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PUBLIC INTERACTION IN THE GEORGIAN ENERGY REGULATORY PROCESS

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PUBLIC INTERACTION IN THE GEORGIAN ENERGY REGULATORY PROCESS[1]

INTRODUCTION

Effective regulation is a chain with many links. Each of those links provides an opportunity and a need for public interaction. How those opportunities are used will do much to determine the eventual success or failure of the regulatory process.

The links include 1) a comprehensive energy law that conveys the necessary powers and responsibilities, 2) the appointment of people who are honest, qualified and dedicated, 3) adequate financial resources devoted to regulation from sources that do not compromise the commission's integrity, 4) decision making processes that obtain all necessary information and are responsive to the public, to the licensees and to investors, 4) vigorous monitoring and enforcement and 5) written, publicly available decisions that explain the Commission's reasons for its conclusions and that are reviewable by a court or other independent entity. Weakness or failure in any one of these links cannot adequately be offset by strengthening one of the others. All require continuous attention.

Public interaction is important at every stage of the regulatory process, from the shaping of the law and the appointment of the commissioners to the making of decisions to the protection of individual customers. Such interaction can take many forms, ranging from concerns by individuals about their utility service to participation in commission proceedings to participation in regular sessions with the regulatory commission and/or the utility. For the interaction to be effective, the public must have adequate information about the commission's workings and the decisions being made and must feel that its concerns have received a fair hearing and a reasoned decision.

Georgia, however, has no tradition of public participation. The Soviet system of unchallenged governmental authority and state ownership gave customers neither a choice as to service

[1] Chairman Elizbar Eristavi and Commissioner Demur Chomakhidze of the Georgia National Energy Regulatory Commission (GNERC) provided information useful in the preparation of this paper, which builds on a review of public interaction in the Armenian energy regulatory process done by Hagler Bailly for USAID in July 1999. Many of the issues are similar, although the Armenian Commission has been somewhat quicker to begin processes of meaningful public interaction, perhaps in part because the Consumers' Union of Armenia has greater energy sector expertise than its Georgian counterpart.

providers nor a voice as to terms of service.[2] No consumer organizations familiar with energy matters exist at this time. No meaningful energy customer education programs are underway.

Consumer difficulties abound. Rates have been increased to cover an amount closer to the costs of providing service. Some utilities have begun to institute more effective metering and collection practices, including disconnection of those who do not pay or who bypass the meters. Electric reliability during the winter of 1999-2000 was poor; gas service is available only to a fraction of the customers who were connected to the system a decade ago. Many people cannot afford the existing tariffs and some politicians assert that rates can be lowered. In short, in Georgia public interaction cannot be expected to come easily or to be harmonious. Nevertheless, the alternative of secretive regulation working apart from the public, issuing unexplained decisions that provide little guidance from one case to the next cannot be sustained for long in a democratic society.

This paper lays out some criteria for effective public interaction. The fact that Georgian regulation does not presently meet these criteria should be understood in the context of the large task, limited resources and absence of any tradition of public interaction that have been facts of life for the GNERC since its inception in 1997.[3] Fully effective public interaction is not all that common in the U.S. or other nations. Its achievement at this time in Georgia would have been miraculous. Nevertheless, Georgia is barely beginning the processes of public interaction, and substantial progress must be made before customers can be said to have a real voice, or the GNERC a real public constituency.

REASONS FOR EMPHASIZING PUBLIC INTERACTION

This paper uses the term "public interaction" rather than the more common "public participation" in order to emphasize that the process needs to flow in two directions. Public participation suggests a relationship in which the public comes to the commission to deliver a message in a particular context (or set of contexts). Public interaction, by contrast, emphasizes that the public and the commission must deal with each other on a daily basis in many ways, such as customer service, tariff-setting, public response to commission decisions, privatization, and involvement in avoiding waste of energy. Ideally, these dealings should be part of a coordinated strategy, in which constant attention is paid to assuring a constructive dialogue between the public and the Commission about matters of mutual concern and importance.

In a democratic society public interaction is the fundamental basis for the legitimacy of the decisions of the regulatory agency. As long as the public has had the right to participate meaningfully in the forming of regulatory agency decisions and to be informed of the reasons for those decisions, the decisions - even when they are unpopular - have a legitimacy that will help them to withstand criticism. However, the reverse is also true. Decisions made in ways that deny the public a meaningful chance to make its views known are a basis for suspicion and cynicism that can easily contribute to such chronic energy sector problems as low collections, theft and corruption.

[2] Because gas and electricity were widely available at very low cost and customers were rarely disconnected, utility consumerism would have been unlikely in any case.
[3] The GNERC was given jurisdiction over the gas sector in 1999.

Furthermore, the general public is not the only group concerned with the processes of public interaction. A number of the criteria set forth in this paper are important also to potential investors and to the regulated enterprises themselves. A survey of problems encountered by private sector entities in former socialist countries indicated that in the Caucasus region (Armenia, Azerbaijan and Georgia) policy surprises were a problem for some 60% of those surveyed, unpredictable changes in announced policies for 45%, lack of information about important rules and policies for 70% and lack of opportunity to participate in the development of important rules for 78%.[4]

In Georgia as elsewhere, one often hears such phrases as "But we don't have the time (or the money or the people) for such procedures yet" or "We don't really need to have public meetings to know that the public cannot afford higher tariffs and doesn't want to pay them" or "Such practices do not fit the culture of our country." Of course, there is some truth to each of these statements.

Nevertheless, the credibility of a regulatory agency is always fragile. A demonstrated willingness to listen can be important in itself. Furthermore, the public may have views about ways to implement or to mitigate necessary but unpopular decisions that can be very useful even when the decisions themselves cannot be avoided. Certainly the most effective public education programs elsewhere have been those that understood that the commissions and energy companies needed to learn from the public as urgently as the public needed to learn from them.[5]

Finally, carefully conceived public education can be a method of informing customers about the need to take some unpopular steps, about actions (such as more efficient use of energy) that can mitigate the impact of rising prices and about the rights of customers and citizens in energy sector decision making.

No regulatory agency in a democracy has the option of not interacting with the public. The question is what kind of a relationship will exist. Failure to pay close attention to the soundness of the ongoing public interaction is like a failure to exercise. It does no particular damage on any given day, and other matters will seem to have a higher priority. But if it goes on for too long, the effects are very hard to reverse, and the necessary credibility and familiarity will not be available when a real crisis arrives.

CRITEREA FOR ASSESSING PUBLIC INTERACTION

Public interaction involves all aspects of the Commission's work. However, the following are the most significant:

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[4] Aymo Brunetti, Gregory Kisunko, and Beatrice Weder, "Institutions in Transition: Reliability of Rules and Economic Performance in Former Socialist Countries," World Bank, August 1997. Of course, this paper was written before the GNERC could have had any impact and before Georgian energy firms would have shown up in a private sector survey. The Caucasus region tended to rank slightly better than the other former socialist regions surveyed, but the absolute numbers are still high enough to discourage foreign investors.

[5] See for example, Brenda Dervin and Peter Shields, "Some Guidelines for a Philosophy of Communicating with Citizens in a New Regulatory Environment," in "Compendium of Resources on Consumer Education," (National Regulatory Research Institute, Columbus, Ohio, 1998, pp. 69-86).

1. Meaningful participation in proceedings having broad public impact, particularly tariff setting and the conditions included in licenses.
2. The handling of individual or widespread customer concerns in such areas as reliability of supply, billing, disconnection and service quality.
3. Participation in setting the Commission's overall priorities.

The criteria by which to judge effective public participation might include:

1. Availability of information to the public.
    a. *Meaningful notice of commission proceedings*
    b. Meaningful information on the functioning of the commission
    c. Easily accessible information on the rights of customers
    d. Access to all information at the commission regarding utilities
    e. Access to clear information explaining past commission decisions

2. The extent to which the Commission seeks interaction with the public
    a. By holding informational discussions outside Tbilisi
    b. By having regularly scheduled meetings with groups representing customers and licensees
    c. By having regular discussions with the press.

3. The effectiveness of the means by which the public may participate in the decision making of the Commission.
    a. By having access to the information filed by the utility
    b. By being able to ask questions about tariff or other proposals during the proceedings in which they are being considered.
    c. By being able to present views to the Commission during the course of such proceedings.

4. The extent to which the views and concerns of the public are explicitly taken into account in the decisions of the Commission and are subject to review and reversal by a court or other independent entity.

5. The existence and implementation of a plan for communicating with the public regarding the realities of the Georgian energy sector and with regard to their rights and responsibilities as utility customers.

GEORGIAN REGULATION IN THE CONTEXT OF THESE CRITERIA

As indicated above, the GNERC - although it has begun to make progress on some of these criteria - does not currently meet most standards for effective public interaction. The Georgian Law on Electricity and Natural Gas contains reasonably strong requirements for public interaction[6],,and similar requirements appear in the GNERC

[6] For example, Clause 11(2) provides that the Commission "shall allow the interests of the parties, including electricity and natural gas consumers, to be represented in proceedings; Clause 12 provides that Commission

Charter[7] and in resolutions approving both electric and gas tariff methodologies.[8] However, to date these have not been implemented in an effective manner.

The public is not yet well informed as to the existence and function of the GNERC.

Commission procedures allow for written submissions, at least in tariff cases[9], but no opportunity has been provided to ask questions of the regulated entities, either at a hearing or in writing. The ability of the GNERC to interact with the public is further constrained by the absence of a room suitable for a public hearing or other proceeding of any size.

The resolutions of the GNERC express the decisions of the Commission but do not give the reasoning behind them, and there is no requirement for such a statement of reasons in the Georgian Law on Electricity and Natural Gas. Therefore, the resolutions cannot be of much use to a journalist, to a serious student of regulation, to a reviewing court seeking to understand the justification for a GNERC decision, or to an investor or other entity seeking guidance as to what principles the GNERC will apply in future decisions.

PUBLIC MEETING ON ELECTRICITY TARIFFS

The GNERC held one major public proceeding, an explanation of its decision on electric sector tariffs held on August 30, 2000. At this session, Chairman Eristavi and Commissioner Chomakhidze provided background on the electric sector and on the tariff decision itself. The session was attended by some 70 people who represented licensees, customers, customer groups, the media, and other government agencies. Following the presentations, the two commissioners answered a dozen questions from the audience and suggested that another such session might be scheduled in the near future.

For the GNERC to hold such a session and to open itself to a public dialogue represents significant and commendable progress. At the same time, this session by itself falls short of a meaningful public dialogue for several reasons. First, the decision to increase the tariffs had already been made and was scheduled for implementation two days later, on September 1. Consequently, the public and the media knew that nothing they could say was likely to change the outcome. Second, the consumers' group was unfamiliar with the data on which the Commission was relying, primarily because it had no resources to support a technical power sector specialist to become involved in the rate proceeding. Consequently, as was frequently the case in U.S. proceedings during times of rapid rate increases, the public statements and the commission response ("The Commission has been acting against the national interest by approving tariff increases and customer disconnections". "We reject this criticism because you lack the specialized knowledge necessary to support your conclusions") largely passed each other by. Without prompt and continuing follow-up that seeks to establish common ground on issues like theft of service and elimination of other types of energy losses, a significant opportunity to begin a meaningful dialogue will be lost.

meetings should be open to the public and that Commission decisions and other records should be publicly available; Clause 13 provides for public notice of commission meetings; Clause 44c states that in setting tariffs the Commission should use "Procedures for customers and other interested parties to comment on tariff applications."

[7] For example, Clause 3.11 lists among the GNERC functions "To provide through the mass media transparency in Commission functions." Clause 4.11 enumerates among the agency's rights and responsibilities "to assure that the sessions of the Commission shall be public (and that) the Commission's decisions, resolutions, orders and records shall be transparent."

[8] Clause 18(c) and (d) of the electric tariff methodology provide for public notice, an opportunity to examine the tariff filing and an opportunity for written comment (GNERC Resolution #3, July 1, 1998). The same provisions are in Clause 23(2) and (3) of the gas tariff methodology (GNERC Resolution #6, September 8, 1999).

[9] Two such submissions were received in the electric tariff case decided September 1- one from a union and one from a consumers' organization - both opposing the requested increase primarily on the ground that customers could not afford it.

Public interaction has not been a high priority area for GNERC attention, and the general public has not demanded meaningful interaction. The Commission has not yet established much of a presence outside of Tbilisi. The GNERC charter indicates that one of the operating divisions will be the Council of Consumers, with responsibility for "collection of information on operation data" as well as procedures for considering complaints and for implementation of service quality standards.[10] However, this department is not established, and the handling of customer complaints remains the subject of an ongoing jurisdictional dispute with the Antimonopoly Commission.[11]

The GNERC established a public relations department consisting of two former journalists. The Commission held several press conferences, and it sponsored a public opinion survey in December 1999. That survey indicated considerable public understanding of the nonpayment problem and support for remedial measures in return for reliable service.[12]

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[10] GNERC Charter of October 6, 1997, Clause 6.5. A Charter revision is pending and may eliminate this provision.

[11] The Antimonopoly Service, while agreeing that the GNERC is the state agency authorized to set tariffs, feels that its responsibilities include articulating a position in these proceedings. However, the Antimonopoly Service feels that it rather than GNERC has the responsibility to protect customers in individual matters such as billing or disconnection disputes. [Law on Antimonopoly Activity and Competition, Article 20(c). See also the Law on the Protection of Customer Rights. George Isakadze, Head of Service of the State Antimonopoly Service of Georgia provided information helpful to understanding this conflict].

[12] Results of the poll as reported in the GNERC Annual Report for 1999 (p.31) are as follows:

a. 46.8% consider privatization of "Telasi" a positive event, 50.8% deem that following privatization the situation did not improve, out of which 16.8% thinks that it even deteriorated.
b. There is significant potential for increasing the obligation of consumers to pay their bills. The ongoing advertisement campaign on TV and radio is less effective and there are no advertisements. "Telasi" must carry out relevant sociological research in this regard.
c. Public relations representatives should use the media not only when electricity supply has deteriorated; they must take measures to anticipate public opinion. Also they must broadcast positive trends, even if they are minor or short-term.
d. Customers, unlike some entities, treated positively the decision of GNERC regarding setting monthly payments for families who do not have meters or whose meters do not work. The main reason for this is that payment for consumed power is less.
e. Few respondents supported the idea of relocating meters in steel cases to entryways. Most respondents would support the idea if of 24 hour power supply were assured.
f. If activities were performed properly, payment for consumed electricity might be resolved positively.
g. Elimination of corruption in the sector is the most important step needed for improving power supply. The second is fair privatization of power enterprises and transfer of ownership to "honest partners."
h. The transfer of heating requirements to gas is vital for decreasing electricity consumption. This would have a positive effect on electricity supply to consumers as well as on decreasing electricity bills, both of which would help to sort out the payment problems.

SOME WAYS TO IMPROVE PUBLIC INTERACTION IN GEORGIAN ENERGY REGULATORY PROCESSES

Some of the following suggestions may be difficult to achieve in Georgia at this time. The first one will require legislation. None seem completely out of the question over the next few years, although financial assistance from USAID or another outside source would seem to be a prerequisite for several.

1) The current jurisdictional overlap between the Antimonopoly Service and the GNERC as to energy sector utility regulation should be resolved as part of a legislative package that codifies (in Clauses 1 and 4 of the Law on Electricity and Natural Gas) an expectation that the furtherance of public interaction in energy sector regulatory decision making is among GNERC's statutory responsibilities and that the GNERC should give a detailed written explanation for its major decisions. As matters now stand, GNERC's overall mission as to public involvement is not strongly stated, and some customers are confused as to which agency to turn to, while others can go to both and continue with the one that gives the most favorable answer. Enforcement under such circumstances is difficult. Furthermore, customer complaints provide important insight to regulators as to utility performance and are sometimes taken into account in setting performance-based tariffs. This function is blunted if much of the important customer complaint information is in the hands of another agency with whom a cooperative relationship does not exist.[13]

2) The GNERC should consider transforming its public relations department into a department for public interaction. It should also include in its charter and its organization a consumer assistance department, either as part of the department of public interaction or separately. Such an office or group would have responsibility for developing a comprehensive public interaction approach, including assuring that the general public had adequate and early notice of proceedings of public concern. It could also handle individual customer concerns and could function as a public information office with responsibility for media matters, although the inclusion of media matters is not essential. Such an office could have the lead responsibility for developing comprehensive rules governing such issues as disconnection and establishment of service, as well as service quality standards.

3) As part of its process of establishing itself in the public mind as a source of independent expertise regarding energy sector regulation, the GNERC should consider the preparation and distribution of written (and perhaps video) materials explaining what the Commission does, how it works, and what the rights of the customers are. Such materials should be available at GNERC offices and meetings. They could also be made available to customer groups, as could a periodic newsletter.

[13] While the normal (and in our view preferable) resolution would put the customer contact function with the GNERC, there is precedent for having the customer service function in the agency with consumer advocate responsibilities. For such a bifurcation to work, however, the two agencies should have a demonstrated capacity for trust and cooperation.

In the U.S. such materials typically have titles like "The Answers to Frequent Questions Regarding Utility Service," or "The Rights of Utility Customers" or "Advice Regarding Energy Efficiency."

4) While few homes in Georgia would yet be able to access a GNERC web page (or know why they might want to), such an undertaking would still be of use to those with a special interest in energy sector regulation, including licensees, other government agencies and perhaps the media.

5) The GNERC could require through license conditions or as a condition of tariff approvals that the utilities themselves undertake to improve their interaction with the public.[14] Each distribution entity could be required to have a consumer advisory council. In New York such utility consumer councils typically consist of some fifteen people who represent different types of customers (for example, large, small, commercial, people with different ethnic backgrounds, people living in apartments). They meet perhaps every two months with the senior management of the utility to discuss issues of customer concern. Perhaps once a year, one or two of the commissioners meet with the council. Of course, such councils require individuals who have some stature as leaders of the groups that they represent if they are to be useful and not just a reflection of the views of the utility.

6) The Commission could also have its own consumer advisory council, consisting of representatives who could attend several meetings per year on topics of particular interest. Such meetings would, of course, tend to have more structure and purpose than a meeting with the general public. The results of these meetings, including the main questions and answers, can be described in brochure form for a wider distribution to the public.

7) The Commission could also consider the use of advisory councils with technical or economic expertise to advise periodically on matters pending before the commission. Such councils might not only provide useful advice; their involvement would also enhance the credibility of Commission decisions if the outside experts were in agreement with them. Regular consultations with individual outside experts - from academia, for example - is also worth considering.

8) It seems particularly important that the Commission prepare detailed explanations of the reasons for its decisions. Such material would be helpful to entities with a particular interest in the decisions of the commission, such as the utilities, organized customer groups, potential investors in the utilities, serious commenters in the media and future staff and commissioners.[15] In other countries, such a document is also

[14] AES-Telasi has an ongoing public relations program of its own that has recently come to include surveys and focus groups. A central theme is the need to recognize that electricity is a commodity that must be purchased and paid for rather than treated as a government-granted entitlement. The rest of the energy sector does not yet have such programs.

[15] The importance of a careful explanation of regulatory decisions goes beyond public interaction. As a basic U.S. administrative law summary states, "The aim is to urge the agency to give careful rather than cursory consideration, to keep it within statutory bounds, to assist judicial review of agency decisions and to develop a body of available precedent. Unexplained administrative actions may be inexplicable and unjustifiable. As Judge Frank once stated so

required if the decision is subject to review by a court or another government body. In the U.S. the absence of such a document would, by itself, cause a court to reverse the decision, at least until it was explained well enough to permit judges to review it. Given the establishment of a separate consumer affairs office or group as recommended above, the legal staff would have more time to devote to this function.

9) USAID could consider assistance to groups that represent customers or the general public in Commission decisions. A few U.S. states (notably California) and several Canadian regulatory commissions (notably British Columbia and Quebec) provide - or require utilities to provide - financial assistance to customer groups intervening in particular cases. Overall assistance is less common[16],,but a good case for such institution-building expertise exists in countries in which the basic consumer movement institutional infrastructure is lacking. Undertakings as basic as the distribution of informational newsletters are beyond the means of many customer groups at this time. Obtaining expert advice on energy and regulatory matters seems completely out of reach. It is hard to see how public interaction can become a reality until an informed public exists to interact with.

10) The Commission need to make its principles known to the public outside of Tbilisi as well. In Georgia, where travel can be difficult and the postal system is often not reliable, regional offices primarily for interaction with utility customers could also be very useful. Public meetings in other parts of the country would be a possible starting point. However, such a measure is unlikely to have much impact unless it is part of a coordinated strategy.

11) Updating the December 1999 survey, perhaps in conjunction with "focus groups," could help to inform the Commission on the likely public response to certain types of decisions. The GNERC cannot, of course, allow its basic tariff decisions to be made on the basis of public opinion, but that is quite different from seeking to understand the likely public response to types of decisions when success or failure of those decisions depends on changes in the public's behavior.

12) Each utility could be required to have programs for customers with special needs (such as disabilities or the elderly). These programs can be developed through the consumer advisory councils or by special working groups set up by the utility.

13) Ultimately, the Commission proceedings need to provide an early opportunity for significant public input. The GNERC's receipt of written comments in its recent electric tariff proceeding is a good beginning, as is its August 30 session explaining

well: '[A]dministrative agencies, when acting judicially, have an obligation to be as articulate as practically possible. For no aspect of a democratic government should be mysterious.'" Ernest Gellhorn, Administrative Law, West Publishing Company, 1972, pp. 236-37).

[16] In addition, of course, at least half of the U.S. states provide for representation of the public through an agency of government apart from the Commission, such as an "Office of People's Counsel (Maryland)," "Division of the Ratepayer Advocate (New Jersey)," "Consumer Protection Board (New York)," Attorney General's Office (Massachusetts), Department of Public Service (Vermont), or "Public Advocate (Maine). And almost all states expect that part of the staff of the regulatory agency will separate itself from the Commission and act as an advocate for consumers or for "the public interest" in most major proceedings.

its decision, but these are not equivalent to a comprehensive and ongoing process of public proceedings and public interaction. This is not to say that the Commission needs to adopt the judicial model often associated with U.S. regulation. Even in that system, which is sometimes criticized for offering excessive public participation and procedural requirements, ample opportunity exists to choose procedures that are applicable to particular situations. Informal or hybrid procedures based on public notice, access to information and an opportunity for comment before the decision have long been available as an alternative to fully litigated "cases." In recent years, many commissions have experimented with alternative dispute resolution, mediation, and negotiation formats. In these proceedings, such safeguards as cross-examination and prohibition of ex parte contact are often relaxed relative to their application when a matter is decided through formal litigation. Even with such less formal processes, the need for a reasoned decision remains.

CONCLUSION

The GNERC has accomplished a good deal in its first three years. However, public interaction has not been a high priority. Despite some praiseworthy initiatives and activities, a comprehensive public interaction program does not yet exist. Its absence is critical because the rapid changes taking place in the Georgian energy sector have created a high degree of public interest and concern. Strong programs for public education, public participation and public communication will never be more important than right now, when they are barely beginning. Development and implementation of such programs is essential if the GNERC is fully to function as part of the ongoing growth of democratic institutions in Georgia.