 6 of the Certification Rules, the Applicant is required to submit the information about authorized persons on managerial position and employees, who are assigned organizational (operational/business, financial) and administrative (management/decision-making) functions of the Applicant and/or information about mandated other persons to whom the above-mentioned functions are assigned, in particular, according to the powers of attorney issued by Director General and submitted by the Applicant based on subparagraph „q.a”, specific management/representation powers are assigned to the members of the Board of Directors. These persons, according to the information provided based on subparagraph "q.b", do not carry out other commercial activities, including energy activities.

The documents submitted in the framework of the Certification Application showed that amendments were made to the corporate structure of the Applicant, in particular, following the Final Decision, on May 13, 2021, the Applicant's Supervisory Board had been established. The Applicant did not inform the Commission about this amendment in accordance with Paragraph 3 of Article 7 of the Certification Rules, which provides for the Applicant's obligation to notify any amendments to the Commission immediately (but not later than 7 working days after the amendment is made) and also to submit all relevant documents, data and/or information to the Commission. By failure to the Commission of the establishment of the Supervisory Board, the Applicant violated the rules of notifying the Commission of any amendments to the documents, data and information submitted for the purposes of certification, as defined by the above-mentioned provision of the Certification Rules.

In addition to the above, the submitted documents demonstrate that the Applicant's Supervisory Board was established in violation of the requirements of conflict of interest for the persons responsible for the management/supervision of the transmission system operator as defined by the Law and Certification Rules; in particular, one of the members' of the Supervisory Board of the Applicant (Leontina Galdava, ID - 01017023423), was a member of the Applicant's Supervisory Board in violation of the conflict of interest rules for a member of the Transmission System Operator Supervisory Board envisaged by Article 45, paragraph 2, subparagraph “d” of the Law, in particular, at the same time She was a member of the Supervisory Board of LLC Gardabani Thermal Power Plant and also a member of the Supervisory Board of JSC Georgian Oil and Gas Corporation.

On March 21, 2022, the Applicant submitted the letter N1292/01 to the Commission stating that since February 18, 2022 the above-mentioned member of the Supervisory Board of the Applicant has ceased to be a member of the Supervisory Board of LLC Gardabani

Thermal Power Plant and JSC Georgian Oil and Gas Corporation; Also, on the basis of an internal order of the JSC Partnership Fund, she is no longer a representative of the JSC Partnership Fund in the mentioned companies. The Applicant was asked to submit a document issued by JSC Partnership Fund, indicating the start and end dates of the term of office of mentioned Supervisory Board member as a representative of JSC Partnership Fund to the supervisory boards of LLC Gardabani Thermal Power Plant and JSC Georgian Oil and Gas Corporation, and the deadline for submission of the mentioned documentation was determined as of April 4, 2022.

On April 4, 2022, by the letter N 1620/01, the Applicant submitted the letter N02/1-28 of April 4 of JSC Partnership Fund, stating that from May 17, 2021 to February 18, 2022, the member of the Supervisory Board of the Applicant - Leontina Galdava was the representative of the JSC Partnership Fund in the Supervisory Boards of LLC Gardabani Thermal Power Plant and JSC Georgian Oil and Gas Corporation. Accordingly, it was established that during the 9 months (from May 17, 2021 to February 18, 2022) there was a violation of one of the most important cornerstones for the fulfillment of the transmission system operator's unbundling and independence obligation - the rule of independence and the absence of conflict of interest with respect to the persons in charge for the management of the transmission system operator.

The documents submitted by the Applicant also indicate that the above-mentioned member of the Supervisory Board is also held the position of director of several hydropower plants construction projects, including the position of director of the hydropower plant (under construction) LLC Mtkvari HPP (hydropower plant under construction in Akhaltsikhe), which is currently under construction. Despite the fact that LLC Mtkvari HPP is not currently involved in the activities of the participants of the energy sector engaged in the generation, distribution, supply and trade of electricity and/or natural gas, the basis for the conflict of interest is obvious, as LLC Mtkvari HPP is a potential (under construction) hydropower plant, and its connection to the transmission network is planned by 2022 according to the "Transmission Network Ten-Year Development Plan (2021-2031)" approved by the Order N1-1/42 of February 17, 2021 of the Minister of Economy and Sustainable Development of Georgia (hereinafter - the TYNDP), (the "Table 9.1 of the ten-year plan, on connection of new power plants to the grid by years").

According to Article 45, paragraph 2, subparagraph "d" of the Law, in order to ensure compliance with independence and unbundling requirements, the same person is not entitled to be a member of the supervisory board, management board or bodies legally representing the undertaking, of both an undertaking performing any of the functions of generation or supply

and a transmission system operator or a transmission system. For the purposes of assessment compliance of the Applicant with the requirements of independence and unbundling of the transmission system operator, determined by the Law and the Unbundling Plan, the Commission considers that the abovementioned restriction shall include, inter alia, the person who is represented in the supervisory board, management board or bodies legally representing the undertaking that carries out/shall carry out energy generation activities during its construction and/or before issuance of generation license where applicable, as well as before this undertaking/generation facility being connected to the transmission network. Especially when the connection of the relevant power plant to the transmission network, according to the ten-year plan, is provided for the current year.

It should be noted that the transmission system operator is exclusively and solely responsible for the connection of the power plant/generation facility to the transmission network; according to Article 36, paragraph 1 of the Law, an undertaking which constructs electricity generation facility, in accordance with the procedures established by the Laws of Georgia and in compliance with technical requirements, in order to carry out a trial run and/or the complex testing of an electricity production facility for its commissioning, shall apply to the transmission system operator to whose network this facility has been connected. Representatives of the respective transmission system operator shall participate in the trial run and/or complex testing of the electricity production facility; according to the paragraph 2 of the same Article, a transmission system operator and a distribution system operator shall perform a trial run and/or the complex testing of an electricity generation facility, and give approval for its commissioning, in accordance with the procedures established by the electricity transmission network rules and other secondary legislation of Georgia. Article 76 of the "Network Rules" adopted by the Commission's Resolution N10 dated April 17, 2014, provides the content of the application which shall be introduced to the transmission system operator in order to connect the generation facility to the transmission network. A power plant/generation facility is entitled to submit such application to the transmission system operator before completion of construction of its generation facility. Accordingly, Mtkvari HPP LLC is entitled to submit application for connection to the transmission network during its construction, having its director (person being entitled to manage and represent the undertaking) represented in the supervisory board of the Applicant; the transmission system operator, on its turn, is obliged to review this application and take non-discriminatory and substantiated decision. Such circumstances unequivocally shall create source of conflict of interests and contradict the requirements of independence and unbundling; such risks shall also occur in case of carrying out a trial run and/or the complex testing of the facility of the

Mtkvari HPP LLC for its commissioning. Besides, the Applicant did not provide any guarantee/prevention mechanism confirming that during the period of the director of Mtkvari HPP LLC being represented in the supervisory board of the Applicant, having access to the internal processes, data and information as well as subordination of the employees of the Applicant, the position of this supervisory board member shall not serve discriminatory purposes, in favour of Mtkvari HPP LLC, while the Applicant delivers services determined by the Laws of Georgia and other secondary legislation as the transmission system operator.

As for the other members of the Supervisory Board (Jorg Mathieu, Zurab Bekaia, Teona Makalatia, Ekaterina Shavgulidze) confirm that they do not participate in the activities of energy sector participants related to electricity and/or natural gas generation, distribution, supply and trading activities and are not presented in the structures of such undertakings.

According to paragraph 6 of Article 45 of the Law, neither commercially sensitive information held by a transmission system operator which was part of a vertically integrated undertaking, nor the personnel of such a transmission system operator, shall be transferred to undertakings performing any of the activities of production or supply. Paragraph 4 of the Form of Ownership Unbundling approved by Annex N3 of the Certification Rules (hereinafter Form of Ownership Unbundling) obliges the Applicant to briefly describe procedures that ensure confidentiality of commercially sensitive information and limit the transfer of employees to the undertakings carrying out generation, supply and/or trading activities, referring relevant regulatory framework and norms. The submitted documents prove that after the final decision was made by the Commission, the amendments were not made to the "Confidentiality and Non-Disclosure Agreement with the Employees" approved by N220 order of the Chairman of the Management Board of March 26, 2018.

Paragraph "s" of Article 6 of the Certification Rules, obliges the Applicant to provide information on the Applicant's management and those employees who had been transferred from other energy enterprises performing electricity/natural gas generation, distribution, supply activities or trading, during the last 6 months prior submission of the Certification Application. According to the information provided, one of the members of the Supervisory Board before the appointment (as well as after the appointment) as a member of the Supervisory Board, held the following positions: Digomi HPP Ltd - Consulting Engineer, LLC Gardabani Thermal Power Plant - Member of the Supervisory Board, JSC Partnership Fund - Energy Officer, JSC Georgian Energy Development Fund - Technical Advisor, Director of Mtkvari Holding Ltd; Oni Holding - Director, JSC Georgian Oil and Gas Corporation - Member of the Supervisory Board, Blue Energy Ltd - Partner / Director; Georgian Co-Investment Fund

- Technical Advisor, RBI Group Ltd - Director. Also, the staff of the Operation Department and SCADA and the Informational Technology Department of the Applicant (five employees in total), prior to their appointment to these positions, worked at the assistant station-master positions of JSC "Energo-Pro Georgia's" sub-substation.

The relationship between the Applicant and the transmission system owner

The Agreement "On Transfer of the Electricity Transmission Lines and their Components Owned by JSC UES Sakrusenergo to JSC Georgian State Electrosystem (Transmission System Operator) with the right of use with for the unspecified term (by Lease) and for the Provision of Accompanying Repair and Maintenance Services" (hereinafter – the Lease Agreement) was concluded between the Applicant and JSC UES Sakrusenergo on January 4, 2020. This transaction was approved by the Ministry through the correspondence N23/8005 of December 17, 2020. According to the Lease Agreement, JSC Sakrusenergo transferred the assets to the Applicant for possession and operation, in a manner in which the Applicant shall possess, fully operate and use these assets as a collateral (provided that the Applicant has submitted the relevant written application and the shareholders of JSC UES Sakrusenergo have adopted the necessary prior decision in accordance with the company's Charter). The Lease Agreement was signed after the General Meeting of Shareholders of JSC UES Sakrusenergo made a relevant decision based on the Charter and registered it at the LEPL - National Agency of Public Registry of Georgia on January 6, 2021.

In the opinion of the Secretariat, the Commission in its final decision assessed in detail the the compliance of the lease agreement between JSC Georgian State Electrosystem and JSC GES Sakrusenergo with the requirements of ownership unbundling and the compliance of the transmission system operator with the use of JSC Sakrusenergo service with the requirements of ownership unbundling, and was established that 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.

As for the compliance of the lease agreement between JSC Georgian State Electrosystem and JSC GES Sakrusenergo with the requirements of ownership unbundling and the compliance of the transmission system operator with the use of JSC Sakrusenergo service with the requirements of ownership unbundling as of today, the submitted documents show that after the final decision was made by the Commission, no amendments were made to the

mentioned lease agreement and the parties to the lease agreement duly fulfill the rights and obligations imposed on them by the agreement.

Assessment of the Legal basis for Certification

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

According to paragraph 1 of Article 42 of the Law, transmission is an activity of public interest which encompasses transportation of electricity or natural gas through the transmission network as well as the operation, maintenance and development under economic conditions of the transmission network, and other related activities necessary for secure, reliable and efficient functioning of the electricity and natural gas systems of Georgia. According to paragraph 3 of the same Article, while carrying its duties and fulfilling its tasks, the transmission system operator shall be independent from any other energy activities, namely production, distribution, supply and trade, and related commercial interests. Article 43, paragraph 1 of the Law states that transmission system operator shall be authorized by the Commission through issuing a transmission license; according to paragraph 2 of the same Article, transmission license shall be granted only to the transmission system operator that is certified in accordance with Article 50 of the Law.

According to the Article 45 paragraph 2 of the Law, to ensure independence of the transmission system operator, the same person or persons shall not be entitled at the same time:

- a) directly or indirectly to exercise control over an energy undertaking performing any of the activities of production or supply, and directly or indirectly exercise control or exercise any right over a transmission system operator or over a transmission network;
- b) directly or indirectly to exercise control over a transmission system operator or over a transmission network, and directly or indirectly exercise control or exercise any right over an energy undertaking performing any of the activities of production or supply;

- c) to appoint members of the supervisory board, the management board or bodies legally representing the undertaking, of a transmission system operator or a transmission network, and directly or indirectly exercise control or exercise any right over an energy undertaking performing any of the activities of production or supply; and
- d) to be a member of the supervisory board, the management board or bodies representing the undertaking, of both an energy undertaking performing any of the activities of production or supply and a transmission system operator or a transmission network.

The State of Georgia owns 100% of the shares of the Applicant and the rights of the shareholder are exercised by the Ministry. Accordingly, the highest management body of the Applicant is the State, whereas the Supervisory Board appoints the Director General (management/representative authority).

The State owns also 100% of shares of electricity producers – LLC Enguri HPP and LLC Vardnili HPP Cascade. The shareholder rights to LLC Enguri HPP are also exercised by the Ministry. Ministry also exercises management rights to the supplier of natural gas – JSC Georgian Oil and Gas Corporation as well as to the trader of the electricity – JSC Electricity System Commercial Operator.

In order to ensure independence of the transmission system operator from generation and supply activities, according to the Article 4, paragraph 2 of the Unbundling Plan, the Government of Georgia determined a temporary measure, according to which the Ministry shall reallocate management rights to the energy enterprises at least among the structural divisions of the Ministry. In order to meet this obligation, in accordance with the Order of the Minister N1-1/521, the shareholder/partner rights to the mentioned enterprises were divided between the Department of Energy Policy and Investment Projects and the Department of Energy Reforms and International Relations of the Ministry. It should be noted that the order was valid until December 31, 2021, therefore as of today the order is invalid and as the submitted documents show, the Ministry did not issue/adopt another Act in exchange for that Order, which provided relocation of management rights of energy undertakings under the Ministry's management.

Taking into consideration that the Ministry directly controls the Applicant, on the one hand and, on the other hand, directly controls the undertakings carrying out the generation (Enguri HPP LLC) and trading (Electricity System Commercial Operator JSC) activities; indirectly

controls the undertakings carrying out the generation (Vardnili Cascade HPP LLC), supply (Georgian Oil and Gas Corporation JSC through the supervisory board of the Partnership Fund JSC) and trading (Karchal Energy JSC, established in Turkey, 99% of shares of which owned by Georgian State Electrosystem JSC activities; Besides, Minister of Economy and Sustainable Development of Georgia assigns the person representing and managing the Applicant and, at the same time, the Ministry controls undertakings carrying out energy generation, trade and supply activities, the Applicant fails to comply with the independent and unbundling requirements of the transmission system operator provided by Article 45, paragraph 2, subparagraph “a” of the Law and accordingly, Article 4, Paragraph 2 of the Unbundling Plan has not been satisfied.

As for the independence of the Applicant from energy trading activities, according to the information provided by the Applicant (Letters of the Ministry of October 21, 2021 № 23/7046 and letter of the Applicant N2022/01 of September 20) JSC Karchal Energy currently does not carry out trading activities; in addition, as of today procedures are pending, aiming to remove the shares of JSC Karchal Energy from the Applicant's capital;; And that JSC "Karchal Energy" did not carry out trade activities in 2020 and 2021.

Having examined the Certification Application and enclosed documents, it has been revealed that the Applicant has not satisfied the requirements of Article 45 of the Law and, accordingly, Article 4, Paragraph 1 of the Unbundling Plan. Moreover the Applicant has been violated the imperative provision of Article 45.1(d) of the Law that, in order to ensure the independence of the transmission system operator, the same person simultaneously, should not be a member of the supervisory board, management board or representative body of both an undertaking carrying out any activity of production or supply and a transmission system operator or a transmission network.

Thus, the Commission considers that the Applicant should be refused for certification as a electricity transmission system operator.

Taking into consideration all of the abovementioned circumstances, according to the Article 50, paragraph 2 of the Law of Georgian on Energy and Water Supply, Articles 52 and 53 of the General Administrative Code of Georgia and Article 9, paragraph 1 of the Transmission System Operator Certification Rules approved by the Commission’s Resolution №9 of 27 March 2020, the Commission

Decides:

1. The decision on refusal of preliminary certification of JSC Georgian State Electrosystem as an electricity transmission system operator shall be adopted.
2. by July 1, 2022, all the measures necessary to comply with the requirements of Article 4, paragraph 1 of the Transmission System Operator Unbundling Plan adopted by the Government of Georgia through Resolution N682, dated November 13, 2020, shall be completed, in particular, 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 July 8, 2022, submit to the Commission the documents, that certify full implementation of the activities listed in Paragraph 2 of this Decision:
 - a) Sufficient legal acts that certify reallocation of managing rights of the enterprises listed in Paragraph 2, subparagraphs “a” and “b” of this Decision, in the manner that the enterprises involved in energy transmission/distribution activities, on the one hand

and energy enterprises involved in generation/supply/trading activities, on the other hand, are not managed by the same State institutions;

b) Corporate documents of the energy enterprises mentioned in Paragraph 2, subparagraphs “a” and “b” of this Decision/extracts from the Registry of Enterprise and Non-Commercial Legal Entities of LEPL Public Registry Agency of Georgia, certifying that these corporate documents have been amended sufficiently;

c) List of members of the collegial bodies (supervisory board, person/persons with managerial and/or representative authority, management board) of the enterprises mentioned in paragraph 2 subparagraphs “a” and “b” of this Decision, that confirms transfer of management rights of the mentioned enterprises to the relevant State institutions/public bodies, taking into consideration the requirements of allocation of management rights adopted through the paragraph 2 of this Decision.

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

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

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

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

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

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