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**STATUS ASSESSMENT OF REGULATORY REFORM
IN THE REPUBLIC OF ARMENIA**

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I INTRODUCTION

In accordance with USAID contract no CCN-0002-Q-15-3152, Hagler Bailly has prepared a status report focusing on the state of regulatory reform in the Armenian energy sector ¹

This report describes the history and current state of regulatory reform, examines a number of areas to assess the effectiveness of the Armenian Energy Regulatory Commission, and provides recommendations to further enhance regulatory reform in the Republic

II BACKGROUND

On April 3, 1997, a Presidential Decree established the Republic of Armenia Energy Regulatory Commission (the "Commission") This is the first administrative regulatory body created in Armenia In June of 1997, the Armenian National Assembly passed, by an overwhelming margin, the long awaited Energy Law The Law, one of the better crafted documents of its kind in the CIS, reinforced the position of the Commission as an independent regulatory authority According to the Energy Law, the main objective of the Commission is

“ To ensure reliable and safe supply of electrical and thermal energy and natural gas to the consumers of the Republic of Armenia at reasonable rates, providing equal conditions for all energy sector operation Licensees ” (Article 19)

The actions of the Commission are independent within its area of jurisdiction and the Commission's decisions on tariffs cannot be appealed

The Commission consists of five members including a Chairman, Deputy Chairman, and three Commissioners They are nominated by the Prime Minister and approved by the President The initial terms of the Commission members are staggered, ranging from one to five years, with the

¹ Delivery Order 15 requires preparation of a brief status assessment report as part of the legal and regulatory reform subtask Although the Delivery Order envisioned a single report, due to the nature of each topic and different audiences Hagler Bailly determined that it would be more effective to issue two separate reports The legal assessment has been previously prepared by Latham & Watkins (see Armenia Legislative Survey)

longest terms being assigned to the Chairman and Deputy. After the initial period, the term for all Commissioners is five years.

The main tasks of the Commission as defined by the Energy Law are

- ▶ to approve tariffs for electric energy, thermal energy, and natural gas,
- ▶ to issue, ensure compliance with, and revoke licenses for production, import, transmission, export and distribution of electrical energy, production, transportation and distribution of thermal energy, and, import, transportation, export, and distribution of natural gas,
- ▶ to define quotas for production, import and export of electrical energy,
- ▶ to register existing energy supply contracts between energy sector Licensees and to develop model energy supply contracts between Licensees, as well as model contracts for electrical and thermal energy and natural gas supply to consumers,
- ▶ to help achieve the settlement of disputes between economic entities

III ORGANIZATION AND FINANCING

The beginnings for the Commission were challenging. The most urgent tasks facing the Commission were both financial and organizational. In accordance with the Energy Law, the proposed annual budget of the Commission should be submitted to the Government, which in turn should forward it without any amendments to the National Assembly. To assist with early startup tasks the Commission has received sizable help from outside donors which has been of critical importance to creating and sustaining the Commission's operation. The financial support for the newly created agency has come from many sources including USAID, the World Bank and the state budget of the Government of Armenia. Currently, the Commission is unable to rely on license fees as a source of financing.

The organizational structure of the Commission had to be designed at the outset. Rather than trying to duplicate an existing structure from one of the existing regulatory commissions in the US or elsewhere, the approach taken was to create a structure capable of addressing the current problems of the Armenian energy sector. The original structure recommended by Hagler Bailly with only minor modification (addition of an Assistant to the Chairman of the Commission) is still in place and appears to be working well. The Commission has been divided into four departments including financial, technical, legal, and operational. All of the departments are supposed to work on major issues together and provide expertise and support to each other rather than remaining within rigid functional boundaries. If necessary, inter-departmental working groups are set up to address major cases.

In short, the Commission structure allows for

- ▶ clear distinction of areas of responsibilities between individual departments,
- ▶ ability to involve more than one department to help address complex issues,
- ▶ placing an emphasis on technical/professional staff,
- ▶ a lower number of managerial positions compared to Soviet-style structures

The structure of the Commission is presented in Figure 1

With the assistance of USAID, procurement of major office equipment, computer equipment and vehicles has taken place. Within a short period of time Commission staff were able to work effectively and generate the Commission's first resolutions and decrees. A computer network (LAN) has been installed which will further enhance the staff's abilities and enable the Commission to communicate more effectively with sister agencies in other countries. World Bank technical assistance funds are also being used to help fund Commission operations.

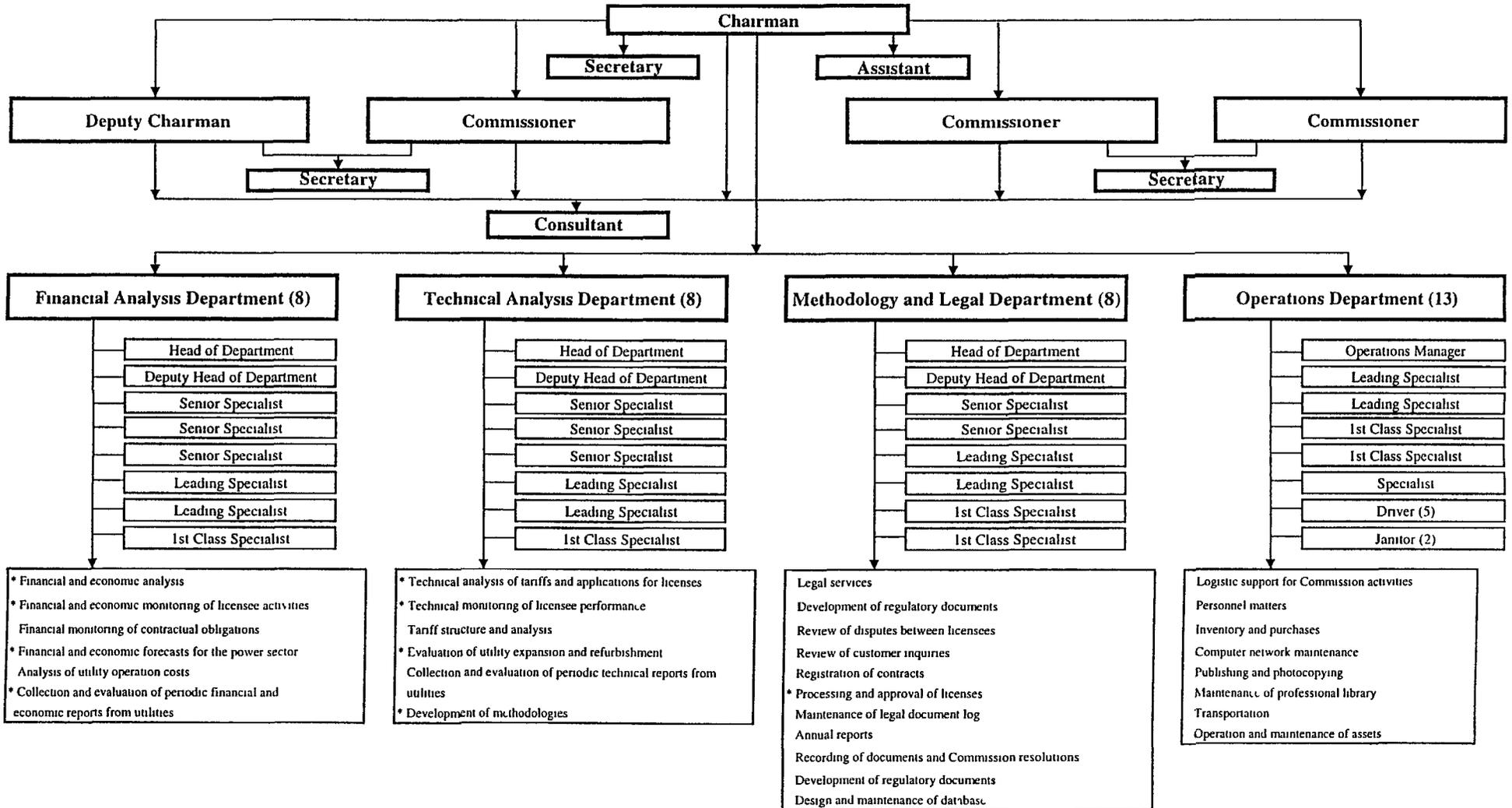
At this time, the Commission is close to fully staffed, having 41 staff members including the Commissioners. The only area remaining to be staffed is in the area of communications (i.e., consumer affairs). Financially, the Commission, although struggling, is operational due in large part to the assistance provided by the donor community. However, reliance on donor assistance is not a long term option for the Commission and a sustainable non-politicized way of financing the Commission must be introduced. Hagler Bailly is presently preparing a proposal and draft law for providing the Commission with the legal authority to assess periodic license fees for Commission funding purposes.

IV STAFF TRAINING

The majority of the Commission staff have limited experience in the regulation of public utilities. Many, however, have extensive background in either operations or management of energy sector enterprises. Over a six month period, an extensive training schedule was set up for the Commission staff. This included three two-week long regulatory training sessions in New England, participation in World Bank sponsored training courses in Florida, and two month-long internships with the Kentucky Public Service Commission (KPSC). The exchange program with the KPSC continues. All of the key Commission personnel have participated in at least one of the above activities. In addition, Commission representatives actively participate in conferences organized by USAID/USEA for the regulatory agencies from Eastern and Central Europe, and the NIS.

Overall, the training regime has been very successful. Staff knowledge and expertise have improved considerably.

Figure 1
Organizational Chart of the ROA Energy Regulatory Commission



V PUBLIC RELATIONS

Although the openness and transparency of the Commission's actions is increasing, there is still room for improvement. An urgent need is related to the process for handling customer complaints and inquiries. At present, if a written complaint is filed with the Commission it is first directed to the Chairman or Deputy Chairman of the Commission who assigns one of the remaining Commissioners to oversee handling of the complaint. The Commissioner in turn selects a staff member to handle the complaint, and requests that the Head of the Methodology and Legal Department review the legal implications of the complaint. If the complaint is filed in person, the complainant is asked to place it in writing. Unless an answer is immediately available from the Head of the Methodology and Legal Department, the complaint is processed in a fashion similar to that used for mailed-in complaints.

This process is not efficient and lacks a structure and formal written procedures. The Commission has resisted establishing a special position dedicated primarily to handling complaints and inquiries from the public. The Commissioners claim that there are not enough employees to handle complaints and inquiries and that any improvement in the process would be "foreign" to Armenian business culture.

The Commission contends that to address the number of complaints (10-50 per month), three employees are needed to work in this area. This number seems excessive. Experience from other regulatory agencies shows that complaints usually fall into several standard categories and that the majority of cases can be handled expeditiously by a single person. Adequate service rules and regulations would also improve the situation as these would provide answers to the majority of complaints. Thus, only inquiries of an unusual nature would require handling by other Commission staff.

Another area that requires improvement is public participation in Commission proceedings. Although there have been press releases and public service announcements encouraging the public to attend certain Commission sessions, much more emphasis should be placed on achieving public participation. The Commission is having some difficulties in public perception precisely because it has not effectively accomplished this important aspect of the regulatory process. Further, the Commission should consider holding special meetings outside of Yerevan to provide for better public input from the regions.

VI MAJOR WORK PRODUCTS

At the outset, the Commission faced multiple tasks that were prescribed by the Energy Law. The deadlines for those tasks, in many instances, were quite short. Since a majority of the documents required did not exist, sample contracts, rules and regulations, and licenses had to be created, this activity constituted a major undertaking.

VI 1 Rules of Electricity Use

The rules of electricity use that existed in Armenia were from the Soviet-era and were either inconsistent with the new economic system or did not fully address certain issues. Thus, new terms and conditions, or rules, of electricity use had to be developed to define, among other matters, the relationship between the producers, transporters, distributors, and final end users within the energy system. These rules specify the obligations of various parties regarding quality of service, payment for services, and service interruptions or disconnections.

Rule development was, and should be, primarily a task for the Commission. Instead, the Ministry of Energy dominated the process of rules development. When the rules were finished and approved by the Government, they contained many provisions that caused some consternation with the Commission staff. The Commission is actively attempting to receive Ministry of Energy and Government endorsement for changes to the rules of use and is being supported in this effort by Hagler Bailly.

VI 2 Rules of Gas Use

The development of the rules of gas use has not been as intense or controversial as the electricity rules. The Ministry of Energy and Commission have cooperated much more closely. The Commission should endorse the gas rules as quickly as possible due to the amount of activity underway in the gas sector.

The gas distribution sector is being restarted gradually, having been out of service for several years. The process of restarting the system includes substantial rehabilitation, metering and service connection costs. The Commission should focus more carefully on the cost and quality of service implications arising from the restart of natural gas distribution. For instance, it appears that the conditions for consumer reconnect are being interpreted arbitrarily and that consumer interests are not being adequately protected. Adoption of the rules of gas use will help address this problem.

VI 3 Electricity Tariffs

Of the three types of tariffs (gas, electric and thermal energy) within the Commission's jurisdiction, the tariff for electricity has been the most controversial. On August 1, 1997, the Commission issued Resolution No. 6 in which it established tariffs for production, transmission, and distribution of electric power. The same resolution specified electric tariffs for sales to customers requiring service up to 400 V. The tariffs attempt to recover the majority of the costs associated with production, transmission, and distribution of electric power. Although they lack several important rate design features, these rates can be considered an important first step in establishing cost-based tariffs, in accordance with the new Energy Law. As of today, the most prominent deficiency of the existing rates is the absence of demand and other fixed charges, lack of customer segmentation and an ill-defined night time discount rate for larger consumers.

The Commission established rates for electricity are shown in Table 1 below

Table 1
Electricity Tariffs as Approved by the Armenian Energy Commission
(in Armenian Drams per kWh - VAT of 20% included)

Tariff Type	Rate in Armenian Drams	Equivalent Rate(520AMD/\$)
Residential Consumers		
- first 100 kWh per month	15 0	\$0 029
- between 100 and 250 kWh per month	22 0	\$0 042
- over 250 kWh per month	25 0	\$0 048
Commercial/Industrial Consumers		
- 6(10)kV and 0 4kV consumers	25 0	\$0 048
- 35kV and higher voltage consumers	16 0	\$0 031
- Time of Use tariff (11PM to 7AM)	12 0	\$0 023
Distribution Utility Power Purchase		
- Yerevan	15 64	\$0 030
- Ararat	15 67	\$0 030
- Vayots Dzor	14 96	\$0 029
- Lori	14 16	\$0 027
- Tavoush	12 30	\$0 024
- Kotaik	15 88	\$0 031
- Aragatsotn	14 48	\$0 028
- Armavir	15 41	\$0 030
- Shirak	15 02	\$0 029
- Gegharkunik	14 57	\$0 028
- Sjunik	15 34	\$0 030
Armenergo Transmission, Dispatch and Ancillary Services	Not specified	Not applicable
Generation Power Sales		
- Nuclear power station	12 37	\$0 024
- Hrazdan thermal power station	15 48	\$0 030
- Yerevan thermal power station	16 26	\$0 031
- Sevan-Hrazdan hydropower cascade	4 21	\$0 009
- Vorotan hydropower cascade	1 37	\$0 003
- Small hydropower producers (privatized)	13 0	\$0 025
- Yerevan lake (new construction - private)	25 0	\$0 048

Source Armenian Energy Commission, Resolutions 6, 9, 10 and 11

Of course, any type of electricity rate increase is an unpopular move. In Armenia, the issue of electricity rates has become intensely politicized. This has caused considerable difficulty for the Commission. Recently, during the Presidential elections, each major candidate made statements expressing concern about the level of the electricity tariffs (at present, tariffs average approximately \$0.045 per kWh). The candidates pledged their support for freezing, or lowering, tariffs from their present level. Even members of the National Assembly are demonstrating much more interest in the electricity tariff issue than seen in the past. Recently, several members of the National Assembly sponsored an amendment to the Energy Law that would have transferred tariff-setting approval from the Commission to the National Assembly. The Government opposed the amendment on Constitutional grounds and the amendment appears to have been defeated. Nonetheless, it appears that the current National Assembly will continue to have more interest in tariff levels than was the case prior to the election.

As part of the Government's agreement with the World Bank, electricity tariffs were to have increased on April 1, 1998 to begin to include debt service. The Commission has not yet increased the tariffs as the agreement requires. In fact, there has been significant discussion regarding the implementation of a time-of-use tariff for residential consumers that, if implemented, would lead to an overall average decrease in the electricity tariff. The Commission's failure to increase the tariff is jeopardizing the World Bank's Structural Adjustment Credit and proposed Transmission and Distribution Rehabilitation Loan.

Notwithstanding the continuing debate concerning an increase in the tariff level, the Commission is initiating an analysis of alternative rate designs, including introducing two-part (i.e., energy and demand) rates for wholesale and retail electricity sales in place of the current energy-only single-part tariffs. The Commission is being assisted in this effort by Hagler Bailly.

VI.4 Gas Tariffs

There was little controversy from either a technical or political point of view when the Commission set tariffs for natural gas (Resolution No. 7). There has not been significant natural gas service at the distribution level in Armenia for several years as a result of the blockade and collapse of gas supply. Most residential gas end-uses were replaced with either electricity, propane, kerosene or wood. The natural gas imported into the Republic was reserved primarily for power generation and other critical uses (e.g., bakeries). The tariffs established by the Commission for natural gas are \$79.10 per 1,000 cubic meters per month for consumption over 10,000 cubic meters, and 51.0 drams (\$0.10) per cubic meter per month for consumption below 10,000 cubic meters.

In March of this year, Hagler Bailly and its subcontractor Merklein & Associates, initiated a natural gas tariff study to better assess the economic tariff levels for gas transportation and distribution as well as to examine ways to improve the structure and design of the gas tariffs. A

working group was established within the Commission and representatives from the relevant natural gas enterprises were invited to participate. The results of this study are expected by July

VI 5 Licenses

The Energy Law requires licenses for all commercial activity in the energy sector, including the construction of power plants, and generating, importing, exporting, transmitting, and distributing electric energy, thermal energy, and natural gas. Licensing will occupy the Commission staff for the remainder of 1998 and first half of 1999. The Energy Law requires that the entire licensing process be concluded by July 1, 1999.

So far, the Commission has prepared model licenses for electricity generation, transmission and distribution and for the transportation and distribution of natural gas.

The Commission is working on resolving several issues related to licensing. These include

- ▶ Fines and penalties. The Commission has the authority to assess fines and penalties on Licensees. The Commission is attempting to determine whether the licenses should fully describe possible violations and the associated fines and penalties.
- ▶ Impact of privatization. Given the apparent intention to move forward with privatization, the Commission is assessing how privatization will affect the licensing process. First, licenses may have to be transferred or revoked and reissued. Second, the Commission expects that licenses for private investors will require terms different from those used for a state enterprise.
- ▶ Monitoring compliance. The Commission is considering how to monitor Licensee compliance. Also, the Commission is attempting to define the conditions under which a license can be suspended or revoked.
- ▶ Financial guarantees. The Energy Law requires that the Commission seek financial performance guarantees from Licensees. The Commission is examining both the extent of financial guarantees (i.e., the amount required) and the method of guarantee (e.g., performance bond, letter of credit).

Recently, a problem has arisen related to the manner in which the Commission's licensing and oversight responsibilities relate to those of other state organizations. Gosenergonadzor, the energy supervision inspectorate, (at present part of the Ministry of Energy but very independent in its actions) seems to be taking on some of the roles of a regulatory body, such as the imposition and collection of monetary fines. The impact of these activities by Gosenergonadzor should not be overlooked. It is important that Gosenergonadzor's activities be strictly limited to those of Licensees' compliance with technical parameters, standards, and safety codes, the role for which this agency was created in the first place.

There is considerable debate between Gosenergonadzor, the Commission, the Ministry of Energy and the Prime Minister's office on the appropriate role of Gosenergonadzor. A decision has been reached to transfer Gosenergonadzor from the Ministry of Energy to the Prime Minister's office. In light of the present debate, it may be useful for Hagler Bailly to work with the Commission and the Ministry of Energy on defining the appropriate roles and responsibilities for Gosenergonadzor.

VI 6 Contracts

The Energy Law permits bilateral contracting but places the Commission in a role to oversee such contracts to help protect against improper "insider" arrangements. The Energy Law allows the Commission to "register" power supply, natural gas supply and thermal energy supply contracts between the various supply entities and consumers in the energy sector.

The Commission has prepared 13 model contracts, as examples of contracts that the Commission will endorse if submitted for approval. These include:

- ▶ model contract between an importer and transporter of natural gas,
- ▶ model contract between a transporter and distributor of natural gas,
- ▶ model contract between a distributor and residential consumer of natural gas,
- ▶ model contract for natural gas between a distributor and commercial/government/industrial consumer,
- ▶ model contract between a generator of thermal power for heating purposes (hot water) and consumer of thermal power,
- ▶ model contract between a transporter of thermal power for heating purposes (steam) and consumer of thermal power,
- ▶ model contract between a generator of thermal power (steam and hot water) and transporter of thermal power,
- ▶ model contract between a transporter of thermal power (hot water) and distributor of thermal power,
- ▶ model contract between a distributor of thermal power and residential consumer,
- ▶ model contract for purchase and sale of electricity for residential customers,
- ▶ model contract for purchase and sale of electricity for non-residential customers,

- ▶ model contract for purchase and sale of electricity between Armenergo and a distribution company,
- ▶ model contract for purchase and sale of electricity between Armenergo and a generating company

Recently, the Commission has begun to assess the changes that will be required in the model contracts to implement some of the market restructuring concepts under discussion. They are being assisted in this effort by Hagler Bailly.

VI 7 Resolutions

The Commission issues its decisions and orders in the form of resolutions. Unlike Commission orders seen in places such as the United States and U.K., the Commission's resolutions are usually kept short and contain only minimal information. In general, no legal background or history of the case is cited, with the exception of a jurisdictional quote from the Energy Law. Many resolutions have extensive appendices containing approved documents. The list of Commission resolutions and a brief description of each is presented in Appendix A.

The documentation of decisions is a significant weakness of the Commission. Continued effort needs to be expended to persuade the Commission of the need for, and benefits from, more thorough documentation of the evidence presented and the basis for the decisions reached.

VI 8 Publications

The Energy Law requires that the Commission present to the National Assembly annually its program for the following year including its budget, a forecast for production and consumption, and expected tariff changes for electric energy, thermal energy and natural gas. This annual report has to be presented by October. The Commission met this deadline. In addition, before May, the Commission is required to publish an annual report on its activities for the past year. This report was also prepared and published in local newspapers. Although criticized at the beginning of its existence for being somewhat low profile and secretive, the Commission has made progress in increasing its public exposure. By publishing annual reports and some of its decisions, as well as through interviews to the press, the Commission has begun to gradually increase its visibility and recognition among consumers.

VII CONCLUSIONS AND RECOMMENDATIONS

The establishment of the Energy Commission was an important step forward in the reform of the Armenian energy sector. The Commission represents the first independent regulatory agency.

established in Armenia and has laid the groundwork for additional administrative agencies to follow. Importantly, the Commission has helped to advance the state of civil service reform. For instance, compensation of Commission members and staff are not tied to the wholly-inadequate Government pay scale.

Currently, there are several actions that should be taken by the Commission, in conjunction with technical assistance, that will help to significantly advance the state of regulatory reform. These include:

- ▶ establish written procedures for handling complaints and inquiries from the public,
- ▶ staff a permanent position dedicated to addressing complaints and inquiries from the public,
- ▶ establish a procedure for classification, handling and recording of public and confidential information entering and leaving the Commission,
- ▶ hold special Commission meetings in cities outside of Yerevan to provide the public with better opportunities to participate in the regulatory process,
- ▶ improve the documentation of Commission decisions (this is an area where the USEA partnership with the Kentucky Public Service Commission can be of great assistance),
- ▶ establish written procedures for conflict resolution between regulated entities in accordance with the Commission's conflict resolution responsibilities described in the Energy Law,
- ▶ adopt a Code of Ethics for the Commissioners and staff immediately. A draft code of ethics has been prepared by Hagler Bailly and has been under review for several months. Adoption of the Code of Ethics, the first of its kind in the Republic, will represent an important step forward in creating a framework to govern the conduct of public sector employees,
- ▶ revise the electricity rules of usage and adopt the natural gas rules of usage,
- ▶ work with the Ministry of Energy and Government to better define and restrict the activities of Gosenergonadzor to technical matters,
- ▶ proceed with the analysis and adoption of two-part tariffs,
- ▶ continue to promote adoption of a license-fee based approach to Commission funding, and,

- ▶ increase tariff levels in accordance with the World Bank's Structural Adjustment Credit conditionality even in light of the political ramifications involved

The Energy Commission moved ahead aggressively early after its establishment with the issuance of tariff decisions covering all three energy subsectors. More recently, the Commission has been threatened by the political changes resulting from the collapse of the government earlier this year. Somewhat unexpectedly, the remainder of 1998 will probably be the most difficult for the Commission since its inception.

Specifically, the manner in which the Commission responds to the electricity tariff issue will be critical. If the Commission decides to increase the tariff in compliance with the agreement reached with the World Bank, there will be obvious political ramifications. However, the Commission will have clearly demonstrated itself to be sufficiently independent in its actions. If the Commission does not increase the tariff, there may be fewer political ramifications, but the Commission will risk being viewed as having lost some of its independence and effectiveness. This will be a negative sign for regulatory reform and will certainly diminish the perception of the regulatory process in Armenia both domestically and internationally.

APPENDIX A
SUMMARY OF THE ENERGY REGULATORY COMMISSION
RESOLUTIONS

Resolution No 1 requires that the organizational chart of the Commission be adopted and that relevant documentation be presented to the Commission by the Ministry of Energy for the review of the existing tariffs for electricity, thermal power and natural gas

Resolution No 2 is dedicated to the preparation of the draft of the Prime Minister's Resolution on assigning a work group to make amendments in the resolutions of the Republic of Armenia Government, Ministries and Departments

Resolution No 3 rules that refugees in temporary housing be billed at the same rate as residential customers. Also, the Commission requests the Ministry of Energy to discuss with the Commission problems related to small Hydro Power Plant (HPP). Finally, the Commission rejects ARMENMOTOR's request to recalculate its amount of consumed electricity

Resolution No 4 establishes a rate of 4.21 drams/kWh for electricity generated by the Sevan-Razdan Cascade

Resolution No 5 sets the salaries for the Commissioners

Resolution No 6 sets the tariffs for different types of customers in the power sector

Resolution No 7 sets the tariffs for natural gas

Resolution No 8 sets the tariffs for central heating for each thermal enterprise for the winter season 1997-1998

Resolution No 9 establishes company-specific tariffs for electric power sales from ARMENERGO to distribution companies

Resolution No 10 supplements and amends to the Commission Resolution No 6

Resolution No 11 sets the electric power generation tariff for the ENERGIA, Ltd's small HPP at Yerevan Lake

Resolution No 12 permits the continuation of operations of economic entities in the electricity, natural gas and thermal energy sectors until the introduction of a licensing system

Resolution No 13 approves the Commission's workplan for 1997-98, procedures for meetings, and procedures for interaction with the public and mass media

Resolution No 14 sets the tariffs for importers, transporters and distributors of natural gas

Resolution No 15 approves model contracts between Suppliers-Transporters, Suppliers-Distributors, and Transporters-Distributors in the natural gas sector

Resolution No 16 provides clarifying information regarding tariffs for electricity that became effective September 1, 1997

Resolution No 17 is dedicated to the registration of contracts between the economic entities operating within the power sector

Resolution No 18 reviews the tariffs for electricity, natural gas and thermal energy starting April 1, 1998, considering their adjustments based on the inflation forecasts for 1998

Resolution No 19 requires all power sector enterprises to submit documents confirming their legal status

Resolution No 20 extends the effective date for Resolution No 14 until new gas tariffs are established

Resolution No 21 sets the salaries for the Commissioners

Resolution No 22 approves model contracts between distributors and residential customers and distributors and non-residential customers in the natural gas sector

Resolution No 23 provides editorial changes to the language of Resolution No 17

Resolution No 24 approves the publication of an annual report on Commission activities for 1997

Resolution No 25 approves model contracts for electric service for residential customers, for customers requiring service under 1kV, and for high-voltage customers