

**THE NATIONAL CONTROL COMMISSION FOR PRICES AND ENERGY  
GAS AND ELECTRICITY DEPARTMENT  
ELECTRICITY DIVISION AND LAW DIVISION**

To submit to the Commission's  
meeting  
Members of the Commission  
Vyantas Vaitkus  
Viktorija Sankauskaitė  
Žilvinas Klimka

2013-08-26

**CERTIFICATION DOCUMENT  
ON DESIGNATION OF THE TRANSMISSION SYSTEM OPERATOR AND ISSUE OF  
THE ELECTRICITY TRANSMISSION LICENCE**

2013-08-26 No O5-288  
Vilnius

**Introduction**

The National Control Commission for Prices and Energy (hereinafter – the Commission) after assessing the documents, data and the information submitted by the transmission system operator regarding the compliance with the requirements set forth in Article 53 of the Law on Electricity of the Republic of Lithuania (Official Gazette, 2000, No. 66-1984; 2012, No. 17-752) (hereinafter – the Law), as well as the responses of other institutions and undertakings, by Resolution No. O3-138 *Regarding the Unbundling of the Electricity Transmission Activity and the Designation of the Transmission System Operator* as of 29 April 2013 (hereinafter – the Resolution) resolved to:

- State that the unbundling of LITGRID AB transmission activity complies with the provisions of Article 15, Paragraph 8 and Article 53, Paragraphs 2, 3 and 6 of the Law, and LITGRID AB can be designated as the transmission system operator;
- Inform the European Commission about the made decision and to submit the documents justifying such decision;
- Make the final decision on the designation of the transmission system operator abiding by the procedure set forth in Article 25, Paragraphs 6 and 7 of the Law;
- In the case of the altered circumstances due to which the compliance with the requirements on unbundling the transmission activity set forth in Article 53, Paragraphs 2, 3 and 6 of the Law is not ensured, to obligate LITGRID AB to inform the Commission thereof no later than within 3 business days from the date when these circumstances became known to LITGRID AB.

Correspondingly, on 9 May 2013 the Commission informed the European Commission about the made preliminary decision and submitted all available data.

On July 2013, the Opinion of the European Commission as of 4 July 2013 C(2013) 4247 final regarding the unbundling of LITGRID AB was received, whereby the European Commission provided the following essential comments and proposed that the Commission would evaluate them while making the final decision:

- To ascertain whether the Prime Minister has the power of making influence, for instance, by giving direct instructions when the Ministers are making the decisions related to LITGRID AB and

*UAB Visagino atominė elektrinė*, which would be more beneficial to the interests of the latter, however they would be not beneficial to other users of the transmission grid of LITGRID AB.

- To ascertain whether (1) the Ministry of Energy is not exercising any right with respect to *AB Lietuvos dujos*, or (2) at least there is no conflict of interests due to which the Ministry of Energy could exercise control over LITGRID AB in seeking for more advantageous conditions to *AB Lietuvos dujos* as compared to other network users.

- To indicate the reasons due to which the function of the supply of the liquefied natural gas currently has to be performed by the Lithuanian Oil Products Agency, which is subordinate to the Ministry of Energy, and what specific actions are currently performed by this designated supplier of the liquefied natural gas. The European Commission is suggesting to respectively evaluate the activity performed by the Lithuanian Oil Products Agency and later – by *UAB LitGas* in order to ensure that there is no conflict of interests and that such conflict of interests would not occur in the future;

- The European Commission also noted that some of the persons, who currently are the members of the Board of *UAB LitGas*, are the representatives of the Ministry of Energy, and this issue will have to be solved after launching the Liquefied Natural Gas Terminal into operation.

The Commission respectively addressed LITGRID AB by Official Letter Ref. No. R2-2163 as of 17 July 2013 and the Ministry of Energy by Official Letter Ref. No. R2-2096 as of 12 July 2013, and requested to submit the information needed to evaluate the conclusions of the European Commission:

1. By taking into consideration that pursuant to Article 96 of the Constitution of the Republic of Lithuania (Official Gazette, 1992, No.220, No. 33-1014) the Ministers are subordinate to the Prime Minister, it was requested to indicate whether the Ministry of Energy since 1 October 2012, when LITGRID AB had been separated from the group of companies *UAB Visagino atominė elektrinė*, and up till now has received from the Prime Minister any assignments or commitments related to the interests of *UAB Visagino atominė elektrinė*, and if this was the case, what these assignments or commitments were. What measures have been taken to avoid a possible conflict of interests among the companies involved in the production, supply and transmission activities and controlled by the different Ministries however with the possibility by the Prime Minister to give assignments or commitments regarding the activities or interests of these companies. Respectively, LITGRID AB was requested to indicate whether the Ministry of Energy since 1 October 2012, when LITGRID AB had been separated from the group of companies *UAB Visagino atominė elektrinė*, and up till now has received from the Prime Minister any assignments or commitments related to the interests of *UAB Visagino atominė elektrinė*, *AB Lietuvos dujos*, *Lithuanian Oil Products Agency*, *AB Klapdėdos nafta* or *UAB LitGas*, and if this was the case, what these assignments or commitments were.

2. What measures are taken by the Ministry of Energy to ensure avoiding the conflict of interests related to the Ministry's control over LITGRID AB and the package of the shares of *AB Lietuvos dujos* held by the Ministry of Energy so that *AB Lietuvos dujos* would not have more beneficial conditions than other users of the transmission system of LITGRID AB? LITGRID AB was requested to indicate the amounts, which had been paid by *AB Lietuvos dujos* as by the user of the electricity transmission services, including the system services, rendered by LITGRID AB in 2012 and the 1<sup>st</sup> half of 2013. If LITGRID AB received other revenues from *AB Lietuvos dujos*, for what services and what amount was paid during the mentioned time periods?

3. With regard to the information provided by the Ministry of Energy in Official Letter No. (11.2-13)3-4847 as of 23 November 2012 and in Official Letter No. (11.2-13)3-1221 as of 28 March 2013, it was requested to explain in a more detailed and comprehensive way the reasons for appointing the Lithuanian Oil Products Agency subordinate to the Ministry of Energy to perform the function of the liquefied natural gas supply, and the specific actions, which are currently carried out by this Agency in relation to the planned natural gas supply to Lithuania. Besides, the Ministry of Energy was asked to specify what type of activity is presently carried out by *UAB LitGas*, and whether in the nearest future it is being planned to make any decisions related

to the possible future activity of the liquefied natural gas supply by *UAB LitGas*, and if this is the case, whether this company will be transferred to the management by another Ministry and whether the members of the Board of *UAB LitGas*, who are also the representatives of the Ministry of Energy, will be changed, and when it is planned to do so.

4. What amounts were paid by *AB Lietuvos dujos* as by the user of the electricity transmission services, including the system services, rendered by LITGRID AB in 2012 and the 1<sup>st</sup> half of 2013? If LITGRID AB received other revenues from *AB Lietuvos dujos*, the company was requested to indicate for what services and what amount was paid during the mentioned time periods.

5. It was requested to specify other possibly unmentioned reasons and circumstances, which would be helpful in responding to the comments provided in the Opinion of the European Commission.

The Ministry of Energy provided responses to the mentioned questions by its Official Letter Ref. No. (17.3-16)3-2669 as of 1 August 2013, and LITGRID AB – by its Official Letter Ref. No. SD-3550 as of 31 July 2013 (see 2 and 4 attachment). These responses are provided herein below in evaluating the comments by the European Commission (see sub-paragraphs 2.2.1, 2.6.1, and 2.6.2).

It should be noted that the Commission, with regard to the deadline for making the final decision regarding the designation of the transmission system operator set forth in Paragraph 2, Article 3 of Regulation (EC) No. 714/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the network for cross-border exchanges in electricity and repealing Regulation (EC) No 1228/2003 (Official Journal 2009, L series, p. 15) and in Article 25, Paragraph 7 of the Law, has evaluated the Opinion by the European Commission, as well as the responses received from the Ministry of Energy and LITGRID AB.

Moreover, in the cases when the changes occurred in the Boards of LITGRID AB and other companies, which were analysed in performing the procedure of designation of the transmission system operator, and in the managements structure of the group of companies *UAB Visagino atominė elektrinė*, the information provided below has been updated and supplemented as compared to the information provided in the Certification document No. O5-124 *Regarding the Unbundling of the Electricity Transmission Activity and the Designation of the Transmission System Operator* submitted on 19 April 2013, however in the essence this makes no influence on the decision made by the Resolution of the Commission.

## **1. General provisions**

### *1.1. Legal background*

Article 9 of *Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity repealing Directive 2003/54/EC* (OJ 2009, L 211, p. 55) (hereinafter – the “Directive”) provides that a Member State, which has chosen the model of full ownership unbundling, from 3 March 2012 has to ensure unbundling of the transmission activity from the activities of production and supply and the commercial interests of these activities, including unbundling of the ownership of the transmission activity.

The provisions of the Directive have been transposed into the *Law* passed on 7 February 2012.

The objectives of the Law are set forth in Article 3 of the Law, among these – to ensure independence of the electricity transmission activity and the electricity distribution activity and their effective unbundling from the commercial interests of other activities in the electricity sector, to establish the legal framework for the reorganization of the vertically integrated undertakings. Article 53 of the Law has embedded the requirements for the Transmission System Operator in order to ensure full separation of the transmission system operator from the vertically integrated

undertaking, including, but not limited to, unbundling the control over the transmission system operator and the electricity transmission activity, including the transfer of the proprietary rights to the assets used in the electricity transmission activity to the transmission system operator.

Abiding by Article 3 of *Regulation (EC) No 714/2009 of the European Parliament and the Council of 13 July 2009 on conditions for access to the network for cross-border exchanges in electricity and repealing Regulation (EC) No 1228/2003* (OJ 2009, L 211, p. 15, hereinafter – the “Regulation”), Article 8, Paragraph 9, Item 13 of the *Law on Energy of the Republic of Lithuania* (Official Gazette “Valstybės žinios”, 2002, No 56-2224; 2011, No 160-7576), Article 9, Paragraph 4, Item 5 and Article 25 of the Law as well as Item 6 of the *Rules on licensing the activities in the electricity sector approved by Resolution No 723 of the Government of the Republic of Lithuania as of 20 June 2012* (Official Gazette “Valstybės žinios”, 2012, Nr. 71-3660), the *Regulations on the procedure and conditions for submitting the data and information for the certification of the Transmission System Operator* (hereinafter – the “Certification Regulations”) approved by *Resolution No O3-51 of the National Control Commission for Prices and Energy* (hereinafter – the “Commission”) as of 19 March 2012 (Official Gazette “Valstybės žinios”, 2012, No 34-1698), the Commission as the national regulatory authority should perform an assignment to ensure effective unbundling of the activities in the electricity sector by ensuring independence of the electricity transmission activity and the electricity distribution activity from the interests of the production and supply activities and to respectively certify the energy undertaking, which has complied with the requirements of the Law on unbundling the transmission activity, to operate as the transmission system operator.

## 1.2. Factual circumstances

Abiding by Article 15 of the Law and the Commission’s *Resolution No O3-34 on issuing the electricity transmission license to LITGRID Turtas AB as of 24 February 2011* (according to the Commission’s *Resolution No O3-74 on amending the electricity transmission license to LITGRID AB as of 14 April 2011* the name of LITGRID Turtas AB was changed into LITGRID AB), LITGRID AB is the transmission system operator managing the high voltage (110-330 kV) electric grid in Lithuania and maintaining stable and reliable operation of the entire power system.

Abiding by Articles 23 and 30-33 of the Law, LITGRID AB is also responsible for performing the national balancing function in the territory of the Republic of Lithuania, provision of the system services, operation of the interconnection lines with the power systems of other countries, their maintenance, control and development in order to reduce the limitation of transfer capability in the transmission network and by taking into consideration the demand of the power system and the electricity network users. In addition to that, abiding by *Resolution No 449 of the Government of the Republic of Lithuania on the approval of the project conception and the strategic trends for implementing the project for interconnection of the power system of the Republic of Lithuania with the electricity networks of Continental Europe for their synchronous operation as of 25 April 2012* (Official Gazette “Valstybės žinios”, 2012, Nr. 17-752), LITGRID AB, as the transmission system operator, has been appointed to act as the project development company in the project for interconnection of the power system of the Republic of Lithuania (together with the power systems of other Baltic states) with the electricity networks of Continental Europe for their synchronous operation. In accordance with Item 9 of the *Procedure Regulations for Supplying Public Obligation Services* approved by *Order No 1-215 of the Energy Minister of the Republic of Lithuania as of 24 November 2009* (Official Gazette “Valstybės žinios”, 2009, No 140-6159; 2010, No 122-6227), LITGRID AB was also appointed to act as the administrator of the income earned from the public service obligations and till 1 January 2013 performed the functions of collection, disbursement and administration of the public service obligations’ income, which are not related to the functions of the electricity production or supply. Till 27 September 2012 LITGRID AB was a part of the vertically integrated undertaking *Visagino Atominė Elektrinė UAB*, which has control over *Lietuvos Energija AB* performing the electricity production activity (and the

latter has control over 100 percent of the shares of *Energijas Tiekimas UAB* performing the electricity supply activity), and over AB LESTO performing the electricity distribution activity.

Pursuant to Paragraph 2, Article 80 of the Law, until the Commission approves the appropriate compliance with the requirements on the independence of the Transmission System Operator and the conditions of unbundling the activities, LITGRID AB is considered to be temporarily appointed to perform the transmission activity.

As it has been already mentioned, Article 53, Paragraph 2 of the Law provides that, no later than from 3 March 2012, the vertically integrated undertaking and the Transmission System Operator have to ensure full unbundling of the Transmission System Operator from the vertically integrated undertaking.

The Commission by its *Resolution No O3-68 on unbundling the transmission activity performed by LITGRID AB as of 19 March 2012* stated that the transmission system operator LITGRID AB had not complied with the requirements on unbundling the transmission activity set forth in Article 53, Paragraphs 2, 3 and 6 (hereinafter – the “Requirements”) and also obligated LITGRID AB no later than by 30 March 2012 to submit to the Commission a comprehensive description of the method chosen for unbundling the activities and control, which are not related to the electricity transmission, from the activities of the vertically integrated undertaking, together with the detailed plan of actions to be taken (hereinafter – the “Plan”).

On 30 March 2012 LITGRID AB submitted the Plan by its Official Letter Ref. No SD-1397 where the deadline for implementing the Requirements – by 31 December 2012 – was set.

The Commission, by taking into account the deadline set forth in the Directive and, respectively, in the Law, until which the activities unrelated to the electricity transmission should have been unbundled, has drawn the conclusion that all actions have to be performed urgently, however LITGRID AB in the submitted Plan has not used all conditions to shorten the deadlines provided in the laws, therefore the Commission by *Resolution No O3-89 on the Plan for unbundling the transmission activity by LITGRID AB as of 11 April 2012* obligated LITGRID AB to finalize all actions deemed necessary to ensure the compliance with the Requirements no later than by 1 October 2012, and to inform the Commission thereof.

LITGRID AB, by executing the Commission’s obligation, by its Official Letter Ref. No SD-4140 as of 1 October 2012 (hereinafter – the “Official Letter”) provided the Commission with the information on full unbundling of the undertaking from the vertically integrated group of companies and from the former shareholder of LITGRID AB shares – *Visagino Atominē Elektrinė UAB*. Moreover, LITGRID AB by its Official Letters Ref. No SD-4515 as of 23 October 2012, No SD-5073 as of 3 December and No SD-1477 as of 29 March 2013 provided the Commission respectively with the revised data which were requested by the Commission’s Official Letters Ref. No R2-2399 as of 17 October 2012, No R2-766 as of 8 March 2013 October 2012. LITGRID AB requested the Commission to designate LITGRID AB as the transmission system operator and to issue the permanent licence for the electricity transmission operations. The Commission respectively has been assessing the compliance of LITGIRD AB unbundling with the Requirements of the Law on unbundling the electricity transmission activities and the compliance of LITGRID AB with the requirements of the licensed activity.

## **2. Regarding the Compliance with the Requirements**

*2.1. Item 1, Paragraph 3, Article 53 of the Law (corresponding to Article 9 (1)(a) of the Directive): The Transmission System Operator by the proprietary rights shall manage the transmission grid, its technological connected facilities and other assets necessary to properly perform the electricity transmission activity.*

The Commission, in line with the provision of Article 53, Paragraph 3, Item 1 of the Law, and, in addition, Article 15, Paragraph 5, Item 1 and Paragraph 8 of the Law, Item 6 of the Licensing Rules, the requirements of the *Procedure Regulations for assessing the economic operator’s technological, financial and management capability* (hereinafter – the “Procedure

Regulations”) approved by the Commission’s *Resolution No O3-6 as of 29 January 2009* (Official Gazette “Valstybės žinios”, 2009, No 15-635; 2011, No 73-3538) has to evaluate the technological capability of LITGRID AB.

Pursuant to Item 7.4 of the Procedure Regulations, the technological capability of the economic operator is evaluated as sufficient when the equipment managed by the economic operator as well as the economic operator’s rights to the equipment (including the content of these rights, their validity period and other important criteria) are appropriate and sufficient to perform the respective regulated activity according to the procedure set forth by the laws, and, pursuant to Item 9.2.1 of the Procedure Regulations, the economic operator, whose technological capability is being evaluated, has submitted to the Commission the Certificate issued by the State Energy Inspectorate under the Ministry of Energy, granting him the right to perform the operation of the relevant energy equipment or a copy of the long-term Agreement on the operation and maintenance of the mentioned equipment concluded with an undertaking which has got the Certificate giving the right to perform this activity. Pursuant to Item 9.2.2 of the Procedure Regulations, the economic operator, whose technological capability is being evaluated, shall submit to the Commission the information about the equipment managed by him (Annex 1 to the Procedure Regulations) containing the following:

- The form of managing the equipment (owned by him by the proprietary right or used by other legitimate methods (by indicating the method)), which shall be specified in accordance with the Certification or Certificate evidencing the proprietary rights and issued by the state company Center of Registers or in accordance with the Agreement on the legitimate management of the equipment or any other documents evidencing legitimate management or use of the equipment;
- The undertaking (division, structural division) performing operation and maintenance, which shall be indicated in line with the Certificate issued by the State Energy Inspectorate under the Ministry of Energy, granting the right to perform the operation and maintenance of the relevant energy equipment, or a copy of the long-term Agreement on the operation and maintenance of the mentioned equipment concluded with an undertaking, which has got such Certificate;
- The place of business, which shall be indicated in line with the location on the map and/or other documents. There shall be specified the municipality and the residential area (city, town, village) where the equipment is installed;
- The projected territory where the regulated activity will be performed, which shall be defined in line with the assumed territory of this activity specified in the economic operator’s application for issuing or amending the licence and by taking into consideration the location of the equipment managed by the economic operator.

Pursuant to the requirements set forth in the Procedure Regulations *on the assessment of the technological capability of the undertaking*, LITGRID AB by its Official Letter Ref. No SD-4140 as of 1 October 2012 and the Official Letter-2 Ref. No SD-4515 as of 23 October 2012 submitted the following information:

- *The list of energy facilities managed by LITGRID AB by the proprietary right* (Annex 5.11 to the Official Letter, Annex 8 (in English) to the Official Letter-2). In the list there are indicated all substations of 330, 110/35/10, 110/20, 110/10, 110/6 kV switchgears, 330/110/10kV substations (TS), 330 kV overhead lines, 110 kV overhead and cable lines located in the territory of the Republic of Lithuania;
- *Certification No E-1633 to LITGRID Turtas AB (company code 302564383) to operate the electric equipment issued by the State Energy Inspectorate under the Ministry of Energy*. It should be mentioned that the Certificate expired on 30 November 2012, however LITGRID AB by its Official Letter Ref. No SD-5073 as of 3 December 2012 submitted a copy of the *extended Certificate No E-1633 to LITGRID AB (company code 302564383) to operate the electric equipment issued by the State Energy Inspectorate under the Ministry of Energy (Annex 8 to the Certificate)*. It should be mentioned that the Certificate will expire on 26 November 2017. The Certificate provides that in accordance with the Law on Energy of the Republic of Lithuania, the rights is given to perform the following works of electric equipment operation:

1. Operation of the electricity transmission lines up to 400 kV (excluding repairs and testing);
2. Technological control and maintenance of switchgears and substations up to 400 kV;
3. Operation of relay protection equipment, automation and control systems in the electricity network up to 400 kV;
4. Operation of electric installations up to 1000 V.

• *The information about the equipment managed by LITGRID AB – i.e. filled in Annex 1 to the Procedure Regulations Assessment of the technological capability of the economic operator LITGRID AB, containing the information on the equipment managed by the economic operator, management form, undertakings performing operation and maintenance, location of the equipment and the territory of the licensed activity– the Republic of Lithuania (Annex 4.3 to the Official Letter).*

Table 1. Technological assessment of the undertaking

Equipment managed by the undertaking	Management form	Operation and maintenance	Place of business	Territory of the licensed activity
High voltage electricity transmission networks and other related and functioning in the compatible mode electric equipment assigned for electricity transmission and technological equipment connected to them.	Proprietary right (100 percent)	LITGRID AB	The Republic of Lithuania	The territory of the Republic of Lithuania

***With regard to what has been said hereinabove, it should be stated that LITGRID AB by the proprietary rights manages the transmission network, its technological connected facilities and other assets necessary to properly perform the electricity transmission activity, and complies with one of the requirements for issuing the license for the transmission activity set forth in Article 15, Paragraph 5, Item 1 of the Law.***

*2.2. Article 53, Paragraph 3 Item 2 of the Law (corresponding to Article 9(1)(b)(i) of the Directive): The same person or persons have no right to directly or indirectly control the entity performing the production and /or supply activity and to directly or indirectly control the transmission system operator or to have any other rights in respect of the transmission system operator.*

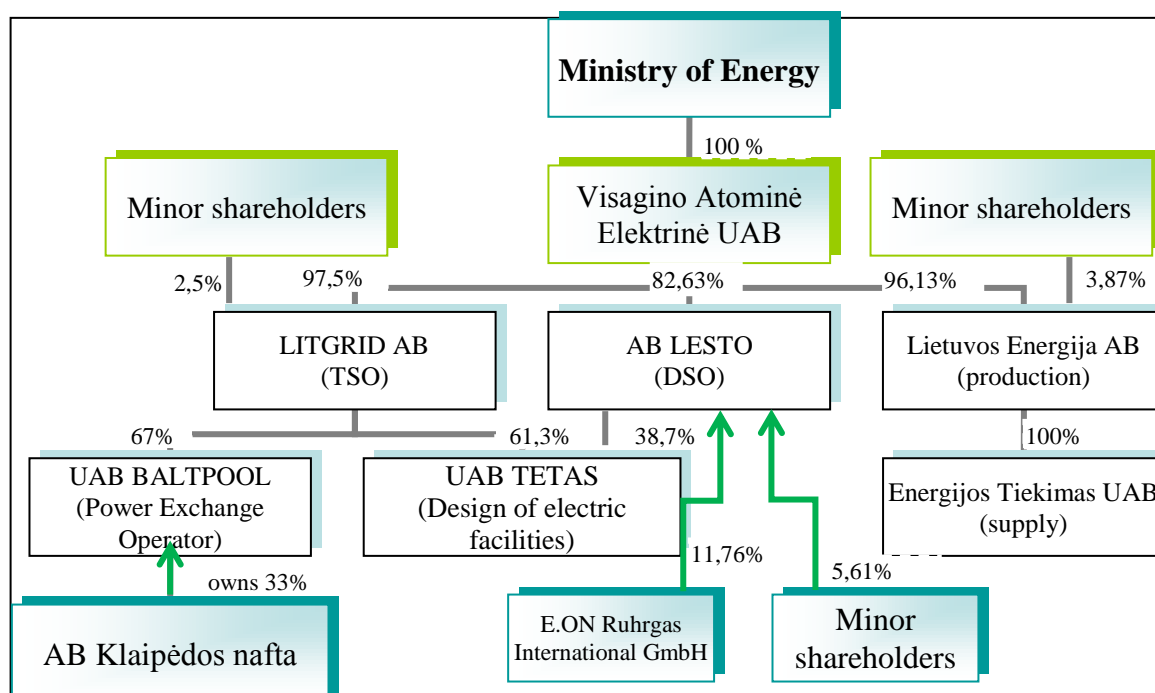
*Article 53, Paragraph 3 Item 3 of the Law (corresponding to Article 9(1)(b)(ii) of the Directive): The same entity or entities have no right to directly or indirectly control the Transmission System Operator and to directly or indirectly control the undertaking performing the production and /or supply activity or to have any other rights in respect of such undertaking.*

Till 27 September 2012, the Transmission System Operator LITGRID AB was directly controlled by *Visagino Atominė Elektrinė UAB*, which by the proprietary rights owned 97.5 percent of LITGRID AB shares. *Visagino Atominė Elektrinė UAB* also exercises control over the undertakings performing the activities of electricity production as well as its distribution and supply – *Visagino Atominė Elektrinė UAB* directly owns 96.13 percent of *Lietuvos Energija AB*<sup>1</sup> shares and 82.6 percent of *LESTO AB* shares. In addition to that, *Visagino Atominė Elektrinė UAB* has indirect

<sup>1</sup> Since 5 August 2013 *Lietuvos energija, AB* became *Lietuvos energijos gamyba, AB*.

control over *Energijos Tiekimas UAB* (100 percent of *Energijos Tiekimas UAB* shares are owned by *Lietuvos Energija AB*), as well as other companies which are not involved in the activity of the electricity or natural gas production, supply or transmission - *UAB Kauno energetikos remontas*, NT VALDOS UAB, *UAB Elektros tinklo paslaugos*, UAB Centre of Technologies and Innovations, *UAB Gotlitas*, Public Education Institution *Energy Training Centre* (see Figure 2). 100 percent of *Visagino Atominė Elektrinė UAB* shares by the proprietary rights are owned by the Republic of Lithuania and were assigned to the Energy Ministry of the Republic of Lithuania for their management by the right of trust.

Figure 1. Structure of a vertically integrated undertaking till 27 September 2012 (the structure presents the undertakings over which the Transmission System Operator and undertakings engaged in production and supply activities hold a control).



After the Government of the Republic of Lithuania had passed the *Resolution No 826 on establishing the public limited liability company and investment of the state-owned assets as of 4 July 2012* (Official Gazette “Valstybės žinios”, 2012, No 81-4238) (hereinafter – the “Resolution”), on 25 July 2012, for the purposes of managing LITGRID AB, EPSO-G UAB (company code 302826889, registered address: A. Juozapavičiaus str. 13, LT-09311, Vilnius) was established and on the same day registered in the Register of Legal Entities. 100 percent of the shares of the newly established company by the right of trust are managed by the Ministry of Energy of the Republic of Lithuania, and on 27 September 2012, 4 067 163 632 of ordinary intangible shares of *Visagino Atominė Elektrinė UAB* (company code -301844044, registered address: Žvejų str. 14, Vilnius) with the nominal value of 1.00 LTL each and giving 100 percent of votes at the general shareholders meeting of *Visagino Atominė Elektrinė UAB*, which up till then had been owned by the state by the proprietary rights and managed by the Ministry of Energy by the rights of trust, were assigned to the Ministry of Economy. Respectively, to implement the provisions of the Resolution, on 27 September 2012, 491 736 153 ordinary intangible shares of LITGRID AB with the nominal value of 1.00 LTL each and giving 97.5 percent of votes at the general shareholders meeting of LITGRID AB were by reimbursement assigned to EPSO-G UAB. The remaining 2.5 percent of LITGRID AB shares are owned by the minor shareholders and are

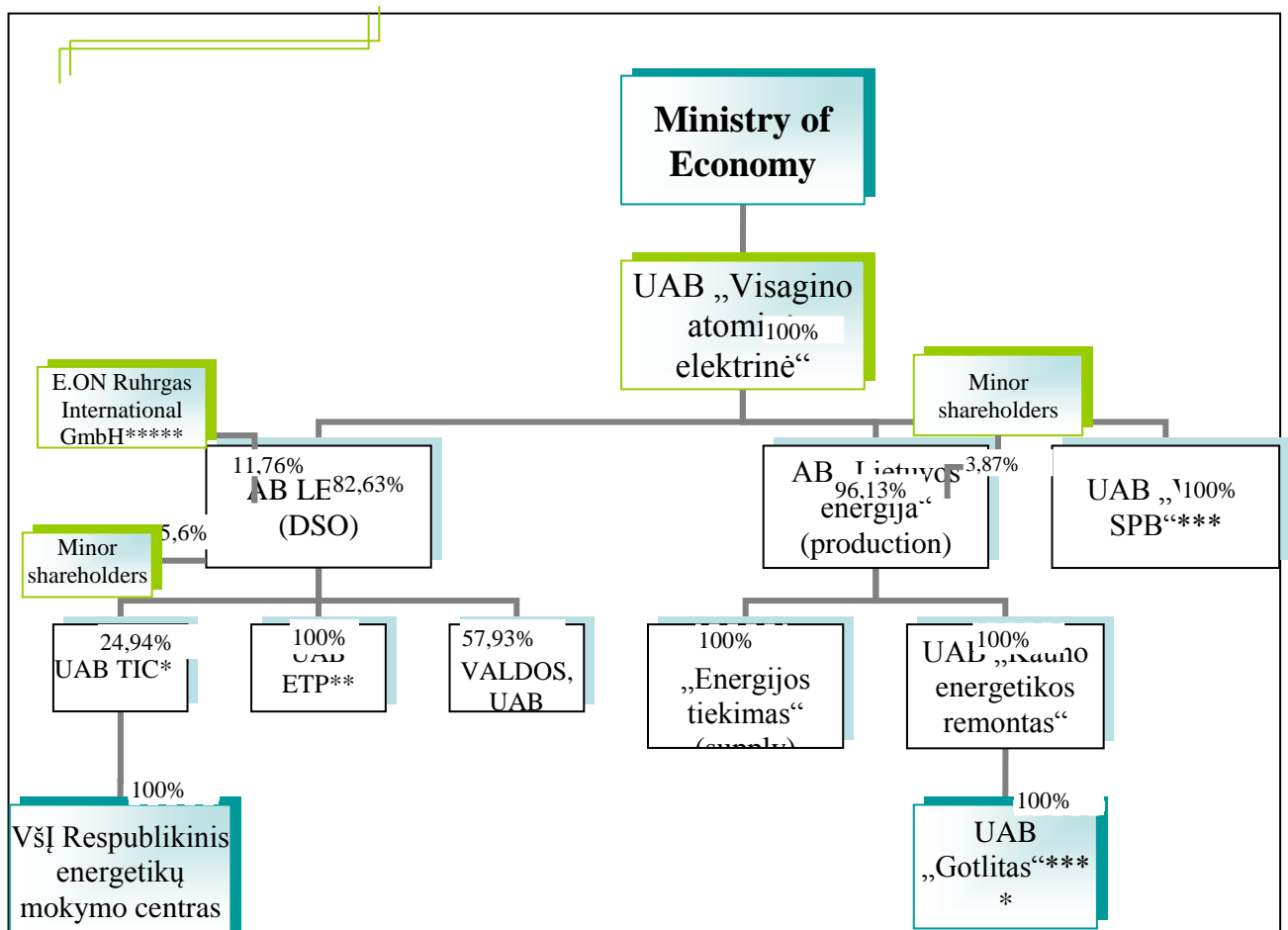


traded at NASDAQ OMX Vilnius Stock Exchange, therefore the ownership of these shares is varying.

The documents evidencing the transfer of the shares by reimbursement:

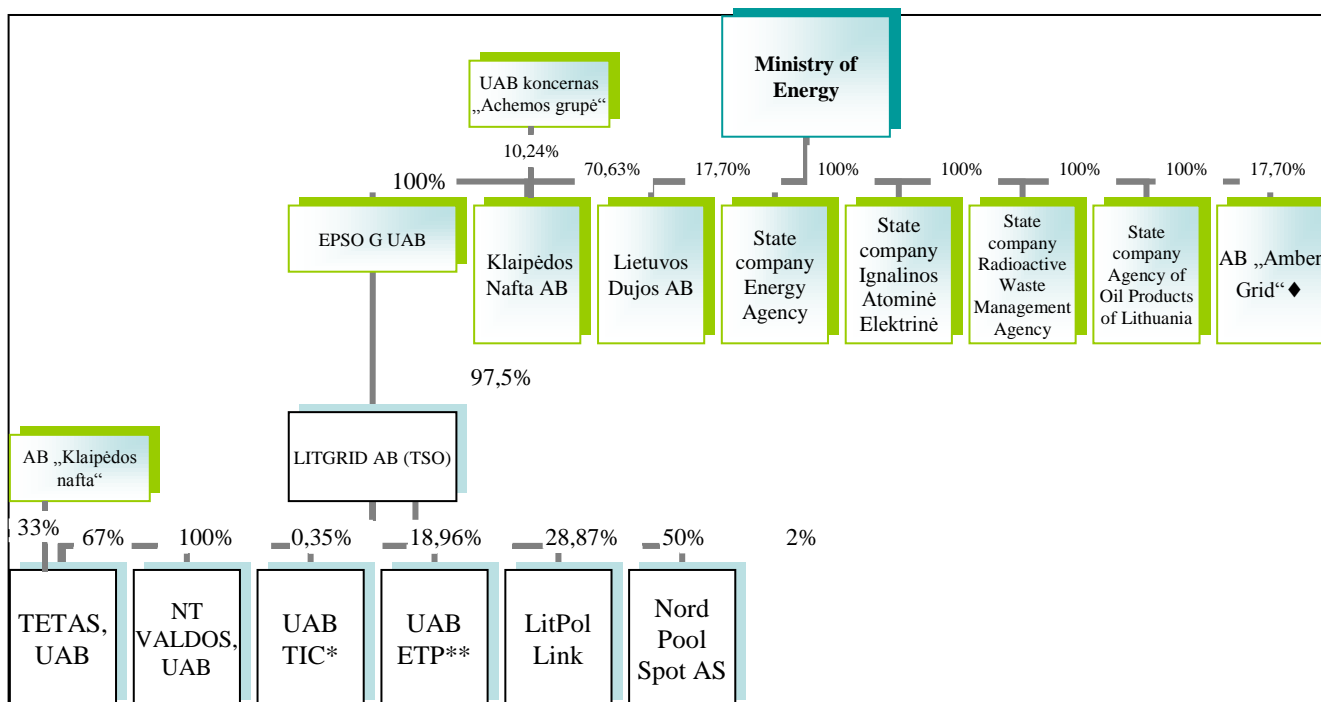
- Copies of the Notification on Material Event about the assignment of *Visagino Atominė Elektrinė UAB* shares to the Ministry of Economy and the Notification on Material Event about the assignment of LITGRID AB shares to EPSO-G UAB (Annex 1 to the Official Letter);
- Copies of the Notification on the Acquisition or Disposal of the Shares (Annex 2 to the Official Letter);
- Excerpts from Central Securities Depository of Lithuania (Annex 3 to the Official Letter);
- Excerpts from the Register of Legal Entities (Annexes 9-13 to the Certificate).

Figure 2. Control over the undertakings after the unbundling of LITGRID AB from the vertically integrated undertaking on 27 September 2012<sup>2</sup>.



\*Technology and Innovation Center; \*\*Electricity Network Services; \*\*\* The company's main activity is implementation of the national investment functions and responsibilities of a new nuclear power plant project of the Republic of Lithuania (JAR data); \*\*\*\* The company's principal activities are the hotels, rentals, services, and other services not prohibited by law to those activities directly associated activities; \*\*\*\*\* electricity, gas, utilities and renewable energy company.

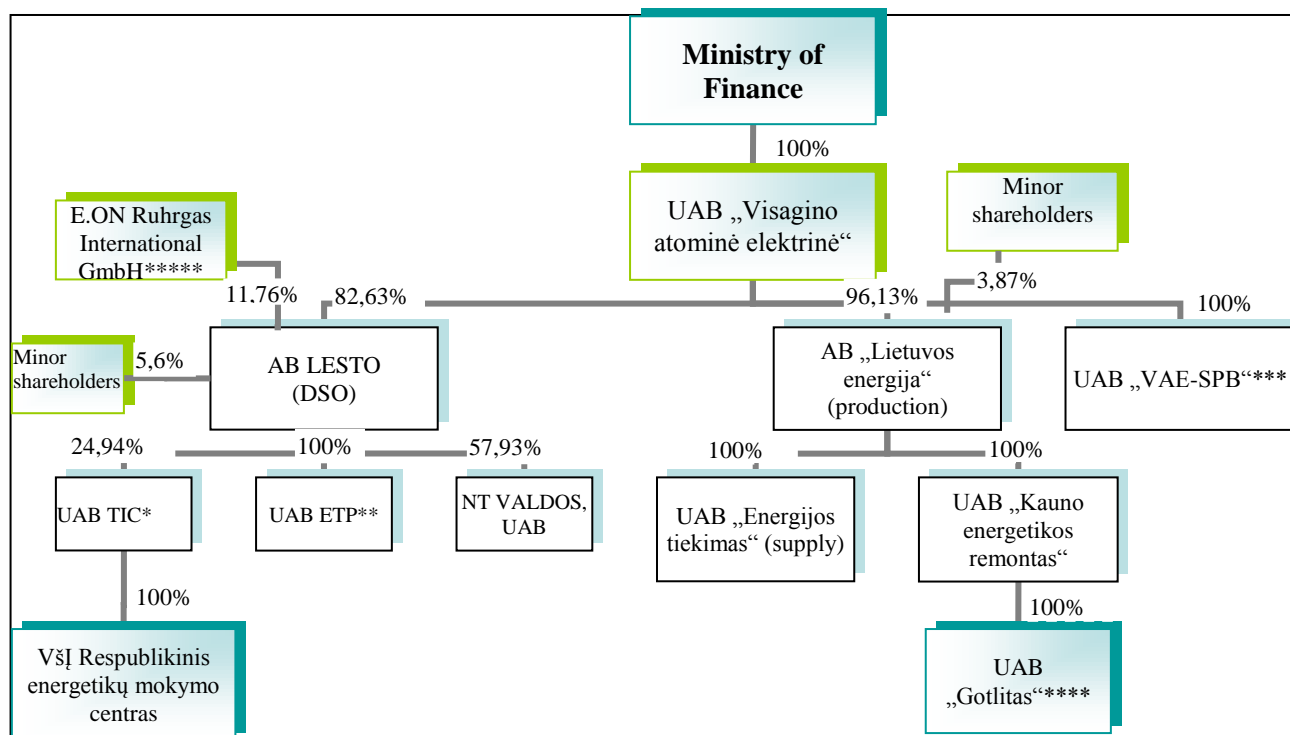
<sup>2</sup> Taken into consideration exchanges of UAB TETAS and UAB Elektros tinklo paslaugos shares between LITGRID AB and AB LESTO which were performed on 11-15 of January 2013.



♦The fixed-date licence to perform the transmission activity was issued to *AB Amber Grid* by the Commission's Resolution No. O3-292 *Regarding Issuing the Natural Gas Transmission Licence to AB Amber Grid* as of 18 July 2013 and, respectively, the licence issued to *AB Lietuvos dujos* to perform the transmission activity was withdrawn by the Commission's Resolution No. O3-311 *Regarding Termination of the Validity of the Natural Gas Transmission Licence of AB Lietuvos dujos* as of 18 July 2013.

It should be mentioned that the Government of the Republic of Lithuania by Resolution No. 141 as of 13 February 2013 *regarding the transfer of the state-owned shares* and the amendment to Resolution No 826 as of 25 July 2012 *On establishing the public limited liability company and investment of the state-owned assets* in order to assure proper and efficient management of energy undertakings has transferred to the Ministry of Finance state-owned 4,067,163,632 ordinary intangible shares of *Visagino Atominė Elektrinė UAB* with the nominal value of LTL 1.00 each and giving 100 percent of votes at the general shareholders meeting of *Visagino Atominė Elektrinė UAB* for possession, use, and dispose of; the shares till then had been owned by the state by the proprietary rights and managed by the Ministry of Economy by the rights of trust. This is confirmed by the extracts from the Register of Legal Entities (Annexes 9-13 to the Certificate).

Figure 3. Control over *Visagino Atominė Elektrinė UAB* group of undertakings as of 17 February 2013



It should be mentioned that the Minister of Finance by Order No. 1K-205 as of 7 June 2013 approved the Corporate Governance Guidelines of the group of the energy undertakings controlled by the State<sup>3</sup> (hereinafter – the Guidelines), which in the essence provide the foundation for establishing the uniform management and control system by applying the uniform principles in managing the programmes, processes and the projects.

According to the new management model, the Supervisory Council and the Boards will be elected in the patronising company *UAB Visagino atominė elektrinė* and in the subsidiaries *AB LESTO* and *Lietuvos energijos gamyba AB*, which both are listed at the Securities Exchange and are subordinate to the patronising company. The Supervisory Council will be elected by the general shareholders meeting, it will consist of 7 members, among them 3 will be independent, and 4 will represent the Ministries of Finance, Energy, Economy and the Chancellery of the Government. The Supervisory Council will elect the Board of the company for a five-year tenure and consisting of 5 members, and the latter among themselves will elect the Chairman. The Chief Executive Officer of the company can serve as the Chairman as well.

It is being planned that during the reorganization of the management structure, the decision will be made on transferring the project of Visaginas Nuclear Power Plant from the patronising company *UAB Visagino atominė elektrinė* to the subsidiary *UAB VAE SPB*, but by keeping the corporate governance functions of the group of companies at the patronising company. It is being planned to finish these changes by 1 October 2013<sup>4</sup>. Respectively, numerous changes have been made in the Boards of the companies and the formation of the Supervisory Council is in progress (see Table 2). It is believed that the changes will continue by 1 October when a new managing and control system is established as set forth in the Guidelines.

In addition to that, the Resolution of the Government No. 730 *Regarding the Transfer of the Shares of the Company Indirectly Controlled by the State* (hereinafter – *Resolution*) as of 21 of August 2013 has been adopted. The Resolution stipulates that in the nearest future the control over *UAB LitGas*, which had been established by *AB Klaipėdos nafta* responsible for the project of the liquefied natural gas terminal, will be assigned either to *UAB Visagino atominė elektrinė* or to the company controlled by the latter.

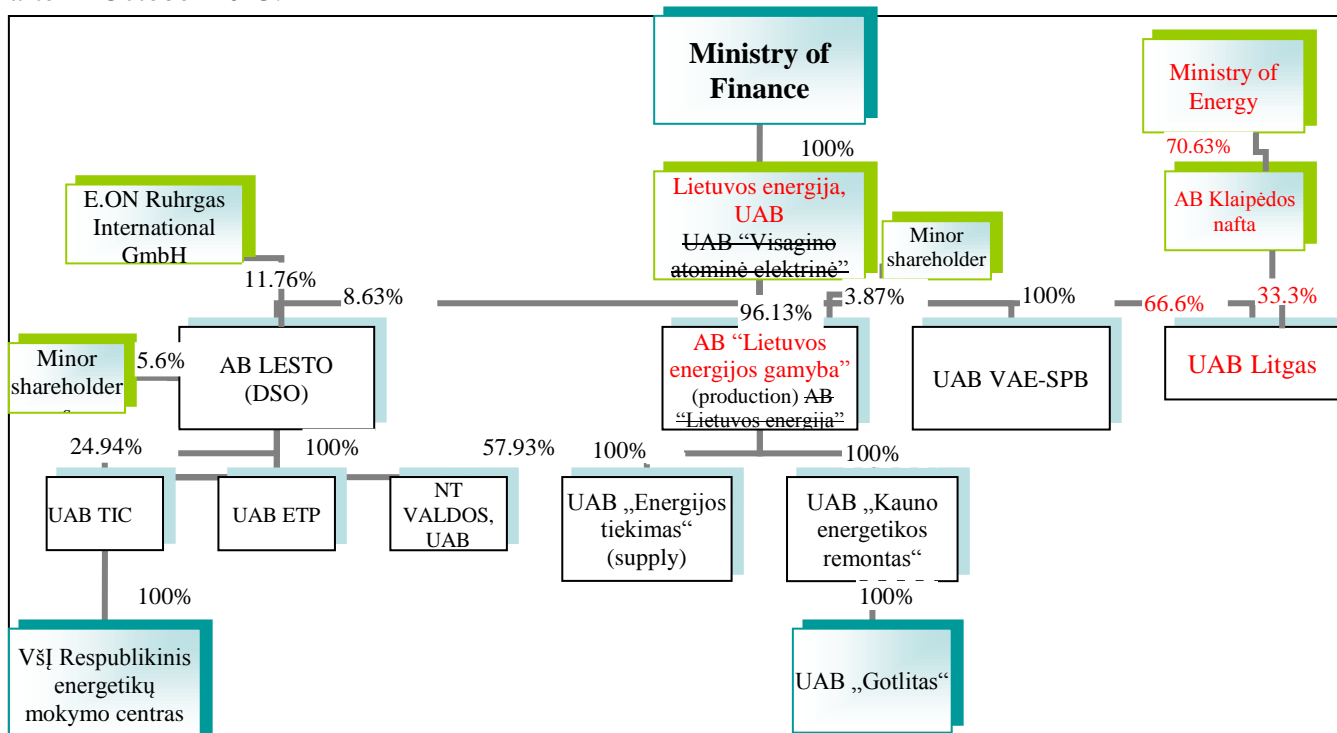
<sup>3</sup> [http://www.vae.lt/files/2013-06-07\\_KORPORATYVINIO\\_VALDYMO\\_GAIRES\\_%28FM\\_1K-205%29.pdf](http://www.vae.lt/files/2013-06-07_KORPORATYVINIO_VALDYMO_GAIRES_%28FM_1K-205%29.pdf)

<sup>4</sup> Source of information – Ministry of Finance: [http://www.finmin.lt/web/finmin/naujienos?erp\\_item=naujiena\\_002008](http://www.finmin.lt/web/finmin/naujienos?erp_item=naujiena_002008)

In the Resolution it is projected to commit the Ministry of Finance, which by the right of trust is managing the shares of *UAB Visagino atominė elektrinė* owned by the State by the proprietary right, to make the expedient decisions necessary for the acquisition of the newly issued shares of UAB LitGas, which will be done either by *UAB Visagino atominė elektrinė* or the company controlled by the latter.

After the increase of UAB LitGas authorised capital, this would give to *UAB Visagino atominė elektrinė* or to the company controlled by the latter no less than 2/3 of shares and votes at the UAB LitGas general shareholders meeting, and it is projected to pay the costs of the emission of the shares by the monetary contribution.

Figure 3<sup>1</sup>. Preliminary control over the group of companies *UAB Visagino atominė elektrinė* after 1 October 2013.



The Transmission System Operator's unbundling from the vertically integrated undertaking has been performed by applying Article 53, Paragraph 6 of the Law (corresponding to Article 9(6) of the Directive), providing that if an entity is a state institution, office, organization or other public entity, it is considered that unbundling of the transmission activity has been properly implemented if the Transmission System Operator and other undertakings performing the activity of the electricity production or supply are directly or indirectly controlled by the separate state institutions, offices, organizations or other public entities.

The Transmission System Operator and other entities performing the commercial activity of the electricity production and supply were assigned to the control area by the separate state institutions. The control over the production, supply and distribution activities was transferred to the Ministry of Finance, the control over the transmission activity – to the Ministry of Energy.

The Ministry of Finance by means of the 100 percent ownership of the shares of *Visagino Atominė Elektrinė UAB* exercises indirect control over the activities of the production, supply and distribution, while the Ministry of Energy by means of the 100 percent ownership of EPSO-G shares exercises indirect control over the transmission activity.

It should be noted that the Ministry of Energy and the Ministry of Finance are two state authorities, which are not subordinate to each other and the spheres of activity thereof are clearly divided in the Laws of the Republic of Lithuania. Article 98 of the Constitution (the daily paper *Lietuvos aidas* 1992, No. 220; Official Gazette "Valstybės žinios", 1992, No 33-1014) provides that the Minister is in charge of the Ministry and solves the issues assigned to the competence of the

Ministry; Article 26 of the Law on the Government of the Republic of Lithuania (Official Gazette “Valstybės žinios”, 1994, No 43-772; 1998, No 41(1)-1131) *inter alia* provides that the Minister is in charge of the Ministry, solves the issues assigned to the competence of the Ministry and is directly responsible for the implementation of the Program of the Government and yearly priorities of the Government activity as well as the accomplishment of the planned results in the areas the control thereof is assigned to the Ministry; in addition to that, Article 29 of the mentioned Law provides that the Ministry is established in order to set the state policy as well as to organize, coordinate and control its implementation in the specific controlled areas assigned to the Minister. The functions of implementing the state policy can be assigned to the Ministry only in the cases prescribed by the laws and only for a set time period. The activity of each Ministry is financed from the state budget. Pursuant to Article 91 of the Constitution, the Ministers, together with the Prime Minister, constitute the Government, which, pursuant to Articles 94 and 95 of the Constitution, coordinates the activity of the Ministries and solves all issues as a collegial body, by the majority of votes. Pursuant to Article 96 of the Constitution, the Ministers, in accordance with the controlled areas assigned to their responsibility report to the Seimas, President of the Republic and are directly subordinate to the Prime Minister.

### 2.2.1. Comment by the European Commission regarding the powers of the Prime Minister

With regard to the issue raised in the conclusion of the European Commission whether the Prime Minister has the power of making influence, for instance, by giving direct instructions when the Ministers are making the decisions related to LITGRID AB and *UAB Visagino atominė elektrinė*, which would be more beneficial to the interests of the latter, however they would not be beneficial to other users of the transmission grid of LITGRID AB, in addition to the aforementioned arguments, we would like to point out the following aspects:

- The core principles for organising the activities and work of the Government are embedded in the Constitution (Articles 95-97): (i) the Government is a collegial institution, (ii) it makes the decisions by the majority of votes of the members of the Government, i.e. by the majority of votes of the Ministers, (iii) the Government also is jointly and severally liable to the Seimas for the joint activity of the Government.

- The constitutional principles are detailed in the Law on the Government. It should be emphasised that Article 34 of the Law on the Government provides that the Government (i.e. by making the collegial decision) shall have the right to repeal legal acts of the Ministers, Heads of government agencies and agencies under the Ministries, if the said acts are not in compliance with the Constitution of the Republic of Lithuania, international agreements of the Republic of Lithuania, laws and other legal acts passed by the Seimas, decrees of the President of the Republic, resolutions of the Government or ordinances of the Prime Minister. No right is granted by the legal acts to the Prime Minister alone, without the joint decision of the Government, to repeal the orders issued by the Minister of the respective field.

- The constitutional setup of managing the State, which is effective in Lithuania, in principle does not differ from the principles of the activity of the Government and the interaction among the Government and other governing institutions embedded in other countries of the Continental Law<sup>5</sup>. After assessing the national legal regulation, the conclusion should be drawn that the existing legal framework does not grant the right to the Prime Minister to make influence on the Ministers of the specific areas.

With an aim to evaluate not only the legal aspects, but the practical aspects as well, the Commission additionally addressed the Ministry of Energy by Official Letter Ref. No. R2-2096 as of 12 July 2013 and LITGRID AB by Official Letter Ref. No. R2-2096 as of 17 July by requesting to inform whether the Ministry of Energy since 1 October 2012, when LITGRID AB had been

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<sup>5</sup> E.g. Germany: Die Übersetzung berücksichtigt die Änderung(en) des Gesetzes durch Gesetz vom 21.7.2010 (BGBl. I S. 944), 52 str., Italy: The Constitution of the Italian Republic (Official Gazette, December 27, 1947, n. 298), 95 str., Finland: The Constitution of Finland 11 June 1999 (731/1999, amendments up to 1112/ 2011 included) 60 str., etc.

separated from the group of companies *UAB Visagino atominė elektrinė* and up till now has received from the Prime Minister any assignments or commitments related to the interests of *UAB Visagino atominė elektrinė*, and if that was the case, what these assignments or commitments were. What measures have been taken to avoid a possible conflict of interests among the companies involved in the production, supply and transmission activities and controlled by the different Ministries, however with the possibility by the Prime Minister to give assignments or commitments regarding the activities or interests of these companies. Respectively, LITGRID AB was requested to indicate whether the Ministry of Energy since 1 October 2012, when LITGRID AB had been separated from the group of companies *UAB Visagino atominė elektrinė* and up till now has received from the Prime Minister any assignments or commitments related to the interests of *UAB Visagino atominė elektrinė*, *AB Lietuvos dujos*, *Lithuanian Oil Products Agency*, *AB Klapdėdos nafta* or *UAB LitGas*, and if that was the case, what these assignments or commitments were.

The Ministry of Energy by its Official Letter No. (17.3-16)3-2669 as of 1 August 2013 informed that since 1 October 2012 it has not received any commitments from the Prime Minister related to the interests of *UAB Visagino atominė elektrinė*, and in addition pointed out that by seeking for the transparency in the activity of the companies managed by the State as well as for their financial and social efficiency, the practice of appointing public servants to the positions of the members of the management bodies was abandoned. For this purpose the Draft Law Amending and Supplementing Articles 3, 4, 6, 10, 11, 12, 13, 15, 16, 17, 19, 20, 21, 22, 23, 24, 26 of the State and Municipal Enterprise Law of the Republic of Lithuania has been drawn up (No. 12-2353-03) and the Guidelines have been approved.

LITGRID AB by its Official Letter No. SD-3550 as of 31 July 2013 also informed that up to that date it has not received from the Prime Minister or from the Ministry of Energy any commitments or assignments related to the interests of *UAB Visagino atominė elektrinė*, *AB Lietuvos dujos*, *Lithuanian Oil Products Agency*, *AB Klaipėdos nafta* or *UAB LitGas*.

It should be noted that the specific objectives of the activity and the functions of the respective institution were defined in the Statute of the Ministry of Energy, approved by the Resolution No 86 as of the Government of the Republic of Lithuania as of 11 February 2009 (Official Gazette “Valstybės žinios”, 2009, No 19-755), and in the Statute of the Ministry of Finance, approved by the Resolution No 1088 of the Government as of 8 September 1998 (Official Gazette “Valstybės žinios”, 1998, No 81-2267; 2010, No 123-6290).

According to the Statute of the Ministry of Energy, the main objectives of the Ministry of Energy are as follows:

- To set the energy security policy of the state;
- To set the nuclear energy policy of the state;
- To set the state policy in the areas of fossil energy resources, renewable energy resources, electricity and heat energy, efficiency of energy consumption and to ensure the implementation of this policy.

According to the Statute of the Ministry of the Economy, the main objectives of the Ministry of the Economy are as follows:

- To set the policy of the state economy: the general economic (macroeconomic) policy, the policy on competition, the internal market of the European Union;
- To set the state policy for improving the competitiveness: creating the environment favorable for business, attracting investments, promoting export, improving the environment for innovations, development of industry and services.

According to the Statute of the Ministry of Finance, the principal goals of the Ministry of Finance shall be as follows:

- formulating public fiscal policy; organizing, coordinating and overseeing its implementation;
- shaping finance market policy; organizing, coordinating and overseeing its implementation;
- making public policy in the area of financial accounting and audit; organizing, coordinating and overseeing its implementation;

- formulating public policy in the area of statistics; organizing, coordinating and overseeing its implementation;
- shaping public policy in the area of State assets management; organizing, coordinating and overseeing its implementation;
- formulating EU structural support and cohesion policy; organizing, coordinating and overseeing its implementation;
- shaping property and business rating policy; organizing, coordinating and overseeing its implementation;
- formulating public policy in the area of document technological protection; organizing, coordinating and overseeing its implementation;
- Shaping public supervision policy in the area of precious metals, stones and their goods; organizing, coordinating and overseeing its implementation;

***With regard to what has been said hereinabove, the Ministry of Finance and the Ministry of Energy are separate public legal entities, the executive authorities which are not subordinate to each other, implementing the state policy in the individual areas of activity assigned to them. Respectively, the Ministry of Finance has indirect control over the activities of the production, distribution and supply, while the Ministry of Energy has indirect control over the transmission activity in the energy sector, thus it should be stated, that the requirements of Article 53, Paragraph 3, Items 2 and 3 have been complied with. The Government acts collegially, therefore no right is granted by the legal acts to the Prime Minister alone, without the joint decision of the Government, to repeal the orders issued by the Minister of the respective field and thus to make influence on the activity of the Minister.***

*2.3. Article 53, Paragraph 3, Item 4 of the Law (corresponding to Article 9(1)(c) of the Directive): the same entity or entities shall not appoint the supervisory bodies, management bodies or the administration members of the Transmission System Operator, and shall not exercise the direct or indirect control over the undertaking performing the production and / or supply activity or have any rights in respect of such undertaking.*

***With regard to what has been said hereinabove in sub-paragraph 2.2, it should be noted that all shares of Visagino Atominè Elektrinė UAB are owned by the Ministry of Finance, and the latter does not have any rights in respect of EPSO-G UAB, all shares of which are owned by the Ministry of Energy. Respectively, the conclusion should be drawn that the Ministry of Finance has no right to appoint the supervisory or management bodies or the members of the administration of the Transmission System Operator.***

*2.4. Article 53, Paragraph 4, Items 1-3 of the Law (corresponding to Article 9(2) of the Directive): With regard to the requirements of Article 53, Paragraph 3, Items 1-4 of the Law, the rights specified therein first of all comprise: the power to use the voting rights, the power to appoint the members of the supervisory bodies, management bodies and the administration, control over and having in its disposition the portfolio giving more than 1/3 of the shares and votes at the general shareholders meeting.*

In addition to that what has been mentioned in sub-paragraph 2.2 of the Certification document, it should be pointed out that according to the data of the Certificate submitted by LITGRID AB by its Official Letter Ref. No SD-4140 as of 1 October 2012 (Annex 5.2 to the Official Letter) regarding LITGRID AB stakeholders, controlled subsidiaries and the shareholders

agreement, as well as the data of the excerpts from the Register of Legal Entities (Annex 2 to the Certification document):

1) The only stakeholder in LITGRID AB having more than 1/3 of shares and votes at LITGRID AB general shareholders meeting is EPSO-G UAB;

2) In LITGRID AB there are no stakeholders from the third countries having 5 or more percent of the shares and/or votes at LITGRID AB general shareholders meeting as well as the stakeholders having no voting rights;

3) LITGRID AB in the meaning of the Law on Consolidated Financial Statements of the Republic of Lithuania (Official Gazette “Valstybės žinios”, 2001, No 99-3517; 2008, No 79-3099) has direct decisive impact, i.e. direct control over these companies:

a. TETAS UAB (design of electricity networks, construction, repairs and other services), where from 11 January 2013, 100 percent of shares are held<sup>6</sup>;

b. BALTPPOOL UAB (operator of the natural gas market and energy resources), where 67 percent of shares are held.

The Certificate submitted by LITGRID AB on 1 October 2012 also confirmed that the shareholders agreement has not been concluded at LITGRID AB.

It should be also mentioned that the Transmission System Operator is a shareholder in the following undertakings:

a. *Nord Pool Spot AS* (2 percent of shares) – provides the services of Power Exchange in the Nordic Countries and in the Baltic States;

b. *NT Valdos UAB* (0.35 percent of shares) – provides the services of the assets management and transport;

c. *Technologijų ir Inovacijų Centras UAB* (18.96 percent of shares) – provides the services of innovations and novelties, knowledge and competence management, information technologies, application systems and the services of their management to the energy undertakings;

d. *LITPOL LINK, SPÓLKA Z OGRANICZONĄ ODPOWIEDZIALNOŚCIĄ* (50 percent of shares) – prepares the technical project of the Lithuania – Poland interconnection, revises the route of the new line, makes the environmental assessment of the new line, solves the issues of the land ownership, permits and licenses, performs other required works for constructing the Lithuania – Poland interconnection.

It is worth mentioning that above mentioned undertakings are not engaged in electricity or natural gas production and supply activities and it should be stated that BALTPPOOL UAB and Nord Pool Spot AS are the market operators, i.e. the trading platforms where trade in electricity, gas and other natural resources is organized, however the trading platforms do not perform the functions of the electricity production and supply, therefore it should imply that the fact that LITGRID AB owns a part of the shares of these undertakings does not contradict to the provisions of the Law and the Directive.

***With regard to what has been said hereinabove, it should be stated that the requirements of Article 53, Paragraph 3, Items 1-4 have been complied with.***

*2.5 Article 53, Paragraph 3, Item 5 (corresponding to Article 9(1)(d) of the Directive): The same person has no right to be at the same time the member of the supervisory bodies, management*

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<sup>6</sup> On January 11-15 2013 the exchange of TETAS UAB and Elektros Tinklo Paslaugos UAB shares between LITGRID AB and LESTO AB was carried out by concluding the transaction whereby LITGRID AB transferred to the ownership of LESTO AB all shares of Elektros Tinklo Paslaugos UAB owned by LITGRID AB, and LESTO AB transferred to the ownership of LITGRID AB all shares of TETAS UAB owned by LESTO AB. Until the exchange of shares LITGRID AB had control over 61.13 percent of TETAS UAB shares and over 28.87 percent of Elektros Tinklo Paslaugos UAB shares (performing 0.4 to 400 kV network construction, reconstruction, repair and maintenance works in the energy sector and for the external market).



*bodies or the administration of the entity performing the activity of the production and/or supply and the Transmission System Operator.*

As it has been mentioned in sub-paragraph 2.2 of the Certification document, the Ministry of Finance has no rights in respect of EPSO-G UAB and, correspondingly, in respect of LITGRID AB, and the Ministry of Energy has no rights in respect of *Visagino Atominė Elektrinė UAB* and, correspondingly, in respect of *Lietuvos Energija AB*, LESTO AB and *Energijos Tiekimas UAB*.

It should be noted that during the preparation of this decision regarding the designation of LITGRID AB as the Transmission System Operator neither in *EPSO-G UAB* nor in LITGRID AB there were any persons who would be the members of the Board or Heads of structural divisions at *Visagino Atominė Elektrinė UAB* or *Lietuvos Energija AB*, LESTO AB and *Energijos Tiekimas UAB* (see Table 2).

It should be noted that pursuant to the Register of Legal Entities (the data verified on 23 August 2013); the objective of *EPSO-G UAB* activity is management of controlling block of shares of the Transmission System Operator of the Republic of Lithuania. *EPSO-G UAB* has the right to get involved in other activity, which would not contradict to the laws of the Republic of Lithuania.

LITGRID AB by its Official Letter Ref.No SD-4140 as of 1 October 2012 also submitted the Articles of Association of LITGRID AB (company code 302564383) registered in the Register of Legal Entities on 1 May 2012 (Annex 5.1 to the Official Letter), the List of the Members of the Board and other persons holding the executive positions (the date of the election of the Board – 16 November 2010, the tenure expires on 16 November 2014) (Annex 5.7 to the Official Letter), the Job Regulations of LITGRID Turtas<sup>7</sup> AB Chief Executive Officer approved by Resolution No 1 of the Board of LITGRID Turtas AB as of 5 November 2010 (Annex 5.6 to the Official Letter), the Activity Regulations of the LITGRID AB Board approved by Resolution No 2 of the LITGRID AB Board as of 20 February 2012, (Annex 5.3 to the Official Letter), the Independence Declarations and Forms of Professional Activity of LITGRID AB Chief Executive Officer, Members of the Management Council and the Board (Annexes 5.8 and 5.9. to the Official Letter) as well as the documents evidencing the appointment of the Members of the Board and the Chief Executive Officers to the respective position (Annexes 5.4 and 5.5 to the Official Letter).

The field of activity of LITGRID AB has been defined in Chapter II of the Articles of Association – exclusively, this is the activity of the Transmission System Operator and other activities in the electricity sector to the extent in which they do not contradict to the activity of the Transmission System Operator. The objectives of the undertaking's activities have been set therein as well – within the limits of its competence, to ensure the stability and reliability of the power system, within the territory of the Republic of Lithuania to establish the objective conditions for access to the transmission grid, to manage, use, have in its disposition the assets of the electricity transmission system, connected facilities, to exercise control over the undertakings performing the functions and the activity of the Transmission System Operator as well as the undertakings which own the cross border interconnection lines or which are developing, managing or are having in their disposition these cross-border lines.

Chapter II of the LITGRID AB Articles of Association, the Activity Regulations of the LITGRID AB Board have set forth the duty of the management bodies of the undertaking and the members thereof to abide by the requirements of the laws and to take all actions exclusively for the

<sup>7</sup> Pursuant to the reorganization conditions of LITGRID AB and LITGRID Turtas AB approved by the Resolutions passed at the extraordinary shareholders meetings held on 24 January 2011, the Hand-over – Acceptance Protocol was signed LITGRID AB and LITGRID Turtas AB. On the basis of the Hand-over – Acceptance Protocol, LITGRID Turtas AB took over all assets, rights and liabilities of LITGRID AB, as it had been set forth in the reorganization conditions of LITGRID AB and LITGRID Turtas AB. The moment of transfer of all LITGRID AB assets, rights and liabilities to LITGRID Turtas AB – 1 March 2011, 00 hrs.

By the decision of the extraordinary shareholders meetings held on 4 March 2011, the company LITGRID Turtas AB was renamed LITGRID AB. Respectively, on 14 March 2011 the new wording of the Articles of Association of LITGRID AB was registered in the Register of Legal Entities of the Republic of Lithuania. After the change of name of the company, other requisites remained unchanged.

benefit of LITGRID AB by implementing the objectives of the undertaking, and have embedded and clearly split the functions of the separate management bodies.

Moreover, it should be noted that the Chief Executive Officer of LITGRID AB Virgilijus Poderys, the Members of the Board (Valentinas Milaknis, Virgilijus Poderys) and the Members of the Management Council (Virgilijus Poderys, Giedrius Radvila, Vidmantas Grušas, Eugenijus Kurtinaitis, Vytautas Tauras, Vilija Railaitė, Daiva Garbaliuskaitė) signed the Independence Declarations, where the mentioned persons have confirmed that they are aware of the requirements for unbundling the Transmission System Operator set forth in Article 53 of the Law on Electricity of the Republic of Lithuania, and they declare and confirm that they are not managing and will not manage in the future, are not involved and will not be involved in the future in the collegial bodies of any undertaking which performs the activities of the electricity production, distribution and supply as well as the activities of the gas extraction and supply, and will seek to ensure compliance with the Requirements set forth in the Law. It should be noted that during the period of certification of the transmission system operator, certain changes occurred in the Board of LITGRID AB. Currently the representatives of the Ministry of Energy do not participate in the Board, part of the members of the Managing Council were changed, the Supervisory Council was appointed, but having in mind that currently there are two members of the Board, most likely that in the near future the number of LITGRID AB Board members will increase.

Table 2. Members of the Board of the Energy Undertakings (data as of 1 October 2012).

LITGRID AB (transmission activity)	Visagino Atominė Elektrinė UAB	VAE-SPB, UAB	AB LESTO (distribution activity)	Lietuvos Energijos Gamyba AB (production)	Energijos Tiekimas UAB (supply)	Lietuvos Dujos AB (gas supply)	Klaipėdos Nafta AB	Amber Grid AB (gas transmission)	LitGas, UAB (potential supply activity of LNG)
<p><b>Currently not appointed.</b> By 28 January 2013 the Chairman of the Board was <b>Arvydas Darulis</b>, former Vice Minister of the Ministry of Energy</p>	<p><b>Dalius Misiūnas</b> Chairman of the Board, CEO of <i>UAB Visagino atominė elektrinė</i></p>	<p><b>Rimantas Vaitkus</b>, Chief Executive Officer</p>	<p><b>Darius Maikštėnas</b>, Chairman of the Board, <i>Omnitel UAB</i> Vice-president for Marketing and Services <i>TeliaSonera AB</i> Mobile Services, Business Manager of Lithuanian Business and Private Customers, Member of the Board of the Public Organization <i>Save the Children</i></p>	<p><b>Raimundas Petrauskas</b> Member of the Board, <i>Schmitz Cargobull Baltic UAB</i> Chief Executive Officer</p>	<p><b>Dalius Misiūnas</b>, Chairman of the Board, Lietuvos Energija AB Chief Executive Officer</p>	<p><b>Valerij Golubev</b>, Chairman of the Board, OAO Gazprom</p>	<p><b>Currently not appointed.</b>  By 4 April 2013, <b>Arvydas Darulis</b> used to be the Chairman of the Board, former Vice Minister of the Ministry of Energy</p>	<p><b>Dr. Bernhard Walter Rainer Link</b>, Chairman of the Board, Member of the Board of Directors of E.ON Global Commodities SE Essen Division narys, Member of the Board of Directors of E.ON Ruhrgas International GmbH</p> <p><b>Note.</b> Saulius Bilys – Chief Executive Officer</p>	<p><b>Currently not appointed.</b>  By 4 April 2013, <b>Arvydas Darulis</b> used to be the Chairman of the Board, former Vice Minister of the Ministry of Energy</p>
<p><b>Virgilijus Poderys</b>, Member of the Board, LITGRID AB Chief Executive Officer</p>	<p><b>Mindaugas Keizeris</b>, Member of the Board, Strategy and Development Director at <i>UAB Visagino atominė elektrinė</i></p>	-	<p><b>Virgilijus Žukauskas</b>, Member of the Board, Acting General Director of AB LESTO, Director of Network Operation Division –Deputy General Director</p>	<p><b>Laurentina Garbauskienė</b>, Member of the Board, Ministry of the Economy, Head of the Division of the State Enterprises Policy</p>	<p><b>Egidijus Purlys</b>, Member of the Board, Ministry of Energy, Head of Energy Production Division</p>	<p><b>Achim Saul</b>, Member of the Board, E.ON Ruhrgas AG</p>	<p><b>Valdas Lastauskas</b>, Member of the Board, Chancellor of the Ministry of Energy</p>	<p><b>Aleksandr Frolov</b>, Vice-Chairman of the Board, Head of Division of OAO Gazprom Board for Cooperation with the CIS and Baltic States</p>	<p><b>Mindaugas Jusius</b>, Member of the Board, <i>Swedbank Life Insurance, AB</i></p>
<p><b>Valentinas Milaknis</b>, Member of the Board, Consultant of <i>Alma UAB</i></p>	<p><b>Liudas Liutkevičius</b>, Member of the Board, Production and Services Director at <i>UAB Visagino atominė elektrinė</i></p>	-	<p><b>Edita Jonikienė</b>, Member of the Board, Director of <i>Vilniaus Investicijos UAB</i>; Member of the Board of agricultural partnership <i>Atžalynas</i></p>	<p><b>Juozas Bartlingas</b>, Member of the Board, Lietuvos Energija AB Chief Executive Officer</p>	<p><b>Algirdas Juozaponis</b>, Member of the Board, General Manager of <i>Energijos Tiekimas UAB</i></p>	<p><b>Uwe Heinz Fip</b>, Member of the Board, <i>E.ON Ruhrgas AG</i></p>	<p><b>Rytis Ambrazevičius</b>, Member of the Board, <i>Omnitel, UAB</i>.</p>	<p><b>Nikolaj Vasiljev</b>, Member, OAO Gazprom, Head of Corporate Control Board at Assets Management and Corporate Relations Department</p>	<p><b>Rytis Ambrazevičius</b>, Member of the Board, <i>Omnitel, UAB</i></p>
<p><b>Currently not appointed.</b> <b>By 24 April 2013, Violeta Greičiuviene</b> used to be the Member of the Board, Head of Strategic Projects Division at the Ministry of Energy</p>	<p><b>Hona Daugėlaitė</b>, Member of the Board, Organisational Development Director at <i>UAB Visagino atominė elektrinė</i></p>	-	<p><b>Dr. Arvydas Tarasevičius</b>, Member of the Board, Member of the Board of Technologies and Innovations Centre,</p>	<p><b>Sonata Matulevičienė</b>, Member of the Board, <i>Baxter</i> Head of Commerce in the</p>	<p><b>Eglė Čiužaitė</b>, Member of the Board, Director of Strategy and Development</p>	<p><b>Kirill Seleznoev</b>, Member of the Board, <i>OAO Gazprom</i></p>	<p><b>Mindaugas Jusius</b>, Member of the Board, <i>AB Swedbank Life Insurance</i></p>	<p><b>Mario Nullmeier</b>, Member, Head of the Representative Office of E.ON Global Commodities</p>	<p><b>Rokas Masiulis</b>, Member of the Board, <i>Klaipėdos Nafta AB</i>, Chief</p>

			Member of the Board of NT Valdros, UAB	Baltic States	Department at Lietuvos Energija AB			SE in the Baltic States	Executive Officer
<b>Currently not appointed.</b> By 16 May 2013, <b>Viktorija Sankauskaitė</b> used to be Member of the Board, Ministry of Energy, Head of Renewable Resources Division. Currently she is appointed as Member of the Commission.	<b>Darius Kašauskas</b> , Member of the Board, Finance Director at <i>UAB Visagino atominė elektrinė</i>	-	<b>Ramutė Ribinskienė</b> , Member of the Board, Director of Finance and Administration Division at AB LESTO	<b>Sonata Matulevičienė</b> , Member of the Board, Baxter Head of Commerce in the Baltic States	<b>Olaf Martens</b> , Member of the Board <i>Putokšnis UAB</i> General Manager	<b>Viktoras Valentukevičius</b> , Member of the Board, General Director of <i>AB Lietuvos dujos</i>	<b>Rokas Masiulis</b> , Member of the Board, <i>Klaipėdos Nafta AB</i> Chief Executive Officer	<b>Aleksandras Spruogis</b> , Member, Energy Vice-Minister	<b>Dainius Bražiūnas</b> , Member, Deputy Head of Energy Resources Division, Ministry of Energy
<b>Note. Supervisory Council:</b> 1. <b>Aleksandras Spruogis</b> , Chairman of the Supervisory Council, Energy Vice-Minister 2. <b>Audrius Misevičius</b> , Advisor to the Prime Minister 3. <b>Violeta Greičiuvienė</b> , Head of Strategic Projects Division at the Ministry of Energy	<b>Note. Members of the Supervisory Council:</b> 1. <b>Šarūnas Kliokys</b> , Chairman (independent) of the Supervisory Council, Director and Chairman of the Board of UAB Avestis, Chairman of the Board of UAB <i>Šiaulių plento grupė</i> , UAB <i>Kilimai</i> valdybos pirmininkas 2. <b>Aloyzas Vitkauskas</b> , Member, Vice-Minister of Finance 3. <b>Antanas Danys</b> , Independent Member, Member of the Board of VšĮ Lietuvos Junior Achievement, former Chairman of the Board and Head of Administration at Swedbank, AB 3. <b>Tomas Garasimavičius</b> , Member of the Supervisory Council, Advisor to the Prime Minister 4. <b>Žydrūnė Juodkienė</b> , Member of the Supervisory Council, Vice-Minister of Energy 5. <b>Dr. Virginijus Lepeška</b> Member (independent) of the Supervisory Council, Incorporator and Chairman of the Board of UAB <i>Organizacijų vystymo centras</i> 6. <b>Rasa Noreikienė</b> , Member of the Supervisory Council, Vice-Minister of Economy		<b>Note. Members of the Supervisory Council:</b> 1. <b>Ilona Daugėlaitė</b> , Development Director at <i>UAB Visagino atominė elektrinė</i> 2. <b>Darius Kašauskas</b> Member of the Board, Finance Director at <i>UAB Visagino atominė elektrinė</i>	<b>Note. Members of the Supervisory Council:</b> 1. <b>Dalius Misiūnas</b> , CEO of <i>UAB Visagino atominė elektrinė</i> , Lietuvos energija, AB 2. <b>Liudas Liutkevičius</b> , 3. <b>Production and Services Director</b> at <i>UAB Visagino atominė elektrinė</i> <b>Pranas Vilkas</b> (former member of the Seimas)		<b>Note: Members of the Supervisory Board:</b> 1. <b>Eimantas Kiudulas</b> , CEO of the Klaipėda FEZ Management Company, 2. <b>Romas Švedas</b> , independent expert, lecturer 3. <b>Agnė Kairytė</b> , Vice Head of Law Division at the Ministry of Energy (Chairwoman of the Supervisory Council)			

Source: [www.litgrid.eu](http://www.litgrid.eu), [www.lesto.lt](http://www.lesto.lt), [www.vae.lt](http://www.vae.lt), [www.le.lt](http://www.le.lt), [www.vkc.vtf.lt](http://www.vkc.vtf.lt), data of the State Enterprise *Center of Registers* as of 24 August 2013.

All persons holding the management positions in LITGRID AB indicated in the Forms of Professional Activity that there are no circumstances which would result in the conflict of interests, and that they are not involved in any other professional activity, excluding Valentinas Pranas Milaknis, who is the consultant at ALNA GROUP UAB, and Vytautas Tauras, who is the Chief Executive Officer of EPSO-G UAB, the Chairman of the Board of TETAS UAB as well as the consultant of the law firm *Metida* of the barrister Reda Žaboliienė.

It should be noted that ALNA GROUP UAB is the group of the companies providing the services of the information solutions and consultations, operating in the Baltic States and Poland, and is not related to the activities of the electricity production, supply or the extraction and /or supply of natural gas. The law firm *Metida* of the barrister Reda Žaboliienė provides services to Lithuanian and foreign customers concerning the issues of intellectual property, enterprises, competition, real estate, contracts, insurance, tax, labor law and other issues, represents the natural and Legal Entities in the civil proceedings, therefore it is not related to the activities of the electricity production, supply or the extraction and /or supply of natural gas.

It should be noted that according to the revised Form of Professional Activity of Vytautas Tauras, the Member of the Management Council, submitted by the LITGRID AB Official Letter Ref.No SD-4515 as of 23 November 2012, instead of the position of the consultant at the law firm *Metida* of the barrister Reda Žaboliienė, he became the consultant of *Persona Bona UAB*, the renamed law firm *Metida*, and according to the data provided in the LITGRID AB Official Letter Ref. No SD-5073 as of 3 December 2012 (Annex 8 to the Certification document) and the verified information of the Register of Legal Entities (the data verified on 8 April 2013), exchange of the shares between LITGRID AB and LESTO AB took place on 11-15 January 2013 and Vytautas Tauras stopped acting as the Member of the Board of *Elektros Tinklo Paslaugos UAB*.

In addition to that, LITGRID AB confirmed (Annex 5.13 to the Official Letter) that during the last six-month period no personnel was employed either from the electricity production, distribution, supply companies or the gas extraction, supply companies.

***With regard to what has been said hereinabove, it should be stated that, at the time of preparation of this decision regarding the designation of LITGRID AB as the Transmission System Operator, at EPSO-G UAB and LITGRID AB there were no physical persons who would act in the capacity of the Members of the Board or the managers of the structural divisions of Visagino Atominė Elektrinė UAB, Lietuvos Energija AB, Energijos Tiekimas UAB. Moreover, all persons at EPSO-G UAB, LITGRID AB have submitted the Independence Declarations where they assumed the obligation not to take part in the collegial bodies or in any other form manage the undertaking performing the electricity production, distribution, supply activities and the gas extraction, supply activities and to ensure compliance with the Requirements prescribed by the Law, thus the requirement set forth in Article 53, Paragraph 3, Item 5 has been complied with.***

2.6. Article 53, Paragraph 7 of the Law (corresponding to Article 9(3) of the Directive):

*In making the decisions aimed at complying with the provisions of Article 53, Paragraph 3, Items 2 and 3 and Paragraph 4 of the Law and to implement unbundling of the electricity transmission activity, the undertaking which is performing the activity of the production, transmission and supply shall also be the undertaking which performs the respective activities in the gas sector as prescribed by the Law on Natural Gas of the Republic of Lithuania.*

*Klaipėdos Nafta AB*, which by the right of trust is managed by the Ministry of Energy owning 70.63 percent of the shares, pursuant to Article 4 of the Law on the Liquefied Natural Gas Terminal (Official Gazette “Valstybės žinios”, 2012, No 68-3466), *Resolution No 199 of the Government of the Republic of Lithuania on the construction of the liquefied natural gas terminal (on*

implementing the Law on the Liquefied Natural Gas Terminal of the Republic of Lithuania) as of 15 February 2012 (Official Gazette, 2012, No 25-1166, No 83-438), is the project development company of the liquefied natural gas terminal (hereinafter - the “LNG terminal”). The LNG terminal should start activities on 3 December 2014.

It should be pointed out that on 17 December 2012, a company *LitGas UAB* was established (subsidiary to Klaipėdos Nafta AB) and registered which, as projected, should carry out activities on trade and/or supply of the liquefied natural gas. The activity scope currently indicated in the Register of Legal Entities covers natural gas supply activities via the liquefied natural gas terminal and also other possible activities.

*LitGas UAB* has been established under the Decision as of 16 November 2012 of the Board of Klaipėdos Nafta AB to establish a closed stock company – *Dujų tiekimas UAB*. Due to the fact that a new subsidiary in its activities shall mostly deal with foreign companies, the title *Dujų tiekimas UAB* has been amended to *LitGas UAB* by the Decision as of 6 December 2012 of the Board of the Company.

In assessing the composition of the Board at the time of making the preliminary decision, certain changes should be noted. The following members of the Board of the Company have been elected the Board members of *LitGas UAB*: Mindaugas Jusius (representative of *Swedbank Life Insurance, AB*), Rytis Ambrazevičius (representative of the telecommunication company Omnitel, UAB), Rokas Masiulis (Chief Executive Officer at *Klaipėdos Nafta, AB*) and Dainius Bražiūnas (Deputy Head of Energy Resources Division of the Ministry of Energy). Rokas Masiulis, Chief Executive Officer of *Klaipėdos Nafta AB*, has been elected as the General Manager of *LitGas UAB*.

It should be mentioned that the anticipated activities of supply of the liquefied natural gas shall be started to be executed by *LitGas UAB* as from the start of the activities of the liquefied natural gas terminal, following performance of the requirements, set under the legal acts in relation with the receiving of licence for natural gas supply activities and the requirements of the Law in implementing the Third Energy Package<sup>8</sup>.

It should be mentioned that on 7 November 2012 *Resolution No 1354 of the Government of Lithuania on the approval of the Procedure Regulations for diversification of the natural gas supply* was passed (Official Gazette “Valstybės žinios”, 2012, No. 132-6708), whereby the Lithuanian Oil Products Agency was temporary (till 31 December 2013, when its functions will be taken over by the natural gas supply undertaking – the winner of the Tender) obligated to carry out the assigned supply of the liquefied natural gas. 100 percent of the shares of the Agency are owned by the Ministry of Energy. It should be mentioned that this Ministry has indirect (through EPSO-G UAB) control over LITGRID AB, which is the Transmission System Operator. As the Commission had some uncertainties regarding the situation that the Ministry of Energy has indirect control over the Transmission System Operator and direct control over the appointed supplier of the liquefied natural gas, could not comply with the requirements set forth in the provisions of Article 53, Paragraph 3, Item 3 of the Law and Article 9(1)(b)(ii) of the Directive, and that the same entity (entities) has (have) not right to have the direct or indirect control over the Transmission System Operator and to exercise the direct or indirect control over the undertaking performing the production and/or supply activities or to have any other rights in respect of such undertaking.

The Commission by its Official Letter Ref. No R2-2590 as of 9 November 2012 addressed the European Law Department under the Ministry of Justice requesting for the opinion whether the appointment of the Lithuanian Oil Products Agency to act as the LNG terminal supplier complies with the provisions of the Directive related to the requirements on ownership unbundling. The European Law Department by its Official Letter Ref. No SD-244 as of 15 November 2012 expressed the opinion that two public entities can be treated as the separate authorities if the Transmission System Operator and the production and supply undertakings controlled by them are not controlled by the common public authority, and the Ministry of Energy, on the basis of the legal

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<sup>8</sup> Information from Website of Klaipėdos nafta AB, that was confirmed by Letter No (11.2-13)3-4847 as of 23 November 2012 of the Ministry of Energy:  
[http://www.oil.lt/index.php?id=403&tx\\_ttnews\[tt\\_news\]=701&tx\\_ttnews\[backPid\]=1&cHash=f3e5c5b8a8](http://www.oil.lt/index.php?id=403&tx_ttnews[tt_news]=701&tx_ttnews[backPid]=1&cHash=f3e5c5b8a8)

regulation set in Lithuania, should be considered to be such common public authority, which can directly or indirectly make the decisive impact both on the Transmission System Operator and the production and supply undertakings, and this does not comply with the objectives of the Directive and the Law wherein its provisions have been transposed regarding unbundling the Transmission System Operator from the production and supply activities.

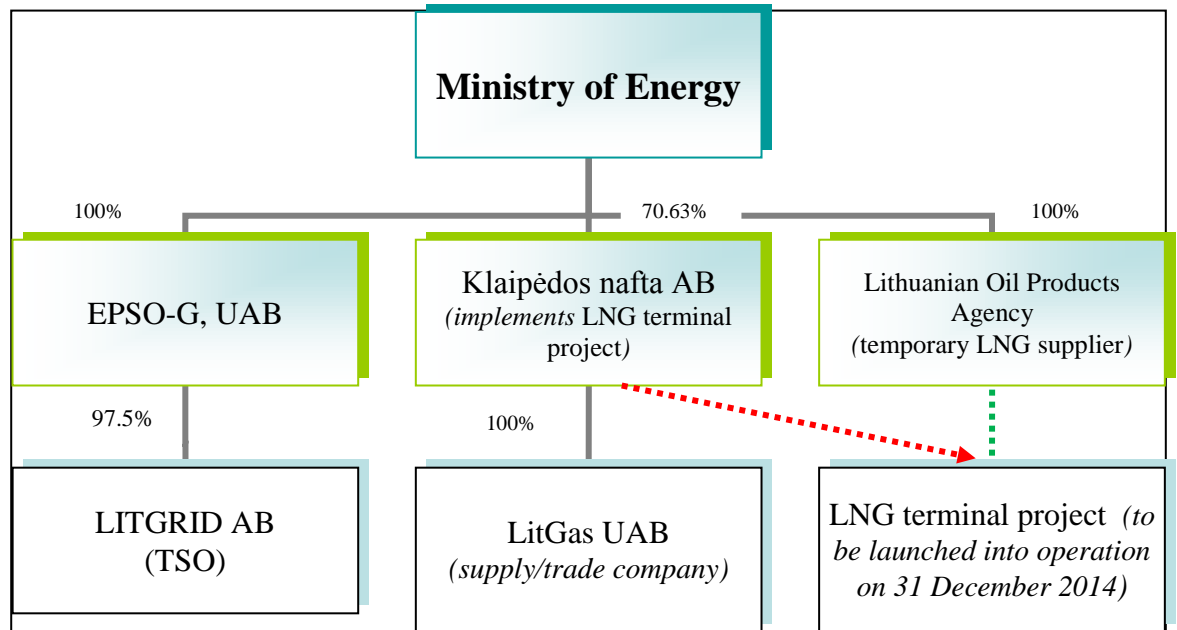
With regard to the above, the Commission by its Official Letter Ref. No R2-2665 addressed the Ministry of Energy with the request to provide the information whether there are planned the respective amendments of the legal acts regarding the assignment of control over the undertakings controlled by the Ministry of Energy to another public authority or any other actions, aimed at ensuring full compliance with the requirements of the Law and provisions of Article 9 of the Directive regarding full unbundling of the Transmission System Operator and independence of its activity from the production and supply activities in the gas and electricity sectors. Respectively, the Ministry of Energy by its Official Letter Ref. No (11.2-13)3-4847) as of 23 November 2012 (Annex 15 to the Certification document) expressed its opinion on the following aspects:

- *Regarding non-compliance of the activity of the undertakings controlled by the Ministry of Energy with the provisions of Article 9 of the Directive and Article 53 of the Law.* Article 2, Paragraph 32 of the Law on Natural Gas of the Republic of Lithuania (Official Gazette “Valstybės žinios”, 2000, No 89-2743; 2011, No 87-4186) provides that the natural gas supply is the natural gas selling and/or reselling to the natural gas consumers and its supply to the natural gas system, and the requirement of Article 53, stating that the same entity or entities have no right to control the transmission system operators and directly or indirectly control the undertaking performing the activity of the production and /or supply at present is being fully implemented, because neither of the above indicated entities (i.e. *the Lithuanian Oil Products Agency, LitGas UAB, Klaipėdos Nafta AB*) currently are involved in the activity of the electricity or natural gas production (extraction) or supply.

- *Regarding the Lithuanian Oil Products Agency.* It was additionally specified that the Lithuanian Oil Products Agency will perform the assigned activity of the liquefied natural gas supply no longer than till 31 December 2013, and the LNG terminal will be launched into operation only on 3 December 2014, hence the mentioned Agency will not be involved in the activity of the natural gas supply, because it will not cover the activity of the natural gas supply as prescribed by the Law on Natural Gas.

- *Regarding LitGas UAB.* The undertaking will be involved in the natural gas supply activity only after having obtained the respective license and only if such activity complies with the requirements of the laws of the Republic of Lithuania, including the requirement on unbundling the activities and control. It was also noted that the undertaking would start the gas supply activity from 3 December 2014 at the earliest, when the LNG terminal starts operating. It was also noted that the activity of the undertaking might be limited to the trade in liquefied gas (i.e. the degassed natural gas potentially might be not supplied) and the latter activity, from the point of view of the Ministry of Energy, till the delivery of gas to the natural gas system cannot be considered to be the supply of the natural gas in accordance with the provisions of 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(OJ 2009, L 211, p. 94;hereinafter - the Gas “Directive”).

Figure 4. Control over the undertakings related to the activity of the LNG Terminal.



-----➔ AB “Klaipėdos nafta” does not own/will not own LNG terminal, is responsible for implementation of the LNG terminal project

-----➔ State Company *the Lithuanian Oil Products Agency* is appointed as a temporary LNG supplier (until under the public tender the permanent LNG supplier will be appointed) and no longer than till 31 December 2013, as the LNG will terminal be launched into operation on 31 December 2013.

It should be noted that after the meeting that took place on 21 February 2013 between the representatives of the Commission and the representatives of the European Commission which among other things, discussed the scheme of present undertakings related to LNG terminal operations. The Commission by the Official Letter No R2-765 as of 8 March 2013 additionally addressed to the Ministry of Energy informing about the critical issues discussed with the representatives of the European Commission regarding the designation of the TSO and requested for more detailed information about the projected activities of *LitGas UAB* and *the Lithuanian Oil Products Agency* while implementing the functions of the designated supplier as well as requested to present copies or extracts of contracts/intention protocols or any other documents (of any format) with the information on commitments or potential liabilities of *the Lithuanian Oil Products Agency* related to the acquisition of liquefied natural gas and (or) sale, resale, if such exist, as well as all the information about the activities of the Agency in relation with LNG projected import to the territory of the Republic of Lithuania. Also, in what form and manner these obligations (due to the potential (liquefied) natural gas purchases, sales, etc.), could be transferred from the Agency to the designated supplier elected by way of public tender.

The Ministry of Energy by the Official Letter No (11.2-13) 3-1221 as of 28 March 2013 (Annex 22 to the Certificate) advocated the following aspects:

- *Regarding the Lithuanian Oil Products Agency.* Currently neither *the Lithuanian Oil Products Agency* nor *LitGas UAB* are engaged in the supply of natural gas. It has been stated in the Official Letter that while LNG supplier selection tender has not been finalized and LNG supply contract has not been negotiated, *the Lithuanian Oil Products Agency* does not need to carry out functions assigned by Natural Gas Supply Diversification Procedure, and in the future a designated supplier before entering obligated to natural gas companies, will take the appropriate action of natural gas supply license.

In addition, the Ministry of Energy presented the copy of the Official Letter No. (1.10)-SD-45 by *the Lithuanian Oil Products Agency* as of 27 March 2013 that indicates that the Agency has



no signed contracts or letters of intent for the liquefied natural gas acquisition, sale, resale or other functions as assigned by Natural Gas Supply Diversification Procedure to designated supplier.

It has been also noted that *the Lithuanian Oil Products Agency* activities and functions are defined by *the Law on State Stocks of Petroleum Products and Crude Oil* (Official Gazette “Valstybės žinios”, 2012, No. 68-3468) and presented the copy of the Rules of Association of *the Lithuanian Oil Products Agency* approved by the Order as of 14 October 2009 of the Minister of Energy. These Rules specify that the Agency's is responsible for accumulation and maintenance of the state-owned stocks of petroleum products and crude oil as well as for operating and upgrading petroleum products storage facilities, expansion, repair, overhaul of fuel tanks and other operations in order to satisfy the public interest.

- *Regarding LitGas, UAB.* It has been pointed out that immediate decisions regarding the transfer of the rights of *LitGas UAB* control to the other Ministry shall be taken, in case *LitGas UAB* be assigned as the LNG supplier thus to meet the requirements of the Directive on the abolition of vertical links between electricity and gas sectors. In the opinion of the Ministry of Energy the existing legal framework is in compliance with the provisions of the Directive and in the future in circumstances that are potentially inconsistent with these requirements; the necessary measures will be taken for the adjustment of laws and in order to comply with the Directive on vertical links aside.

Taking into consideration the explanatory letters of the responsible authorities, the Electricity Division of Electricity and Gas Department and Law Division give notice that Paragraph 7 of Article 2 of Natural Gas Directive defines that “supply” means the sale, including resale, of natural gas, including LNG, to customers. Pursuant to Part 31 of Article 2 of the *Law on Natural Gas* the definition “natural gas supply” is defined as the sale and (or) resale of natural gas to customers and natural gas supply to natural gas system. Currently the Ministry of Energy indirectly holds control over the Transmission System Operator and direct control over the designated supplier of liquefied natural gas - *the Lithuanian Oil Products Agency*; and the company *Klaipėdos Nafta AB* that carries out the project on LNG terminal and has established a subsidiary company *LitGas UAB*. Therefore, currently neither *the Lithuanian Oil Products Agency* nor *LitGas UAB* is engaged in natural gas supply activities (in sale of natural gas and supply to natural gas system) and LNG terminal fails to perform activities. It should be noted that pursuant to the provisions of the *Law on Natural Gas*, *the Lithuanian Oil Products Agency* or *LitGas UAB* do not hold legal possibilities to carry out supply activities without a licence issued by the Commission.

#### 2.6.1. Comment by the European Commission regarding the Lithuanian Oil Products Agency and UAB LitGas

Furthermore, the issue has been raised in the Conclusion of the European Commission concerning the reasons due to which the function of the supply of the liquefied natural gas at present has to be performed by the *Lithuanian Oil Products Agency*, which is subordinate to the Ministry of Energy, and what specific actions are currently performed by this designated supplier of the liquefied natural gas. The European Commission also has proposed to respectively evaluate the activity performed by the *Lithuanian Oil Products Agency* and later – by *UAB LitGas* in order to ensure that there is no conflict of interests and that such conflict of interests would not occur in the future. Moreover, the European Commission has pointed out that some of the persons, who currently are the members of the Board of *UAB LitGas*, are the representatives of the Ministry of Energy.

The Commission has repeatedly addressed the Ministry of Energy and, with regard to the information provided by the Ministry of Energy in Official Letter Ref. No. (11.2-13)3-4847) as of 23 November 2012 and in Official Letter Ref. No. (11.2-13)3-1221 as of 28 March 2013, requested to explain in a more detailed and comprehensive way due to what reasons it was decided to designate the Lithuanian Oil Products Agency, which is subordinate to the Ministry of Energy, to perform the function of the liquefied natural gas supply and what specific actions are currently performed by this Agency in relation to the planned supply of natural gas to Lithuania. In addition

to that, it has been requested to specify what type of activity is presently carried out by *UAB LitGas*, and whether in the nearest future it is being planned to make any decisions related to the possible future activity of the liquefied natural gas supply by *UAB LitGas*, and if that is the case, whether this company will be transferred to the management by another Ministry and whether the members of the Board of *UAB LitGas*, who are also the representatives of the Ministry of Energy, will be changed, and when it is being planned to do so.

The Ministry of Energy explained that the Lithuanian Oil Products Agency at present does not perform any functions related to the gas supply as it has been prescribed by the Procedure Regulations for Gas Supply Diversification, and also noted that until the completion of the Tender for selection of the liquefied natural gas supplier and without the negotiated LNG supply agreement, as yet there has been no need to assign the functions related to the gas supply activity to the Lithuanian Oil Products Agency.

It should be also noted that with regard to the Law Amending Articles 5, 10 and 11 of the Law on the Liquefied Natural Gas Terminal (Official Gazette, 2013, No. 76-3842) the Ministry of Energy prepared and presented for public consultations the Draft Resolution of the Government of the Republic of Lithuania *Regarding Amendment of Resolution No. 1354 of the Government of the Republic of Lithuania as of 7 November 2012 on the Approval of the Procedure Regulations for Diversification of Natural Gas Supply*, whereby the specific temporary supplier and the specific company for performing the supply activity are not designated, but instead the procedure and the requirements are set which have to be complied with by the company seeking to become the designated supplier and to perform the functions of the designated supplier. Among other things, such designated supplier would have to obtain the licence for the supply activity, therefore, as mentioned above, the Commission, while issuing the licence, would assess whether the company complies with the requirements set forth in the EU and national legal frameworks on unbundling the activities.

In addition to that, as it has been already mentioned in Sub-paragraph 2.2, at present the Resolution of the Government has been adopted. The Resolution stipulates that in the nearest future the control over *UAB LitGas*, which had been established by *AB Klaipėdos nafta* responsible for the project of the liquefied natural gas terminal, will be assigned either to *UAB Visagino atominė elektrinė* or to the company controlled by the latter, with an aim to ensure the proper unbundling of activities in the electricity and gas sectors. The composition of the members of the Board should respectively change as well. The Commission in accordance with its competence will continuously supervise the compliance with the requirements of the legal acts regarding unbundling the activities, and when the LNG terminal starts operating, the Commission, by taking into account the comment by the European Commission regarding the representatives of the Ministry of Energy in the Board of *UAB LitGas*, will enforce measures to ensure the compliance with the requirements set forth in the Directive and in the Law, should such measures be necessary.

Electricity Division of Electricity and Gas Department and Law Division notify that the Commission, in accordance with the Article 20 of the Law on Natural Gas, Paragraphs 21-25 of the *Licensing Rules on Natural Gas Transmission, Distribution, Storage, Liquefying, Supply and Market Operator* approved by the Government of the Republic of Lithuania by Resolution No. 1246 as of 27 October 2011 (Official Gazette, 2011, Nr. 131-6227) has no right to grant the license for the *Lithuanian Oil Products Agency* or in the future for *LitGas UAB*, or any other company, if the company is controlled by the Ministry of Energy because that fails to comply with the provisions of Paragraph 10 of Article 20, Article 41 of the Law on Natural Gas that claims that natural gas companies carrying on the licensed activities must comply with European Union law and national law, and the same person has no right to directly or indirectly control the company engaged in production or supply activities; as well as directly or indirectly control over the Transmission System Operator or the transmission system, or the implementation of control or management rights to the transmission system operator or transmission system. In this way legal protection mechanism is ensured on the basis of which the company is unable to carry the supply

activities, if not in compliance with the provisions of laws of the Republic of Lithuania and the European Union legislation on proper unbundling of transmission system operator from other activities not relating to transmission, for both natural gas and electricity sectors.

2.6.2. Comment by the European Commission regarding the competence of the Ministry of Energy in respect of AB Lietuvos dujos

The European Commission emphasised in its conclusion that it has to be proved that (1) the Ministry of Energy is not exercising any right with respect to *AB Lietuvos dujos*, or (2) at least there is no conflict of interests due to which the Ministry of Energy could use control over LITGRID AB in seeking for more advantageous conditions to *AB Lietuvos dujos* as compared to other network users.

First of all it should be pointed out that the Ministry of Energy holds 17.7 percent of shares in each of the companies – *AB Lietuvos dujos* and *AB Amber Grid*. The definition of control as well as the non-finite list of the cases when it is considered that the control has been exercised is provided in Paragraph 2, Article 9 of the Directive, as well as in Council Regulation (EC) No. 139/2004 of 20 January 2004 on the control of concentrations between undertakings (Official Journal 2004, L 24 series, p. 1). In the national legal acts transposing the requirements of the Directives – in the Law, the Law on Competition of the Republic of Lithuania (Official Gazette, 1999, No. 30-856; 2012, No. 42-2041), the Law on Consolidated Financial Statements of Companies of the Republic of Lithuania – it is indicated that, first of all, the control is granted by the management and holding of the portfolio giving more than 1/3 of shares and votes at the general shareholders meeting of the company. Therefore it should be noted that the Ministry of Energy has control neither over *AB Lietuvos dujos*, nor *AB Amber Grid*.

The Commission additionally addressed the Ministry of Energy and LITGRID AB by requesting to indicate the measures which are taken by the Ministry of Energy to ensure avoiding the conflict of interests related to the Energy Ministry's control over LITGRID AB and the package of the shares of *AB Lietuvos dujos* held by the Ministry of Energy so that *AB Lietuvos dujos* would not have more beneficial conditions than other users of the transmission system of LITGRID AB. LITGRID AB was requested to indicate what amount was paid by *AB Lietuvos dujos* as by the user of the transmission system for the services of the electricity transmission, including the system services, in 2012 and the 1st half of 2013, and if LITGRID AB earned other revenues from *AB Lietuvos dujos* during the mentioned periods – the amounts and for what services they were paid.

The Ministry of Energy informed that with the aim that neither of the aforementioned companies would have more beneficial conditions in respect to each other, the unbundling of the activities in both – the natural gas and the electricity sectors is performed by strictly following the provisions of the Directive and of the Gas Directive.

In this context it should be noted that the unbundling of the activities in the natural gas sector is performed in accordance with the deadlines approved by Resolution No. 1239 of the Government of the Republic of Lithuania as of 28 October 2011 *Regarding the Approval of the Plan for Implementing the Unbundling of the Activities and Control of the Natural Gas Companies which do not Comply with the Requirements of the Law on Natural Gas of the Republic of Lithuania* (Official Gazette, 2011, No. 130-6170; 2011, No. 132). Since 1 August 2013, the natural gas transmission activity has been in the legal, functional and organisational aspects separated from the activities of production and supply by establishing *AB Amber Grid* performing the transmission activity. A fixed-date licence for the transmission activity was issued to this company by the Commission's Resolution No. O3-292 as of 18 July 2013 *Regarding Issuing the Natural Gas Transmission Licence to AB Amber Grid*, which is valid from 1 August 2013 till the date of coming into validity of the designation of the natural gas transmission system operator. Respectively, by the Commission's Resolution No. O3-311 as of 18 July 2013 *Regarding Termination of the Validity of the Natural Gas Transmission Licence of AB Lietuvos dujos* the licence issued to *AB Lietuvos dujos* to perform the transmission activity was withdrawn.

The Ministry of Energy also emphasised that the state management, regulation, supervision and control, and organising the activity of the electricity and gas sectors is based on the compliance with the provisions of the laws regulating the energy, electricity, and the natural gas sectors and of the secondary legislation, i.e. all investment projects which are implemented in the electricity or gas sectors are reconciled with the Commission, which, in accordance with its own approved Methodologies, also approves the gas and electricity tariffs and the fees for connection to the respective systems.

With regard to the aforesaid statement by the Ministry of Energy, it should be noted that the Commission's obligation to revise and approve the investment projects of the regulated energy undertakings arises pursuant to Article 15, Paragraph 3 of the Law on Energy of the Republic of Lithuania (Official Gazette, 2002, No. 56-2224; 2011, No. 160-7576), which also stipulates that in the cases when these investments of the energy undertakings have not been reconciled with the Commission, they cannot be recognised as the justified ones for the purpose of revising the state-regulated prices, and respectively they would not be included in the prices. The Commission has approved the *Procedure Regulations for Reconciling the Investments of the Energy Undertakings at the National Control Commission for Prices and Energy* (hereinafter – the Procedure Regulations for Reconciling the Investments) by its Resolution No. O3-100 as of 10 July 2009 (Official Gazette, 2009, No. 86-3660). In the Procedure Regulations for Reconciling the Investments the investments are grouped into four categories depending on the primary purpose of the investment:

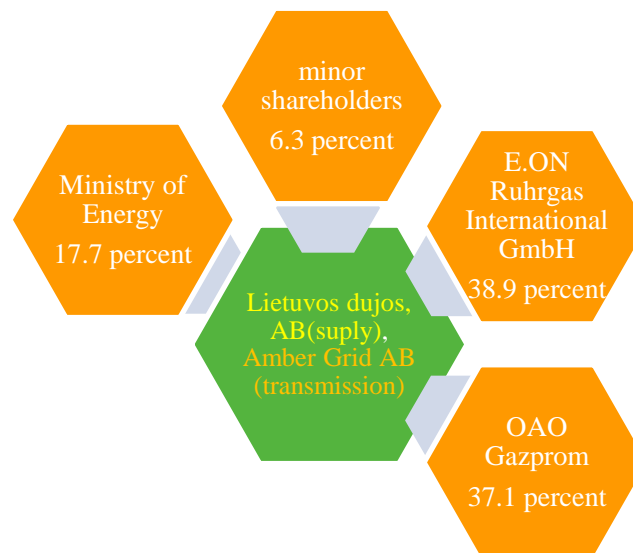
1. Investments which are made pursuant to the plan of measures for implementing the priorities in the energy sector defined in the National Energy Strategy, for ensuring security and reliability of supply;
2. Investments for the system development (including connection of new customers);
3. Investments for the rehabilitation of the existing system;
4. Investments for the reconstruction, modernisation, etc. of the existing system.

In the Procedure Regulations for Reconciling the Investments the stages of the reconciliation and the procedure are defined along with the unambiguous criteria of the project evaluation with regard to the social, security of the system, reliability of supply aspects of the investment project, the financial justification of the project and its economic evaluation. Therefore the Commission, having received the justification of the investment project, is able to thoroughly analyse the project and to additionally evaluate for what purpose and for whose benefits (customers or individual companies which could be merged or should be evaluated in terms of unbundling the activities) this project is being undertaken.

It should be also noted that LITGRID AB has informed that the latter had not entered into any agreements with *AB Lietuvos dujos* on the supply of the electricity transmission services (including the system services), and respectively LITGRID AB had not earned any revenues from *AB Lietuvos dujos*.

Thus, with regard to what has been said hereinabove, it should be noted that 1) The Ministry of Energy does not exercise control over *AB Lietuvos dujos*; 2) The unbundling of *AB Lietuvos dujos* is performed in line with the deadlines and procedures set forth in the legal acts, the Commission is involved in the unbundling process and within its competence has been supervising that the unbundling in the natural gas sector would be performed in compliance with the requirements of the Directive and the Law on Natural Gas; 3) The investment projects of the energy undertakings have to be reconciled with the Commission, hence the Commission in evaluating the economic and financial justification of the investment project is able to determine that neither company would have more advantageous conditions with respect to each other or other companies; 4) LITGRID AB and *AB Lietuvos dujos* have not concluded any agreements for supplying the electricity transmission services.

Figure 5. Management of *AB Lietuvos dujos* and *AB Amber Grid* after legal and functional unbundling of these companies (since 1 August 2013).



*With regard to what has been said hereinabove, as well as Article 53, Paragraph 7 of the Law transposing Article 9 Paragraph 3 of the Directive, it should be stated that at the time of preparation of this preliminary decision regarding the designation of LITGRID AB as the Transmission System Operator, the designation of LITGRID AB is possible on the condition that upon the commencement of the operation of LNG terminal, the Ministry of Energy shall have no right to exercise direct or indirect control over the enterprises engaged in the wholesale natural gas and (or) the retail supply activities.*

*It should be noted that the Commission has no right to issue licenses for the supply activity to the person who do not comply with the requirements set forth in the Law, the Law on Natural Gas, the Directives on unbundling the transmission activity from the activities of production and supply. The currently effective legal mechanism does not provide for any possibilities to the Ministry of Energy to exercise the rights in respect of AB Lietuvos dujos, as the Ministry of Energy does not have control over AB Lietuvos dujos; Besides, the unbundling in the natural gas sector is performed by strictly implementing the requirements of the legal acts, LITGRID AB and AB Lietuvos dujos have not concluded any agreements on supplying the electricity transmission services.*

## 2.7. Conclusions

In summarizing what has been said in Paragraph 2 of the Certification document, it should be noted that after the Government of the Republic of Lithuania had passed *Resolution No 826 on establishing the public limited liability company and investment of the state-owned assets as of 25 July 2012* (Official Gazette “Valstybės žinios”, 2012, No 81-4238), on 25 July 2012 EPSO-GUAB was established for the purposes of managing LITGRID AB. The shares of the newly established undertaking (100 percent) by the right of trust are controlled by the Ministry of Energy, and on 27 September 2012 the state-owned shares of *Visagino Atominė Elektrinė UAB*, till then controlled by the Ministry of Energy by the right of trust, were transferred to the Ministry of the Economy. On 17 February 2013 the Government of the Republic of Lithuania in order to assure proper and efficient management of power undertakings transferred 100 percent of the state-owned shares of *Visagino Atominė Elektrinė UAB* to the Ministry of Finance, till then controlled by the Ministry of Energy by the right of trust. The Ministry of Energy and the Ministry of Finance are the two institutions, which are not subordinate to each other, acting in the fields assigned to them according to their competence. The persons taking part in the management of LITGRID AB – the members of the Board and the members of the Management Council – currently do not participate in the

activities of undertakings engaged in electricity and (or) natural gas production and supply activities and have signed the Declarations of Impartiality, whereby they confirmed that they would not take part in the control of the undertakings, which are involved in the activity of the electricity production and /or supply or the activity of the gas extraction and /or supply, and/or would not take the top management positions in these companies.

After the submitted documents, data and information, including the information provided in the questionnaire on the form of unbundling the ownership of the Transmission System Operator exclusively in accordance with the respective requirements of the Directive, have been analyzed, no non-compliances with the requirements set forth in the Law (and with the provisions of the Directive), the Licensing Rules and the Regulations on the full ownership unbundling by ensuring unbundling of the transmission activity from other activities unrelated to transmission as well as from the commercial interests of these activities, including unbundling the ownership of the transmission activity, were identified.

Respectively, the conclusion should be drawn, that the Requirements of the Directive and Article 53 of the Law on unbundling the Transmission System Operator from the vertically integrated group of companies, which is directly or indirectly responsible for the regular activity of electricity production and/or supply, have been complied with, i.e. LITGRID AB is indirectly, through EPSO-G UAB, controlled by the Ministry of Energy, and the Ministry of Finance has got the direct control over *Visagino Atominė Elektrinė UAB*.

### *2.8. Regarding protection of confidential information*

The Commission, abiding by Article 28, Paragraph 4, Article 57, Paragraph 4 of the Law and with regard to the provision set for in Article 10(8) of the Directive, has to ensure the confidentiality of the information submitted by the Transmission System Operator, which is considered to be its industrial (commercial) or professional secret. Moreover, with regard to the requirements of the EC Staff Working Paper as of 21 September 2011 on the electricity and gas transmission system operators (SEC(2011) 1095 final) stating that, in order to protect the confidentiality of the information submitted by the Transmission System Operator, the scope of the confidential information has to be indicated to the European Commission, we have to point out that LITGRID AB by its Official Letter Ref No SD-4140 as of 1 October 2012 submitted the *Procedure Regulations of LITGRID AB information management* approved by Order No SD-4140 of LITGRID AB Chief Executive Officer as of 24 September 2012 (Annex 5.12 to the Official Letter). The List of LITGRID AB Confidential Information is enclosed as Annex 1 to the mentioned Regulations, and the List of Commercial (Industrial) Secrets – as Annex 2, which defines what information should be treated as confidential.

## **3. Amendment of the electricity transmission licence and its issuing to LITGRID AB**

The Electricity Division of the Gas and Electricity Department and the Law Division ascertained that the Commission, together with the application to issue the termless license for the electricity transmission activity, has received all documents, which are mandatory according to the procedure set forth in Chapter IV of the Licensing Rules and which are listed in the attached verification paper (Annex 1 to the Certificate).

### *3.1. Article 15, Paragraph 5, Item 1: technological capability*

The technological capability of LITGRID AB, as concurrent to one of the requirements for the certification of the Transmission System Operator, has been assessed in Sub-paragraph 2.1 of the Certification document, and it has been stated that the technological capability is sufficient.

### 3.2. Article 15, Paragraph 5, Item 2: financial capability

In accordance with the provision of Item 14 of the Regulations, providing that when the economic operator is a legal person or a structural division of the legal person of other Member State or other organization established in the Republic of Lithuania, in the cases prescribed by Item 4 of the Regulations the financial capability is assessed as being sufficient when the indicator of its total financial capability (during the two most recent years or the years of projected activity) exceeds the lower value of the normative financial capability indicator set by the Commission for the relevant activity in the respective sector. In assessing the total financial capability of the economic operator, the lower value of the normative financial capability indicator in the respective activity is applied with regard to the annual value of revenues earned by the economic operator (by eliminating the revenues which are allocated for purchasing energy as the product with the purpose of its reselling to the end users). According to the data of LITGRID Consolidated Financial Statements for the reported period ended on 31 December 2011, submitted by the undertaking by its Official Letter, as well as according to the submitted filled-in Annex 2 to the Certification Regulations *LITGRID AB financial status indicators from infrastructure activity*, the financial capability of the undertaking is sufficient to perform the licensed electricity transmission activity. After having made the calculations it was established that as of 31 December 2011 the total weighted average indicator of the undertaking's financial capability was as high as 2.88 points, while the calculated lower value of the normative financial capability indicator (the minimum mandatory value) for the economic operators involved in the infrastructure activities in 2011 was 1.23 points. In 2013 analogous calculations have been performed and it was established that the total weighted average indicator of the undertaking's financial capability was as high as 3.25 points, while the calculated lower value of the normative financial capability indicator (the minimum mandatory value) for the economic operators involved in the infrastructure activities in 2012 was 1.20 points. According to the data of LITGRID AB Consolidated Interim Financial Statements, which were publicly announced in the Stock Exchange, the financial capability indicator for three months of 2013 equaled 3.63 points. The comparison of the financial ratios is provided in the below Table.

Table 3. Comparison of LITGRID AB financial status in 2011, 2012 and 1st quarter of 2013.

Item No	Ratio and formula		Quarter 1 2013	2012	2011
1.	Profitability of operations	(Operating income / sales and services) x 100	19.53	6.49	-6.65
2.	Net profitability	(Net income / sales and services) x 100	19.47	5.81	-5.23
3.	Return on assets	(Net income / assets) x 100	0.93	1.23	-0.82
4.	Return on equity	(Net income / capital and reserves) x 100	1.43	1.66	-1.07
5.	Debt ratio	(Total liabilities / assets) x 100	34.87	37.77	23.52
6.	Debt to equity ratio	(Total liabilities / owners' equity) x 100	53.53	60.70	30.75
7.	Current liquidity ratio	Current assets / current liabilities	1.57	1.14	1.88

8.	Trade debts ratio (360 d.)	(Trade receivables / sales and services) x 360 (d.)	185.0	42.42	35.00
<b>9.</b>	<b>Indicator of financial capability (points)</b>		<b>3.63</b>	<b>3.25</b>	<b>2.88</b>
<b>10.</b>	<b>The set lower value of the normative financial capability</b>		<b>1.20</b>	<b>1.20</b>	<b>1.23</b>

The requirement of Article 15, Paragraph 5, Item 2 of the Law as well as Item 14 of the Certification Regulations providing that the financial capability of an applicant for issuing the license has to be assessed according to the data of the Balance Sheets and the Income (Loss) Statements for the two most recent years, for the assessment thereof the financial capability indicators set by the Commission are applied according to Commission's *Resolution No O3-148 on the assessment of electricity energy undertakings in 2011 as of 18 June 2012*, has been complied with. By the mentioned Resolution it has been stated that the financial capability of the economic operator LITGRID AB is sufficient for performing the regulated activity.

*(Confidential information)*

In addition, the Commission, in accordance with the provisions of Article 26 of the Law, must constantly monitor and control how the designated Transmission System Operator, while engaged in activities, complies with the requirements on independence and unbundling of activities as defined in the Law that due to some changes in circumstances related to the Transmission System Operator activities the said requirements will not be violated.

*Taking into consideration that the unbundling of LITGRID AB ownership by establishing EPSO-G UAB makes no impact on the financial capability of the undertaking as the LITGRID AB shares, which had been managed by Visagino Atominè Elektrinè UAB, on 27 September 2012 were by reimbursement transferred to EPSO-G UAB, therefore as it was mentioned before, payouts have not been carried out<sup>9</sup>. It should be mentioned that in the meaning of Article 2, Paragraph 5 of the Law, EPSO-G UAB is not an energy undertaking because it does not perform the regulated activity and is not seeking to obtain a licence for the respective activity in the field regulated by the Law, but is responsible for the Transmission System Operator's management, thus to this undertaking the requirements of the technological, financial and management capability of the electricity undertakings, as prescribed by the Certification Regulations, are not applicable.*

### 3.3. Article 15, Paragraph 5, Item 3 of the Law: management capability.

The Requirement of Article 15, Paragraph 5, Item 3 of the Law and Item 20 of the Certification Regulations provide that for issuing the license an applicant must have employees for performing the licensed activity and preparing the reports, for managing separate accounts of the licensed activity, disseminating information and providing consultations to customers and examining the claims regarding the licensed activity, and if the requirements have been met, his management capability is evaluated as being sufficient.

Pursuant to Item 21 of the Certification Regulations, the economic operator whose management capability is being assessed, provides the Commission with the information about his divisions, branches and management bodies in line with Annex 6 to the *Assessment of management capability of an economic operator*, by indicating the structural divisions (departments) performing these functions and the number of the employees.

LITGRID AB submitted a copy of the Articles of Association registered in the Register of Legal Entities on 11 May 2012, a copy of the Working Regulations of the Board (Annex 5.3 to the

<sup>9</sup> Renewed information from Consolidated LITGRID AB financial information as of 30 June 2013: Source NASDAQ OMX: [http://www.nasdaqomxbaltic.com/upload/reports/lgd/2013\\_q2\\_lt\\_ltl\\_con\\_00.pdf](http://www.nasdaqomxbaltic.com/upload/reports/lgd/2013_q2_lt_ltl_con_00.pdf)



Official Letter) approved by Resolution No 2 of the LITGRID AB Board as of February 20 2012, the Job Regulations of the Chief Executive Officer of LITGRID Turtas AB (Annex 5.6 to the Official Letter) approved by Resolution No 1 of the LITGRID Turtas AB Board as of 5 November 2012, and the filled-in Annex 6 to the Certification Regulations the *Assessment of the management capability of the economic operator LITGRID AB* (Annex 4.6 to the Official Letter).

The data submitted by LITGRID AB show that the management structure of the undertakings consists of the general shareholders meeting, the Board and the Chief Executive Officer – General Director.

The company is operating and the activities are distributed according to the organizational structure provided in Table 4.

Table 4. Table for the assessment of the management capability of the undertaking for performing the electricity transmission activity.

Indicator	Performance of the licensed activity	Accounting of the licensed activity	Information dissemination and consultations to customers	Examination of claims on the conditions of the licensed activity
Department/division performing the functions	System Operation Department, System Control Center, System Reliability Division, Control Systems Division, Transmission Grid Department, Technical Division, Grid Maintenance Division, Operational Planning Division	Accounting Division, Electricity Metering Group, Grid Maintenance Division, Technical Division	Grid Maintenance Division, Technical Division System Control Center	System Control Center
Number of employees	125	13	17	5

The specified functions at LITGRID AB are performed by two top managers, two departments and 8 divisions: System Operation Department, Transmission Grid Department, System Control Center, System Reliability Division, Control System Division, Technical Division, Grid Maintenance Division, Accounting Division, Electricity Metering Group, Operational Planning Division.

It should be mentioned that LITGRID AB by its Official Letter No SD-4862 as of 19 November 2012 submitted the copies of the Order of the Chief Executive Officer on the approval of the Activity Regulations of the Departments, the Order of the Corporate Affairs Division on the approval of the Activity Regulations of the Divisions and the copies of given authorizations as well as the excerpts from the Activity Regulations of the Transmission Grid Department, Technical Division, Grid Maintenance Division, System Operation Department, System Control Center, System Reliability Division, Operational Planning Division, Control System Division of the System Operation Department, Finance Department, Accounting Division of the Finance Department,

Finance Planning and Treasury Division, where the goals and functions for ensuring proper performance of the licensed activity are set.

With regard to the above, the management capability of LITGRID AB is assessed as being sufficient for performing the licensed activity.

### 3.4. Conclusions.

With regard to what has been said hereinabove, it should be stated that LITGRID AB:

1. Owns by the proprietary right the transmission grid, its technological connected equipment and other assets required for proper performance of the electricity transmission activity, therefore the technological capability of the undertaking is sufficient;
2. The total indicators of the financial capability are higher than the set lower value of the normative financial capability in the infrastructure segment, therefore the financial capability of the undertaking is sufficient;
3. After having evaluated the submitted information about the main goals of the activity of the undertaking's structural divisions ensuring due performance of the Transmission System Operator's activity, the management capacity is sufficient.

Respectively, the conclusion should be drawn that LITGRID AB complies with the requirements for issuing the license for the electricity transmission activity as set forth in Paragraph 5 Article 15 of the Law, the Licensing Rules and the Certification Regulations.

Moreover, it should be noted that after having completed the unbundling of LITGRID AB ownership whereby the status of the undertaking, the field of activity and the value remained unchanged, the price caps for the electricity transmission by high-voltage network in 2013 were set to LITGRID AB; the prices of the system services and electricity transmission service prices, tariffs and the procedure for applying the prices and tariffs remained in effect and have been further applied.

Taking this into consideration, for LITGRID AB shall be applicable as follows:

- Commission Decision No O3-281 as of 28 September 2012 *regarding the recalculation of transmission service price cap 2013* (informative note 2012, No.79-697);
- Commission Decision No O3-291 as of 9 October 2012 *regarding the establishment of a price for electricity system service in 2013* (informative note 2012, No.118-5972);
- Commission Decision No O3-341 as of 26 October 2012 *regarding the announcement on electricity transmission service prices, tariffs and their application procedure* (informative note 2012, No.126-6382);

By taking into account that LITGRID AB submitted all documents set forth in the Licensing Rules, Certification Regulations and met the requirements set for performing the licensed activity, it should be stated that LITGRID AB complies with all requirements for ensuring the functions of the Transmission System Operator, prescribed by the legal acts.

## 4. Conclusions and proposals

By summarizing what has been stated herein above, the conclusion should be drawn that the undertaking has submitted all documents required by the Certification Regulations, the Licensing Rules and the Regulations, deemed necessary for certifying the Transmission System Operator and issuing the electricity transmission license. The content of these documents has met the Requirements embedded in Article 53 of the Law on the Transmission System Operator's unbundling and the requirements embedded in Article 15, Paragraph 15 on issuing the license. With regard to the objective of the Directive – in Paragraph 9 of the Preamble it is indicated that one of the goals of the Directive is the effective separation of networks from commercial interests of generation and supply also taking into account the Opinion of European Commission – and the requirements of Article 9 of the Directive on unbundling the transmission activity, as well as pursuant to the requirements of Article 53 of the Law, the Electricity Division of the Gas and

Electricity Department and the Law division are of the opinion that the requirements of Article 53, Paragraphs 2, 3 and 6 of the Law have been complied with and are proposing to the Commission:

1. To state that unbundling of the transmission activity by LITGRID AB complies with the provisions of Article 15, Paragraph 8 and Article 53, Paragraphs 2, 3 and 6 of the Law and that LITGRID AB may be certified as the Transmission System Operator;

2. To issue permanent electricity transmission licence for LITGRID AB.

3. To acknowledge the following documents not valid:

3.1. Commission Resolution No. O3-34 as of 24 February 2011 regarding the issue of electricity transmission licence to LITGRID turtas AB;

3.2. Commission Resolution No. O3-74 as of 14 April 2011 regarding the amendment of electricity transmission license amendment to LITGRID AB.

4. To inform the European Commission about the final decision as set forth in Article 25, Paragraph 8 of the Law and announce the decision on the website of the Commission and Official Journal of the European Union.

5. In the cases of changed circumstances, due to which the implementation of the requirements on unbundling the transmission activities set forth in Article 53, Paragraphs 2, 3 and 6 of the Law cannot be ensured, to obligate LITGRID AB to inform the Commission no later than within 5 business days from the date of occurrence of these changed circumstances.

With regard to the aforesaid circumstances, the Electricity Division of the Gas and Electricity Department and the Law division are proposing to approve the submitted Draft Resolution.

#### ENCLOSURES:

1. Draft Resolution on designation of the Transmission System Operator and issue of the electricity transmission licence, 2 pages;
2. A copy of LITGRID AB Official Letter Ref.No SD-3550 as of 31 July 2013, 1 page;
3. A copy of LITGRID AB Official Letter Ref.No SD-3689 as of 13 August 2013, 1 page;
4. A copy of the Official Letter Ref.No (17.3-16)3-2669 of the Ministry of Energy as of 1 August 2013, 3 pages;
5. A copy of the Official Letter Ref.No R2-2096 of the Commission as of 12 July 2013, 2 pages;
6. A copy of the Official Letter Ref.No R2-2163 of the Commission as of 17 July 2013, 2 pages.

Head of Law division

Vilma Adamavičiūtė

Chief specialist of Law division

Rimgailė Baliūnaitė

Adviser of the Electricity Division

Aistija Zubavičiūtė

To the hearing it has been invited:

1. Representatives of the Ministry of Energy,

2. Representatives of LITGRID AB,
3. Representatives of EPSO-G UAB,
4. Representative of the Ministry of Finance,
5. Representatives of Lithuanian Confederation of Industrialists,
6. Representatives of State Consumer Rights Protection Authority,
7. Representatives of Trilateral Council.