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**REPORT ON REGULATORY ENFORCEMENT
PROCEDURES**

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REPORT ON REGULATORY ENFORCEMENT PROCEDURES

The Electricity Law of 1997 established the Georgian National Electric Regulatory Commission (GNERC or Commission), an independent regulatory agency charged with comprehensive jurisdiction over the rates, terms and conditions of electric service through a system of licenses and tariffs. President Shevardnadze appointed the three commissioners to GNERC in August, 1997 and in early October the Commission adopted its Charter and internal operating procedures. The Commission has thus essentially completed its first year of operation.

The Commission's regulatory authority over the electric sector stems from two basic sources, its control over licensees by license conditions, and its regulation of the rates, terms and conditions of service by reviewing and approving (and, by implication, by reviewing and disapproving) tariffs. Of these, the most important is licensing and specifically the Commission's power to impose conditions on licenses that specifying compliance with requirements deemed appropriate by the Commission. Clause 4.5.d makes it one of the Commission's "main functions" to

establish control over the conditions of the Licensing, and for violation of the conditions shall combine the relevant administrative sanctions, which are determined by the existing Georgian legislation

There are two obstacles, however, to the Commission's establishment of an effective enforcement program. First, at this early stage of its development, the Commission has more important issues on its regulatory agenda. Second, the enforcement mechanisms of the Electricity Law itself may not delegate adequate authority on the Commission to implement an ideal enforcement program. We address each of these issues in turn.

Practical Issues

The Commission has had a busy year. It first had to decide how the Commission itself would be organized and function, which it did with the adoption of Resolution # 1 in October, 1997.¹ It then had to design and implement a system of interim licenses, as instructed by Clause 41 of the Electricity Law. The Commission ran into problems early on in trying to secure compliance with the interim licensing requirements. As Commissioner Tsintsadze disclosed at the Regional Regulatory Conference in Budapest in June, a significant number of electric sector enterprises

¹ In Resolution # 1, the Commission adopted and approved its Charter which generally describes the Commission's functions, rights and responsibilities, organization, and operation; its regulations, which describe in detail how the Commission does business; the structure of the Commission; and the Internal Operating Rules, which describe certain operating procedures, particularly the control of documents and the allocation and management tasks within the Commission.

had failed to apply for interim licenses even many months after the Electricity Law was enacted and the Commission issued interim guidance on the necessity for securing an interim license. One of the laggards was Telasi, the distribution system in Tbilisi, which represents by far the biggest distribution load in Georgia. Confronted with delay or refusal to apply for a license, the Commission found itself essentially without the tools with which to enforce the interim licensing requirement.

In the meantime, other tasks occupied the Commission, such as the consideration of the tariff methodology, the procedure which the Commission would employ to set the first round of cost-based rates for generators, transmission providers, and distributors. This required the Commission to devote significant time to understanding and applying arcane rate principles. At the same time, during the winter and spring of 1998 the Commission participated in the lengthy negotiation (with, among others, the Ministry of Fuel and Energy and Sakenergo) to formulate new market rules to define the structure and operation of a remodeled wholesale power market. The Commission developed model permanent licenses for generation, transmission, and distribution licensees. The commissioners participated in a regulatory study tour of the United States, visiting federal and state energy regulatory agencies, investor-owned utilities, an American company that invests in electric enterprises and assets overseas, and a major electric power pool. The Commission embarked on long-term, cost-based rate proceedings for the licensees in the electric sector, beginning with requests to licensees for cost data in early 1998 and continuing with analysis and refinement of those data during the year. And, the Commission implemented a retail rate increase to 6 tetri/kWh (from 4.5 tetri), effective October 1, and defended the rate increase (as demanded by the Ministry of Finance) with technical analyses.

In light of these developments, the Commission had little time to devote to the development of an enforcement program. Other factors compounded the problem. The electric sector is so cash-poor that financial constraints drive the inability of many licensees to comply with relevant regulatory requirements. Even were that not so, however, the Commission has yet to design and put in place a program of monitoring and information gathering that would allow give it the data it needs to detect and deal with infractions. That may be the task for coming months or years.

Legal Issues

Under Clause 29 of the Electricity Law, the Commission may revoke or suspend a license for non-compliance with its terms and conditions.² As commissioner Tsintsadze noted in Budapest, however, suspension and revocation are not practical enforcement tools. Either sanction would under the terms of the Law, require the licensee to cease providing the service that the license authorized in the first place, meaning that the licensee would cease generating, transmitting, or distributing power upon suspension or revocation. Were that licensee to be, for example, Sakenergo transmission, then the entire power grid in Georgia would cease to function.

² The Law separately authorizes the Commission to revoke licenses for generation (Clause 31.2), transmission (Clause 32.5), dispatch (Clause 32.2) and distribution (Clause 34.2) licenses.

Mr Tsintsadze recommended that the Electricity Law be amended to allow a variety of administrative sanctions, such as the imposition of fines and other penalties and that GNERC be given the discretion to adopt a scale of responses to different violations. Another possible solution that the Commission should explore is the use of the bonding authority granted in Clause 28.

Before issuance of any license * * * the Commission may require a bond or other form of financial security necessary to ensure adherence to this Law and the conditions of the license, including the payment of license fees.

Practical problems may preclude immediate implementation of such a bonding mechanism³ but the Commission should explore the matter further.

Conclusion

The Commission should be encouraged further to explore its enforcement authority in coming months, to examine means for implementing data collection and other means for monitoring compliance, and to evaluate methods for securing compliance short of suspension or revocation of licenses.

³ "Bonding" is at present, not a known commercial phenomenon in Georgia.