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**WHITE PAPER:  
THE AUTHORITY OF THE GEORGIAN NATIONAL  
ENERGY REGULATORY COMMISSION TO ISSUE  
LICENSES**

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# Advisory Assistance to the Ministry of Energy of Georgia Program

## **WHITE PAPER: THE AUTHORITY OF THE GEORGIAN NATIONAL ENERGY REGULATORY COMMISSION TO ISSUE LICENSES**

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## **WHITE PAPER: THE AUTHORITY OF THE GEORGIAN NATIONAL ENERGY REGULATORY COMMISSION TO ISSUE LICENSES**

### **INTRODUCTION:**

According to the article 3 of the Law on “Licenses and Permits” (June 24, 2005) a license is the right of a person, conferred by an administrative body to this person on the grounds of an administrative act, to carry out entrepreneurial activities defined by this law by observing the terms prescribed by law. License Issuer is an administrative body issuing the License according to the rules prescribed by the law. Further, license terms are complete list of requirements and information that should be observed by License seeker, also rules, norms and requirements under the law to be observed by the holder of Licenses in order to carry out activities defined by the License. The Law on “Licenses and Permits” provides the complete list of types, spheres of activities and actions subject to licensing or permits. Introduction of Licenses and permits for the activities and actions defined in this law based on any other legislative or sub-normative act is not allowed. Moreover, introduction of obligations based on sub-normative act issued by an administrative body introducing License regulated or permit-regulated regime on the activity is not allowed (article 4).

Pursuant to the article 6 of the Law the types of licenses include: (a) Electricity generation license; (b) Electricity dispatch license; (c) Electricity transmission license; (d) Electricity distribution license; (e) Natural gas transportation license; (f) Natural gas supply license.

Under article 5 of the Law on “Licenses and Permits”, the bodies authorized to issue the licenses are defined by the law or by the decision of the Government of Georgia. Pursuant to the Law on “Electricity and Natural Gas”, the administrative body that is authorized to issue the license is the Georgian National Energy Regulatory Commission (GNERC). Under clause 4 (4) GNERC has authority to grant Licenses and regulate Licensees within the Electricity and Natural Gas Sectors in Georgia. Further, the main directions of the Commission include the establishment of the rules and conditions for granting generation, transmission, dispatch, distribution, as well as natural gas transportation and distribution licenses, also grant, modify and revoke licenses in compliance with the Law of Georgia on Licenses and Permits, this Law and Licensing Rules. The Commission also establishes the control over the conditions of the Licensing within the Electricity and Natural Gas Sectors of Georgia, and for violation of the conditions, shall combine the relevant administration sanctions, which are determined by the existing Georgian Legislation.

The law on “Electricity and Natural Gas” conforms to the law on “Licenses and Permits” and grants the authority to the GNERC to issue Licenses for the following activities: (a) electricity generation; (b) electricity dispatch; (c) electricity transmission; (d) electricity distribution; (e) natural gas transportation; (f) natural gas supply. The licenses that are issued by the GNERC shall be permanent (clause 24).

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Pursuant to the law on “National Independent Regulatory Bodies” the Georgian National Energy Regulatory Commission is independent regulatory authority (body) created by the state for the purpose of regulation of specified sphere, that is independent from state authorities and operates in the scope of authority determined by the appropriate law.

Further, National Independent Regulatory Commission shall not be controlled by the any State Controlling Bodies. National Energy Regulatory Commission is competent to provide an authority determined in appropriate law of the regulatory authority, as well as to study, discuss and resolve the issues within the framework of its authority without inconsistent influence and illegal intervention. The state authorities do not have any right to intervene in the activity of the regulatory authority, to control this activity and require a report concerning this activity if this action is not directly determined in the appropriate law.

Authority of the GNERC covers rights and obligations determined in the appropriate law of the regulatory authority and specially delegated to this regulatory authority. The relevant (appropriate) law for GNERC is the Law on “Electricity and Natural Gas”, as the authority of an Independent Regulatory Body is defined by this Law. Regulation activities of the GNERC covers the adoption of legal acts within the framework of their authorities determined by the appropriate law, issuing licenses/permits, also monitoring, coordination and control over the compliance with requirements of the Licenses/permits (article 3).

Pursuant to article 10 of the law on “Independent National Regulatory Bodies” within the scope of its competence, an Independent Regulatory Body has the full authority to grant licenses and permits, to suspend them, extend their terms and modify or terminate them. It is not allowed to interfere with or exert control over the licensing and permitting authority of an Independent Regulatory Body. Pursuant to the article 115 (2) of the “General Administrative Code of Georgia” GNERC shall issue administrative act on license through the Public Administrative Proceeding. Therefore, the procedures set forth in the chapter IX of the “General Administrative Code” shall apply. The Law on “Independent Regulatory Bodies” conforms to the “General Administrative Code of Georgia”. Pursuant to the article 4(5) in relation to the licensing and tariff setting competences, an Independent Regulatory Body is obliged to hold public hearing in accordance with Chapter IX of the General Administrative Code. Decisions made without observance of such procedures shall be void.

#### **Requirements for Obtaining the License:**

Under clause 26 (1) of the Law on “Electricity and Natural Gas”, the Commission shall issue Licenses only to Legal Persons and the sole entrepreneurs that satisfy the conditions stipulated in the legislation.

Further, the License Certificate shall specify the type of service defined in the License application, location of the assets for providing services and service territory, for

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which the License is valid, also the date of issuing the License and conditions for its modification and revocation.

Licensees shall be prohibited to reduce or increase services stipulated in the License without the Commission's preliminary consent, except for termination or reduction of services due to non payment by the customer and/or for technical or safety reasons. In any other case, for termination or reduction of services the Licensee shall submit an application to the Commission. Upon receiving the consent form the Commission regarding the termination or reduction of activities by the Licensee, the Licensee returns the License to the Commission. In this case, the Commission shall modify or revoke the License (clause 26.3.).

No Licensee shall be required by the terms of its License, by its tariff, or otherwise to continue supplying electricity or other electricity services in any case where another Licensee, a Direct Consumer, or any other Legal Person or individual has failed to meet its payment obligations under a contract or approved terms and conditions of service.

#### **Modification and Revocation of Licenses:**

Pursuant to the clause 31 of the Law on "Electricity and Natural Gas" a License is modified pursuant to its terms and conditions and revoked for non-compliance with its terms and conditions, this Law and the Law of Georgia on Licenses and Permits. In any other case the Commission may modify or revoke a License only with the prior consent of the Licensee; while modifying a License the Commission may require the Licensee to comply to different, or more stringent requirements than the requirements included in any prior License. In order to ensure compliance with this Law and adherence to customers' interests the GNERC is authorized to approve, to deny approval or to limit the following activities of the Licensee: (a) combine activities subject to licensing, purchase and/or transfer of fixed assets and shares; (b) widen the sphere of licensed activity (clause 32.2.). Any agreement made, legal act issued or other activity performed in violation of clause 32.2 shall be deemed void.

#### **Generation License:**

Pursuant to the article 33 of the Law, the Commission may issue Licenses that in each case authorize a Legal Person or an Individual to generate energy and connect specifically identified generation facilities to the Transmission Grid for the purpose of supplying electricity capacity and/or energy to a specific Receiving Point (Generation License). According to the License Conditions, each Generation Licensee shall, for the duration of the License: (a) Submit the rates, terms, and conditions for power sales contracts with other Licensees for review and approval by the Commission in case of a request made in compliance with the Electricity (Capacity) Market Rules. Such approval shall not be required once the Commission has determined that the Generation Licensee is producing electricity solely for his own consumption, solely for export or conducts power sales in the competitive conditions.

#### **Transmission License:**

Under clause 34 transmission license grants a Legal Person the right to provide transmission service using the Transmission Grid. The License shall identify the

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transmission system included in the Transmission Grid to be operated by the Licensee, which shall include the facilities between the Receiving Points and the Delivery Points. Where a Generation Licensee's facility is to be directly connected to a Distribution Licensee's or a Direct Consumer's facilities, the Commission may deem the interconnection point a Receiving Point and a Delivery Point separated by a minimum section of the Transmission Grid for purposes of establishing parameters for transmission services. When a new transmission facility is required in the Transmission Grid, the Transmission Licensee shall apply for a modification to its License proposing the new transmission facility. If, after notice and hearing pursuant to the rules promulgated by the Commission, the Commission determines that the new facility is required, and further determines that the proposed route for the facility, as may be amended at or following the hearing; will reasonably minimize adverse impacts on the area concerned, is consistent with the State Policy concerning the proposed route as expressed to the Commission during the proceeding; and complies with the requirements of Law, the Commission shall issue to the Transmission Licensee a modified Transmission License that includes the new transmission facility and authorizes its construction on the approved route. If, following the hearing described in present Clause, section 3, the Transmission Licensee is authorized to construct a new transmission facility along an approved route, the Transmission Licensee shall be entitled to acquire any lands required to construct this facility.

**Dispatch License:**

Pursuant to the Law Dispatch License issued by the Commission authorizes a Legal person to conduct the management of the Georgian electricity sector through its central and regional dispatch centres. According to the License Conditions, the Dispatch Licensee shall, for the duration of the License: (a) Ensure reliable functioning of the energy systems in order to satisfy the needs of all relevant Licensees, Importers, Exporter and Direct Consumer at least cost principle, given that a Licensee or a direct Consumer have contracted directly with Generation or Import Licensees and, partly or in whole, meets its requirements, also has contracted with Transmission Licensee. Dispatch Licensee shall not be liable for obtaining back-up electricity (capacity) supplies, except for the cases when the Distribution or Export Licensee pays for such services at the rate approved by the Commission. (b) Install and operate all facilities necessary to ensure operation and electric stability of the energy system, and develop regimes and utilize appropriate dispatch protocols that support efficient operation of the Wholesale Market and full satisfaction of the requirements of Distribution, Import, Export licensee and Direct Consumers, in compliance with "Electricity (Capacity) Market Rules.

(c) Shall operate in accordance with the instructions of the Wholesale Market, regarding discontinuation or curtailment of electricity supply service to violators of the "Market Rules (Clause 35).

**Distribution License:**

According to the clause 36, the Distribution License issued by the Commission authorizes the sole proprietor or legal entity to distribute and sell electricity within the area of an administrative unit, geographic region or specific distribution network. According to the License Conditions, each Distribution Licensee shall, for the duration

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of the License: (a) During the emergency periods, maintain strict regimes and limits of electricity supply, ensure priority supply of electricity to the objects of specific importance, given the due payment is provided. (b) According to the "Market Rules", provide full, timely and guaranteed bill collection for received electricity and services; a Distribution Licensee who fails to meet requirements of these provisions, shall be liable in accordance with the existing legislation; (c) Extend distribution services to consumers... Further, for the corresponding tariff a Distribution Licensee shall transfer through the distribution network electricity of those persons who have a right to sell electricity directly to customers, also to buyers (including customers).

**Natural Gas Transportation License:**

Natural Gas Transportation License issued by the Commission (clause 40) grants a Legal Person a right to provide natural gas transportation and transit services. The License shall identify the proposed pipeline route and lines of pipe and other facilities, including the Receiving Points and the Delivery Points, to be operated by the Licensee. When a new pipeline or other transportation facility is required, the party proposing such new pipeline or other facility shall apply for a Transportation License, or in the case of an existing Transportation License, apply for a modification to this License. If, after notice and hearing pursuant to the rules promulgated by the Commission, the Commission determines that the new pipeline or facility is actually required, and further determines that the proposed route for such pipeline or facility will minimize negative impacts on the area concerned, is consistent with the State Policy and complies with the requirements of Law, the Commission shall issue a new or modified Natural Gas Transportation License, that includes the new pipeline or other facility and authorizes its construction on the approved route. If, following the hearing as described in the above Point 3, the Transportation Licensee is authorized to construct a new pipeline or other facility along an approved route, the Transportation Licensee shall be entitled, following to the set rules, to utilize the lands required to construct such pipeline or facility.

According to the License Conditions, the Transportation Licensee shall, for the duration of the License: (a) Develop and maintain the Natural Gas Transportation Network in a manner adequate to support the needs of Supply Licensees; (b) Develop, submit to the Commission, and make publicly available an investment program; (c) Develop and make available reasonable instructions for the safe, reliable, and non-discriminatory interconnection and operation of the transmission network and connected facilities; (d) Ensure provision of services in compliance with the requirements of this Law and standard acts issued under this Law.

**Natural Gas Distribution License:**

Pursuant to the article 41 of the Law Natural Gas Distribution License issued by the Commission shall authorize the legal entity to operate the distribution network and distribute natural gas within the specific distribution network. According to the License Conditions, each Distribution Licensee shall, for the duration of the License: (a) Ensure provision of services in compliance with the requirements of this Law, standard acts issued under this Law and the Investment Program of the Licensee.

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### **Grounds for Refusal to Issue a License:**

GNERC is authorized to refuse to issue a license if the documents submitted by the applicant for the License do not conform to the requirements of the law and were not adjusted by the applicant in due time established by the administrative agency; or if the applicant can not satisfy License terms defined by the law (article 11 of the Law on “Licenses and Permits”).

### **Analysis and Discussions:**

On the basis of the laws discussed above, the conclusion can be drawn that the license shall be obtained from Georgian National Energy Regulatory Commission to carry out activities stipulated in the law on “Electricity and natural Gas”. Electricity generation, transmission, dispatch, distribution, as well as natural gas transportation and distribution without the relevant License shall be forbidden. Further, the Law in “Electricity and Natural Gas” does not require from a person, who generates electricity only for its own consumption and is not connected to the transmission or distribution grids, to obtain the license. Moreover, the Law provides the possibility of small hydropower plants to operate without a license and set tariff. That shall be done by deregulation.

The new draft law on ‘Amendments to the Law on Electricity and Natural Gas’ also provides for partial deregulation of electricity sector. Under the draft law ‘partial deregulation is granting a small hydro power plant a right to operate without a license based on marginal tariff. The Ministry of Energy is authorized to make decision on deregulation or partial deregulation under the clause 3 (3) of the Law on “Electricity and Natural Gas”. Therefore, the normative-administrative acts on deregulation (partial deregulation) may grant small hydro power plants a right to operate without a license. Pursuant to the “Law on Electricity and Natural Gas” the normative-administrative decree on deregulation shall be issued by the Ministry of Energy of Georgia.

Thus, the activities stipulated in the law on “Electricity and Natural Gas” shall be performed if the administrative body -Georgian National Energy Regulatory Commission confers to the person the right (license) on the ground of administrative act, to carry activities defined in the law on “Electricity and Natural Gas”. However, the license is not required if the person generates electricity only for its own consumption and is not connected to the transmission or distribution grids, to obtain the license (1) and if the activity of small hydro power plant is deregulated.

GNERC is authorized to refuse to issue a license if the documents submitted by the applicant for the License do not conform to the requirements of the law and were not adjusted by the applicant in due time established by the administrative agency; or if the applicant can not satisfy License terms defined by the law (article 11 of the Law on “Licenses and Permits”). Further, license terms (complete list of requirements and information that should be observed by License seeker, also rules, norms and requirements that should be observed by the holder of Licenses in order to carry out activities defined by the License) is specified by the law.

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The License issued by the GNERC shall only specify the type of service defined in the License application, location of the assets for providing services and service territory, for which the License is valid, also the date of issuing the License and conditions for its modification and revocation. Rights and duties of licensees shall not be specified in the License as they are specified in the laws, administrative-normative acts issued by the Commission and the Ministry of Energy. The license only grants right to carry out the Activities stipulated in the law on “Electricity and Natural Gas”.

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