

Georgian National Energy and Water Supply

Regulatory Commission

Decision №48/4

November 11, 2021

Tbilisi

On Taking Decision on Refusal of Certification of LLC “Georgian Gas Transportation Company” as the Natural Gas Transmission System Operator

On September 2, 2021, the Georgian National Energy and Water Supply Regulatory Commission (hereinafter - the Commission) adopted a preliminary decision N38/2 on refusal of certification of LLC “Georgian Gas Transportation Company” as an independent system operator. On September 13, 2021 the Commission notified the Energy Community Secretariat (hereinafter - the Secretariat) of abovementioned 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 N38/2 of September 2, 2021 (hereinafter – the Decision) to the Secretariat to deliver its opinion.

On November 10, 2021, the Secretariat submitted to the Commission its Opinion N3/21 Pursuant to Article 3(1) of Regulation (EC) No. 715/2009 and Article 10(6) of Directive 2009/73/EC – Georgia – Certification of GGTC (hereinafter – the Opinion).

In the Opinion, the Secretariat agrees with the Decision and notes that LLC “Georgian Gas Transportation Company” (hereinafter – the Applicant) can currently not be certified due to following circumstances:

- The Applicant does not comply with the unbundling provisions due to the State as sole shareholder also controlling companies active in production/supply activities in the gas/electricity sectors;

- The Applicant has not concluded a lease agreement with LLC “Georgian Natural Gas Transmission Owner” (hereinafter - the Transmission System Owner), that precludes the Applicant from having at its disposal the necessary technical and physical resources to perform the tasks of a Transmission System Operator enshrined in Article 13 of the Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC (hereinafter – the Gas Directive) and to comply with its obligations under the

Regulation (EC) No 715/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the natural gas transmission networks and repealing Regulation (EC) No 1775/2005 (hereinafter – Gas Regulation).

- The Transmission System Owner did not provide evidence for its ability to comply with its obligations under Article 14(5) of the Gas Directive, namely to provide all the relevant cooperation and support to the ISO for the fulfilment of its tasks, finance the investments decided by the Independent System Operator and approved by the regulatory authority or give its agreement to financing by any interested party including the Independent System Operator, provide for the coverage of liability relating to the network assets, and provide guarantees to facilitate financing any network expansions.

- Independence of the Transmission System Owner from JSC Georgian Oil and Gas Corporation is not fully ensured because no compliance programme has been established as required under Article 15(2) of the Gas Directive.

The secretariat in its opinion assesses the compliance of the Applicant with each requirement of the Gas Directive and Gas Regulation, namely:

a) Article 14(2)(a) of the Gas Directive envisages the compliance of the Applicant with the requirements of Articles 9(1)(b), (c) and (d). According to those requirements, it is not admissible, the same person or persons are entitled neither:

- directly or indirectly to exercise control over an undertaking performing any of the functions of production or supply, and directly or indirectly to exercise control or exercise any right over a transmission system operator or over a transmission system; nor

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

- the same person or persons are not entitled to appoint members of the supervisory board, the administrative board or bodies legally representing the undertaking, of a transmission system operator or a transmission system, and directly or indirectly to exercise control or exercise any right over an undertaking performing any of the functions of production or supply; and

- the same person is not entitled to be a member of the supervisory board, the administrative board or bodies legally representing the undertaking, of both an undertaking performing any of the functions of production or supply and a transmission system operator or a transmission system.

The Secretariat notes, that since the Ministry of Economy and Sustainable Development of Georgia (hereinafter – the Ministry) – exercises control within the meaning of Article 9(1)(b) and (c) of the Gas Directive over the Applicant, as well as a number of undertakings active in production/trade/supply of gas and electricity, therefore, the status of the Applicant does not comply with Article 14(2)(a) of the Gas Directive, and cannot be certified as an independent system operator;

b) Article 14(2)(b) of the Gas Directive provides that the Applicant shall have at its disposal the required financial, technical, physical and human resources to carry out its tasks under Article 13 of the Gas Directive, namely to:

- Operate, maintain and develop under economic conditions secure, reliable and efficient transmission, storage and/or LNG facilities to secure an open market with due regard to the environment, ensure adequate means to meet service obligations;
- Refrain from discriminating between system users or classes of system users, particularly in favour of its related undertakings;
- Provide any other transmission system operator, any other storage system operator, any other LNG system operator and/or any distribution system operator, sufficient information to ensure that the transport and storage of natural gas may take place in a manner compatible with the secure and efficient operation of the interconnected system; and
- Provide system users with the information they need for efficient access to the system.

In the absence of the lease agreement between the Applicant and the Transmission System Owner, the Secretariat considers that the Applicant fails to comply with the requirements of Article 14(2)(b) of the Gas Directive as the Applicant does not have at its disposal the necessary technical and physical resources to carry out its tasks under Article 13 of the Gas Directive;

c) According to Article 14(2)(c) of the Gas Directive, the Applicant can only be certified if it has undertaken to comply with a ten-year network development plan monitored by the regulatory authority. According to the Article 22 of the Gas Directive, the transmission system operator shall submit such a ten-year network development plan based on existing and forecast supply and demand every year to the regulatory authority. It must contain efficient measures in order to guarantee the adequacy of the system and the security of supply.

From the purposes of the abovementioned requirements of the Gas Directive, the Secretariat agrees that due to the lack of any agreement between the Transmission System Owner and the operator of the network, the Applicant is not in a position to perform the tasks of a transmission system operator. The Secretariat also points to Article 14(2)(c) of the Gas Directive, which requires the Applicant to commit to comply with a ten-year network development plan. Taking into consideration that such commitment is given in the Applicant's application for certification and, also its charter contains provisions on the development of a ten-year development plan, the Secretariat considers that the Applicant complies with the requirements of Article 14(2)(c) of the Gas Directive;

d) Article 14(2)(e) of the Gas Directive requires the Applicant to demonstrate its ability to comply with its obligations under the Gas Regulation. According to the Gas Regulation, the transmission system operator shall ensure to offer services on a non-discriminatory basis to all network users (Article 14(1)(a)), provide both firm and interruptible third-party access services (Article 14(1)(b)), offer to network users both long and short-term services (Article 14(1)(c)), implement and publish non-discriminatory and transparent capacity-allocation mechanisms (Article 16(2)), implement and publish non-discriminatory and transparent congestions-management procedures which facilitate cross-border exchanges in natural gas (Article 16(3)), regularly assess market demand for new investment and when planning investments, assess market demand and take into account security of supply (Article 16(5)), make public detailed information regarding the services it offers and the relevant conditions applied, together with the technical information necessary for network users to gain effective network access (Article 18(1)), publish reasonably and sufficiently detailed information on tariff derivation, methodology and structure (Article 18(2)), make public information on existing capacities in a user-friendly and standardised manner (Article 18(3)), disclose this information in a meaningful, quantifiably clear and easily accessible manner and on a non-discriminatory basis (Article 18(5)), make public supply and demand information, based on nominations, forecasts and realised flows in and out of the system (Article 18(6)), make public measures taken as well as costs incurred and revenue generated to balance the system (Article 18(6)), provide information on the balancing status of network users (Article 21(2));, take reasonable steps to allow capacity rights to be freely tradable and facilitate such trade (Article 22).

The charter of the Applicant and the Gas Network Rules, adopted by the Commission, provide for the Applicant to fulfill the tasks of transmission system operator; on the other hand, a lease agreement with the Transmission System Owner to which the assets have been transferred to the Applicant is the necessary basis for managing, operating, maintaining and planning of the transmission system. Due to the lack of conclusion of such agreement, the Applicant does not have at its disposal the necessary resources to perform the main activities of a transmission system operator as listed in Article 13 of the Gas Directive as well as to comply with the requirements of the Gas Regulation. Therefore, the Secretariat shares the position of the Commission that the Applicant fails to comply with the requirements of Article 14(2)(e) of the Gas Directive;

e) Article 14(2)(d) of the Gas Directive requires that the Transmission System Owner has demonstrated its ability to comply with its obligations under Article 14(5) of the Gas Directive, namely, cooperate and support to the ISO for the fulfilment of its tasks (Article 14(5)(a)), finance the investments decided by the ISO and approved by the regulatory authority or give its agreement to financing by any interested party including the ISO (Article 14(5)(b)), provide for the coverage of liability relating to the network assets (Article 14(5)(c)), provide guarantees to facilitate financing any network expansions (Article 14(5)(d)).

The Applicant has provided to the Commission no evidence for the fulfilment of the obligations listed under Article 14(5) of the Gas Directive. The Transmission System Owner has not demonstrated that it will finance the investments decided by the ISO or agree to financing, not that it will provide the coverage of liability relating to the network assets and provide guarantees to facility financing of network expansion. Therefore, the Secretariat considers that Article 14(2)(d) of the Gas Directive is not fulfilled;

f) Article 15 of the Gas Directive requires legal and functional unbundling of the Transmission System Owner that means independence at least in terms of the legal form, organisation and decision-making from other activities not relating to transmission. The Commission concludes in the Decision that the charter of the Transmission System Owner fails to establish the latter's independence. According to subparagraph 3.8 (i) of the charter, the conclusion of any agreement by the Transmission System Owner with a value above GEL 100.000 must be approved by the general meeting of shareholders, except the agreement that shall be concluded according to approved business plan, regardless its value. According to subparagraph 3.8 (j) of the charter, the general meeting of shareholders shall adopt the lease agreement with the ISO as well as draft amendments.

The Secretariat notes in the Opinion that for September 1, 2021, the abovementioned subparagraphs "i" and "j" were deleted from the charter of the Transmission System owner by the amendments. However, due to the lack of establishment of a compliance programme, the Secretariat considers that the Transmission System Owner fails to comply with the requirements of Article 15 of the Gas Directive

According to all of the abovementioned, Article 50, paragraph 2 of the Law on Energy and Water Supply, also, Article. 9, paragraph 2 and paragraph 3 of the "Transmission System Operator Certification Rules", adopted by the Commission Resolution N9, dated March 27, 2020, the Commission

Decides:

1. The decision on refusal of Certification Application of the LLC "Georgian Gas Transportation Company" shall be adopted;
2. This Decision enters into force on the day of its announcement at the public hearing of the Commission;
3. This Decision may be appealed at the Tbilisi City Court (Tbilisi, D. Aghmashenebeli Alley, №64), within 1 (one) month of service of the decision.