

Georgian National Energy and Water Supply Regulatory Commission

Decision №28/5

July 7, 2022

Tbilisi, Georgia

On the Refusal of Certification of LLC "Georgian Gas Transportation Company" as the Natural Gas Transmission System Operator

On April 28, 2022 the Georgian National Energy and Water Supply Regulatory Commission (hereinafter - the Commission) adopted a decision N18/1 on the Eefusal of Preliminary Certification of LLC "Georgian Gas Transportation Company" as an Independent System Operator (hereinafter – the Preliminary Decision).The Commission notified the Energy Community Secretariat (hereinafter – the Secretariat) of it and, based on Art. 50, S. 2, of the Law of Georgia on Energy and Water Supply (hereinafter – the Law), sent that decision to deliver its opinion. Then, according to Art. 3, S. 1 of Regulation (EC) No. 715/2009 and Art. 10, S. 6 of Directive 2009/73/EC, the Secretariat submitted to the Commission its Opinion N2/22– Georgia – Certification of GGTC (hereinafter – the Opinion), dated June 24, 2022.

In the Opinion the Secretariat reviewed previous certification procedure that had taken place in 2021, when LLC "Georgian Gas Transportation Company" (hereinafter – the Applicant) submitted to the Commission certification application and requested to certify as natural gas transmission system operator, according to the independent system operator (ISO) model. The Commission adopted preliminary (Commission’s Decision N38/2, dated September 2, 2021) and final (Commissions’s Decision N48/4, dated November 11, 2021) Deicions on the refusal of the certification of the Applicant. These Decisions had been based upon the facts of the Applicant being still directly and indirectly controlled by the same public body controlling also the public companies active in generation and/or supply of natural gas or electricity, and the lack of lease agreement with the Transmission Network Owner (hereinafter “TNO”) precluded GGTC from having at its disposal the necessary technical and physical resources to perform the tasks of a TSO. In addition, independence of the TNO from LLC ”Georgian Oil and Gas Corporation” was not fully ensured due to the lack of compliance programme.

In the Opinion the Secretariat also reviewed history of foundation and reorganization of the Applicant, current activities the Applicant is involved in, as well as interrelation between the management/representatives of the Applicant and the entities exercising rights and obligations associated with its shareholding. The Secretariat underlined importance of unbundling provisions and main goals of separation of control in vertically integrated undertakings, namely, to prevent vertically integrated undertakings from using their privileged position as operators of a transmission network by obstructing access of network users other than their affiliated companies to their network or other conduct affecting fair and undistorted competition, market integration or infrastructure investment.

According to the assessment of the Secretariat, The Ministry of Economy and Sustainable Development of Georgia, hence the same public body within the meaning of Article 9(6) of the Gas Directive, exercises control within the meaning of Article 9(1)(b) and (c) of the Directive 2009/73/EC (hereinafter - the Gas

Directive) over the gas transmission system operator – the Applicant, as well as over a number of undertakings active in production/trade/supply of gas and electricity; the Secretariat agrees that separation of control within the State in line with Article 9(6) read in conjunction with Article 9(1)(b) and (c) of the Gas Directive has not taken place; in such conditions, one of the main objectives of the Gas Directive’s unbundling provisions, the elimination of an interest by the body in charge of the TSO in discriminating in favour of generation and supply companies controlled by it, is likely to be frustrated.

Based on the information displayed in the Preliminary Decision, the Applicant does not comply with the unbundling provisions due to the State as sole shareholder also controlling companies active in production/supply in the gas/electricity sectors. Most notably, the Applicant is still directly and indirectly controlled by the same public body controlling also the public companies active in generation and/or supply of natural gas or electricity.

Accordingly, the Secretariat agreed with the Preliminary Decision and suggested that the Commission in its final decision to refuse certification of the Applicant under the current circumstances.

In addition, the Secretariat welcomed the requirement of the Commission included in the Preliminary Decision, namely, obligation of the Applicant to comply with the requirements of subparagraph 3.1.9 of the “Unbundling Plan of the Natural Gas Transmission System Operator”, adopted by the Resolution N129 of the Government of Georgia, dated March 25, 2021 (hereinafter – the Unbundling Plan), by 1 July 2022 and to submit to the Commission all documents required to prove compliance with the Unbundling Plan by 8 July 2022.

Taking into account issuance data of the Opinion, as well as terms and procedural rules of issuance this Decision by the Commission through the public hearings, set by the General Administrative Code of Georgia, the Commission considers that compliance with the requirements of subparagraph 3.1.9 of the Unbundling Plan shall be completed by August 1, 2022 and the Applicant shall submit documents proving such compliance to the Commission by August 8, 2022.

Taking into consideration all of the abovementioned circumstances, according to Article 50, paragraph 2 of the Law of Georgia on Energy and Water Supply, as well as according to the Article 9, paragraphs 2 and 3 of Transmission System Operator Certification Rules adopted by the Commission Resolution N9 of March 27, 2020, the Commission

Decides:

1. The decision on refusal of certification of the LLC “Georgian Gas Transportation Company” shall be adopted;

2. By August 1, 2022, all the measures necessary to comply with the requirements of subparagraph 3.1.9 of the “Unbundling Plan of the Natural Gas Transmission System Operator”, adopted by the Government of Georgia through Resolution N129, dated March 25, 2021, 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) Energy transmission activities:

- a.a) LLC “Georgian Gas Transportation Company” – (100% of shares);
- a.b) JSC “Georgian State Electrosystem” – (100% of shares);
- b) Energy trading/generation/supply activities:
 - b.a) JSC “Georgian Oil and Gas Corporation” – (100% of shares);
 - b.b) JSC “Electricity System Commercial Operator” – (100% of shares);
 - b.c) LLC Enguri HPP – (100% of shares).

3. The Applicant shall, by January 3, 2022, submit to the Commission the documents, including legal acts as well as corporate documents/extracts from the Registry of Enterprise and Non-Commercial Legal Entities of LEPL Public Registry Agency of Georgia, that certify:

a) Reallocation of managing rights of the enterprises listed in paragraph 2 of this Decision and prevention of management of energy transmission/distribution on the one hand and generation/supply/trading on the other hand by the same State institutions;

b) Amendments in corporate documents of the energy enterprises mentioned in paragraph 2 of this Decision, adopted according to the legal acts mentioned in this Article;

c) List of members of the collegial bodies of these enterprises (supervisory board, person/persons with managerial and/or representative authority, management board), that confirm transfer of management rights of the mentioned enterprises to the relevant State institutions/public bodies, taking into consideration the requirements of the paragraph 2 of this Decision.

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

5. This Decision may be appealed at the Tbilisi City Court (Tbilisi, David Aghmashenebeli Alley, №64), within 1 (One) month of service of the decision.