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USAID ENERGY PROGRAM

# COMMENTS ON DRAFT ENERGY LAW

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13 July 2018

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# DATA

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## ACRONYMS

AA	Association Agreement
CAO	Coordinated Auction Office
DSO	Distribution System Operator
EC	Energy Community
ECS	Energy Community Secretariat
EMO	Electricity Market Operator
EnCT	Energy Community Treaty
EU	European Union
GNERC	Georgian National Energy and Water Supply Regulatory Commission
GoG	Government of Georgia
HHI	Herfindahl-Hirschman Index
ISO	Independent System Operator
ITO	Independent Transmission Operator
LNG	Liquefied Natural Gas
MO	Market Operator
PSO	Public Service Obligation
RPF	Request for Proposals
SEE	South East Europe
SoLR	Supply of Last Resort
TPE	Third-Party Access
TPP	Thermal Power Plant
TSO	Transmission System Operator
USAID	United States Agency for International Development
USS	Universal Service Supplier
VRE	Variable Renewable Energy
VTP	Virtual Trading Point

# CONTENT

INTRODUCTION AND BACKGROUND .....	5
COMMENTS ON DRAFT ENERGY LAW .....	7

## INTRODUCTION AND BACKGROUND

The purpose of USAID Energy Program is to: (1) support Georgia in energy market development per Georgia's obligations under the Energy Community Treaty (EnCT), (2) build the capacity of the Government of Georgia (GoG) and relevant institution(s) to evaluate the fiscal and long-term impacts of regulatory changes, (3) promote energy investments, primarily in Variable Renewable Energy (VRE) development, (4) to support integration of non-hydro renewable energy into the power system, and (5) provide strategic advisory services to the GoG to increase Georgia's energy security.

Recently Georgia joined European Energy Community (EC) undertaking obligation to implement mandatory reforms in energy sector in compliance with European Union (EU) Energy Aquis. Respective Directives and Regulations are to be implemented within determined timeframe. The membership allows Georgia to make active steps towards liberalization of the energy market, to ensure safety of energy resources, to use renewable energy resources and to facilitate energy efficiency; also, to take measures in the environment protection and statistics area by relevant state authorities.

Country is committed to integrate into European and Euro Atlantic organizations and to transpose best practice of leading European states into all sectors, including the energy sector. The foundation for developing a sustainable, competitive and secure energy lies in the Association Agreement (AA) which was signed between Georgia and European Union in September 2014. AA refers to major reforms that country has to implement, lists the mandatory EU directives and regulations to comply with and links the deadlines for their transposition, to the requirements set by Energy Community.

One of the main objectives of USAID Energy Program is to support Georgia's efforts to facilitate increased investment in power generation capacity as a means to increase national energy security and facilitate economic growth. Improved legal and regulatory framework that complies with European requirements and encourages competitive energy trade, will serve as the basis for investment attraction in the sector as well.

Therefore, considering the developments in energy sector of Georgia and tight timeline of implementing the undertaken obligations, USAID Energy Program actively supports GoG providing recommendations in the reform making process.

USAID Energy Program has reviewed the draft Energy Law, which considers most of the recommendations USAID has been providing to GoG in past years. In particular, following reforms are considered:

- Third party access on electricity and gas transmission and distribution networks;
- Establishment of trading based on bilateral contracts;
- Creation of energy traders including competitive retail suppliers;
- Development of balancing market;
- Unbundling of Transmission System Operator (TSO) and Distribution System Operator (DSO);
- Creation of balancing groups with associated balancing responsible parties;
- Development of Day ahead planning;
- Establishment of Spot market (day ahead and eventually intraday market);
- Strengthening a role of independent regulator.

Related to draft Energy Law itself and the way it is structured, USAID Energy program thinks the draft by its nature is more general, providing different options for institutional setup of energy entities and market setup, while the law shall clearly specify the obligatory provisions.

Moreover, under the draft Law, after its adoption, the Electricity Market Concept Design shall be adopted by the Government of Georgia (GoG) for "general guidance for the organisation and functioning of the electricity market in Georgia. The general guidance shall define the structure of the electricity market and shall provide general outline of the rights and obligations of market participants to extent where it is essential to define the general essence of the market structure".

Usually general guidance for specific sector is determined under the state policy document adopted as a primary legislation, that shall serve as the basis for specific sector related laws. Law shall also clarify the organization of the market, functions of the entities and obligatory provisions. As for the detailed sector related rules and regulations, it's implemented on the secondary legislation level.

Therefore, the necessity and role of adopting Electricity Market Concept Design, especially on secondary level – is unclear.

Table provided in the report considers comments of USAID Energy Program in relation to various articles of draft Energy Law.

# COMMENTS ON DRAFT ENERGY LAW

N	Draft Energy Law Reference	Text of the Law	Suggested modification or comment
1	Article 3 – Definitions	<p><b>3.1 “ancillary services”</b> shall mean for electricity – services necessary for access to electricity systems and for the operation of electricity transmission and/or distribution networks including frequency regulation, voltage control, and restoration of supply, and for natural gas – services necessary for access to natural gas systems and for the operation of natural gas transmission and/or distribution networks, natural gas storage facilities and/or Liquefied Natural Gas (LNG) facilities, including load balancing, blending and injection of inert gases, but not including facilities reserved exclusively for the transmission system operator for natural gas carrying out its functions;</p>	<p><b>Article 3.1</b></p> <p>The blending and injection of inert gases is not performed in Georgia, so ancillary services in the gas sector are load balancing, in other words, balancing. It is not clear what is the balancing and ancillary services market when both balancing an ancillary service are the same.</p>
<p><b>3.24 “day-ahead natural gas market”</b> shall mean an organized wholesale natural gas market where the purchase and sale of natural gas take place each day prior to the day of actual sale and physical delivery of natural gas;</p>		<p><b>Article 3.24</b></p> <p>in Europe gas is physically traded at Virtual Trading Points like the Title Transfer Facility in the Netherlands; in the U.S. it is traded at hubs like the Henry Hub in Louisiana. These markets include “day-ahead” products and day-ahead prices but they include many other products of varying time duration. There is no separate “day-ahead natural gas market.”</p> <p>Ref. See Quarterly Report on European Gas Markets, <a href="https://ec.europa.eu/energy/sites/ener/files/documents/quarterly_report_on_european_gas_markets_q4_2017_fin_a_20180323.pdf">https://ec.europa.eu/energy/sites/ener/files/documents/quarterly_report_on_european_gas_markets_q4_2017_fin_a_20180323.pdf</a></p> <p>Perhaps “short-term” can be substituted for “day ahead” and the definition can be expanded to include “all natural gas exchanges/trading platforms, including exchanges, hubs, and Virtual Trading Points (VTPs).” Article 50.2(6) already mentions setting up of “exchanges/trading platforms” as one of the Independent Transmission Operator (ITO’s) responsibilities.</p>	
<p><b>3.70 “horizontally integrated undertaking”</b> shall mean a horizontally integrated electricity undertaking or a horizontally integrated natural gas undertaking;</p> <p><b>3.71 “horizontally integrated electricity undertaking”</b> shall mean an electricity undertaking performing at least one of the functions of generation of electricity for sale, transmission, distribution or supply of electricity, or trade in electricity, or operation of the electricity market, and another non-electricity activity;</p> <p><b>3.72 “horizontally integrated natural gas undertaking”</b> shall mean a natural gas undertaking performing at least one of the functions of production, transmission, distribution</p>		<p><b>Article 3-70.71.72.</b></p> <p>These terms are not used in the law and therefore should be deleted from the list.</p>	
<p><b>3.100 “storage of natural gas”</b> shall mean the stocking of natural gas in the natural gas storage facility or, as the case may be, in the LNG facility, including related services provided to system users by the system operator in charge</p> <p><b>3.167 “trade in natural gas”</b> shall mean the sale and purchase of natural gas for the purpose of resale inside or outside the territory of Georgia</p> <p><b>3.177 “universal service”</b> shall mean supply of electricity as a public service according to regulated conditions to those final customers which are entitled to be supplied with electricity under such conditions, i.e. household customers and small enterprises, and freely choose such a method of supply or use it by default;</p>		<p><b>Article 3.100</b></p> <p>This definition should include “line pack” since Definition No. 87 defines “line pack” as “storage”</p> <p><b>Article 3.167</b></p> <p>“trade in natural gas” should include the term “swap”</p> <p><b>Article 3.177</b></p> <p>“universal service” states that household customers and small enterprises may “freely choose such a method of supply or use it by default”; however, that choice is “limited in time” under Article 9.1; the term “default” is not used elsewhere in the sense of “default supplier.” The definition should therefore end at “small enterprises”.</p> <p>Missing Definition:</p> <p>“VTP” should be included in the Definitions since “Virtual Point” is identified in Article 77 (Natural Gas Transmission Network Code)</p>	
2	Article 15 - Validity and territorial application of licenses	<p><b>15.3</b> Licenses issued for the transmission and distribution of electricity and natural gas shall grant respective license holders an exclusive right to perform any of these activities throughout the geographical territory (administrative unit) or another service area defined in the</p>	<p><b>Article 15.3</b></p> <p>The term “administrative unit” is used as if it were interchangeable with “geographical territory” when they are not, in fact, interchangeable. An “administrative unit” (such as “the municipality of</p>



		license, i.e. only one (1) license may be issued for the performance of each of these activities in the respective territory. Number of licenses issued for the generation of electricity, for the storage of natural gas and for LNG activities shall not be limited and shall not be restricted by regulatory, administrative, financial and/or any other measure	Tbilisi”) can change over time as the city grows and the borders of the administrative unit are expanded; expansion of an administrative unit can result in overlapping service territories and disputes between distribution companies, with accusations of “poaching” of customers. Service territories should be exclusive to avoid these types of disputes and should therefore include specific geographic boundaries.
3	<b>Article 28 - General objectives of the Commission</b>	<b>28.1(3)</b> Eliminating restrictions on trade in energy between the EC Parties, including developing appropriate cross-border transmission capacities to meet demand and enhancing the integration of national markets which may facilitate energy flows across the Energy Community;	<b>Article 28.1(3)</b> The reference to the Commission “developing appropriate cross-border transmission capacities...” does not make sense since the Commission can only provide incentives for, or approve plans for, expanded cross-border transmission capacities. It does itself build such capacities.
4	<b>Article 29 - Duties of the Commission</b>	<b>29.2(1)(c)</b> fees for the services provided by the market operator, where applicable; <b>29.2(4)(f)</b> the Commission shall be permitted to establish performance-based rates; <b>29.2(4)(g)</b> interruptible rates, load balancing rates and other mechanisms to improve energy efficiency and demand side management shall be encouraged for services in the electricity sector, including consideration of the development and dispatch of renewable energy sources; <b>29.2(4)(h)</b> season and time-of-use rates shall be allowed, in case tariffs may be adjustable according to the cost of peak and off-peak services; <b>29.2(4)(i)</b> cross-subsidies between the transmission and distribution on the one hand and supply and trade activities on the other hand, and discrimination between system users or customers, or different categories of system users or customers shall be eliminated; <b>29.4(4)</b> publishing recommendations, at least annually, in relation to compliance of supply prices with requirements of this Law and its implementing regulations, and providing those to other competent national authorities of Georgia, where appropriate;	<b>Article 29</b> Subsection 2(1)(c) “market operator” is singular but Article 3 contains definitions for both an “electricity market operator” and a “natural gas market operator.” Articles 132 and 138 also describe separate market operators. If there is to be a single combined market operator for both electricity and natural gas, this should be made clear somewhere. Subsection 2(4)(f) – (i) The term “rates” in these paragraphs should be changed to “tariffs” to avoid confusion when translating into Georgian. Subsection 4(4) The requirement that the Commission “publish recommendations at least annually in relation to compliance of supply prices with the requirements of this Law” is unclear. Supply prices, except for those provided by suppliers with a public service obligation, are unregulated and subject to competitive forces. It is unclear what recommendations could be made with regard to “supply prices”. Perhaps this should be amended to refer to “suppliers”, rather than “prices.”
5	<b>Article 30 - Regulatory powers of the Commission</b>	<b>30.1(2)</b> require system operators, if necessary, to modify the terms and conditions, including tariffs and/or prices, to ensure that they are proportionate and applied in a non-discriminatory manner. In the event that the access regime to natural gas storage facilities is defined according to paragraph 3 of Article 98 [Organization of access to natural gas storage facilities and linepack] of this Law, this power shall exclude the modification of tariffs;	<b>Article 30.1(2)</b> The reference to “paragraph (3) of Article 98” is incorrect; it should be “paragraph (4) of Article 98”
6	<b>Article 37 - Promoted generation of electricity</b>	1. Promotion of the generation of electricity shall be regulated in a transparent and non-discriminatory manner, taking into account the criteria of economic feasibility, least cost for final customers, and general effect towards the electricity balance and operation of the electricity system of Georgia. 2. Generation of electricity from renewable energy sources and high-efficiency cogeneration may be incentivized by promotional and support measures under the terms and conditions stipulated in applicable laws or established by the Government with the aim at achieving the goals of the generation of electricity from renewable energy sources and/or of the combined generation of electricity and heat as set for Georgia in applicable legal acts. 3. Promotion of the generation of electricity, including all incentives and/or support measures provided therefore, shall be screened and, where required, justified in accordance with competition and/or State aid rules as established by applicable laws of Georgia. 4. The terms and conditions referred to in paragraph 1 of this Article shall include, in particular, applicable incentives and support mechanisms, rights and obligations of electricity undertakings, conditions for the promoted generation of electricity and regulatory requirements thereto.	<b>Article 37</b> The references to “electricity balance” should be replaced with “projected supply and demand”; the concept of an “electricity balance” is a Soviet-era concept which gave the Government the ability to control which generators would be allowed to operate and which would be excluded through the use of an “annual balance” which had to be approved at the beginning of each year. That concept and the ability of the Government to control imports and exports by excluding certain supplies from the annual “balance” should not exist in competitive markets.
7	<b>Article 41 - Obligations of natural gas producers</b>	<b>41.1(2)</b> possess a metering device that enables measurement of natural gas delivered to the appropriate network;	<b>Articles 41.1(2)</b> The treatment of “metering” and the ownership of metering devices throughout the Draft Law is inconsistent. Most of the references listed above assume that metering equipment is owned by customers and suppliers or requires ownership to be identified in the Distribution

			Network Code. The exception is in Article 91.1, which states that metering equipment on a distribution network shall be “owned” by the DSO and in paragraph 3 of that article, which states that where the metering device is owned by the producer or customer, the DSO shall “take over ownership of such metering devices.” There is no reference to compensation for taking over ownership nor is there any rationale given. Presumably the rationale is to ensure consistency of standards for metering. In other countries, the issue of consistency is addressed through a Metering Code with which all meters are required to comply. There is no reason for the DSO to own all meters if, as provided in other provisions of this Draft Law, the DSO has access to such meters.
8	<b>Article 44 - Unbundling model</b>	<p>1. Unbundling model for each transmission system operator, including the action plan for its implementation, shall be decided by the Government as submitted by the Commission and in consultations with the Energy Community Secretariat (ECS).</p> <p>2. The following unbundling models may be applied:</p> <ol style="list-style-type: none"> <li>1) to transmission system operators for electricity: <ol style="list-style-type: none"> <li>a) ownership unbundling in compliance with Article 45 [Ownership unbundling] of this Law; or</li> <li>b) as an exception to the ownership unbundling, in cases where the transmission system operator in question belonged to a vertically integrated undertaking before or on 6 October 2011: <ol style="list-style-type: none"> <li>i. an independent system operator in compliance with Articles 46 [Independent System Operator ISO] -48 [Independence of the transmission system owner] of this Law; or</li> <li>ii. an independent transmission operator in compliance with Articles 49 [ITO] -54 [Compliance programme and compliance officer of an ITO] of this Law.</li> </ol> </li> </ol> </li> <li>2) to transmission system operators for natural gas: <ol style="list-style-type: none"> <li>a) ownership unbundling in compliance with Article 45 [Ownership unbundling] of this Law; or</li> <li>b) as an exception to the ownership unbundling, in cases where the transmission system operator in question belonged to a vertically integrated undertaking before or on 6 October 2011, an independent system operator in compliance with Articles 46 [ISO] -48 [Independence of the transmission system owner] of this Law.</li> </ol> </li> </ol> <p>3. Implementation of the unbundling model which implies a higher level of independence of the transmission system operator shall not allow for a later regression towards another model which would cause a transmission system operator being tighter bundled with and more dependent on a vertically integrated undertaking or any part thereof.</p> <p>4. Transmission system operators and/or transmission system owners shall not in any event be prevented from taking steps to comply with and to implement the ownership unbundling under Article 45 [Ownership unbundling] of this Law.</p>	<p><b>Article 44</b> Is it necessary to list the different options for unbundling when the unbundling options for the electricity and gas TSOs have already been decided for Georgia? However, in case unbundling options still have to be presented in the Energy Law, why Independent Transmission Operator model (for example, adopted in France and Germany) is not listed for gas TSOs?</p>
9	<b>Article 54 - Compliance programme and compliance officer of an independent transmission operator</b>	<p>1. An independent transmission operator shall establish a compliance programmed setting out measures taken to ensure that discriminatory conduct is excluded and ensure a method for monitoring compliance with that programmed. The compliance programmed shall set out the specific obligations of employees of an independent transmission operator to meet those objectives. It shall be subject to approval by the Commission. Compliance with the programmed shall be independently monitored by a compliance officer.</p> <p>2. The compliance officer shall be appointed by the Supervisory Body of an independent transmission operator formed in accordance with Article 53 [Supervisory Body of an ITO] of this Law, subject to the prior approval by the Commission. The Commission may refuse the approval of the compliance officer only for reasons of lack of independence or professional capacity. The compliance officer may be a natural or legal person and shall be independent in its work and actions.</p>	<p><b>Article 54</b> Is it necessary to list the different options for unbundling when the unbundling options for the electricity and gas TSOs have already been decided for Georgia? If the options have to stay, why is the Independent Transport Operator model (adopted in France and Germany) not listed for gas?</p>

3. The independence of the compliance officer shall be ensured in the following manner:

- 1) the compliance officer shall have no other professional position or responsibility, interest or business relationship, directly or indirectly, with any part of the vertically integrated undertaking or with its controlling shareholders or, as the case may be, with any energy undertaking exercising another activity than the transmission;
- 2) the compliance officer shall exercise no professional position or responsibility, interest or business relationship, directly or indirectly, with the vertically integrated undertaking or any part of it or its controlling shareholders other than an undertaking exercising the transmission for a period of three (3) years before the appointment;
- 3) upon termination of its contractual relations with an independent transmission operator, the compliance officer shall have no professional position or responsibility, interest or business relationship with any part of the vertically integrated undertaking or its controlling shareholders or, as the case may be, with any energy undertaking exercising another activity than the transmission, for a period of not less than four (4) years; and
- 4) the compliance officer shall hold no interest in or receive any financial benefit, directly or indirectly, from any part of the vertically integrated undertaking or, as the case may be, from any energy undertaking exercising another activity than the transmission.

4. An independent transmission operator shall without delay deliver to the Commission a proposal for appointment of the compliance officer and the terms of its agreement with the company, especially terms relating to commencement, duration and termination of appointment, remuneration conditions, substantive and other rights.

5. Within three (3) weeks from the day of receipt of the proposal referred to in paragraph 4 of this Article, the Commission may object to the proposed appointment decision or to the terms of the agreement concluded with the compliance officer where:

- 1) doubts arise as to the professional independence of the nominated compliance officer within the meaning of paragraph 3 of this Article and the appointment terms, including remuneration and other substantive rights; or
- 2) in the case of premature termination of a term of office, doubts exist regarding the justification of such premature termination. Premature termination shall be considered unlawful where indicated termination circumstances are not in conformity with the provisions of this Law concerning independence from the vertically integrated undertaking.

6. The compliance officer shall be in charge of:

- 1) monitoring the implementation of the compliance programmed;
- 2) elaborating an annual report, setting out the measures taken in order to implement the compliance programmed and submitting it to the Commission;
- 3) reporting to the responsible bodies of an independent transmission operator and issuing recommendations on the compliance programmed and its implementation;
- 4) notifying the Commission on any substantial breaches with regard to the implementation of the compliance programmed; and
- 5) reporting to the Commission on any commercial and financial relations between the vertically integrated undertaking and an independent transmission operator.

7. The compliance officer shall submit its proposed decisions on the investment plan or on individual investments in the transmission network to the Commission, at the latest by the moment when respective decision on such plan and/or investments is adopted by the responsible management body of an independent transmission operator.

8. The conditions governing the mandate or the employment conditions of the compliance officer, including the duration of its mandate or employment, shall be subject to approval by the

		<p>Commission. Those conditions shall ensure the independence of the compliance officer, including by providing it with all the resources necessary for fulfilling its duties. During its mandate, the compliance officer shall have no other professional position, responsibility or interest, directly or indirectly, in or with any part of the vertically integrated undertaking or with its controlling shareholders or, as the case may be, with any energy undertaking exercising another activity than the transmission.</p> <p>9. The compliance officer shall report to the Commission regularly, either verbally or in writing, and shall have the right to report regularly, either orally or in writing, to the responsible bodies of an independent transmission operator.</p> <p>10. The compliance officer may attend all meetings of the managing staff and corporate bodies of an independent transmission operator, including the general assembly, supervisory and management bodies, which have the obligation to inform the compliance officer of scheduled meetings and to provide it with all necessary materials. The compliance officer shall attend all meetings that address the following matters:</p> <ol style="list-style-type: none"> <li>1) terms and conditions for the access to and the use of the transmission system and, in particular, regarding relevant tariffs and/or charges, services provided by an independent transmission operator, capacity allocation and congestion management in the transmission network, as well as transparency, balancing and secondary markets;</li> <li>2) projects undertaken in order to manage the transmission system and to maintain and develop the transmission network, including investments in interconnectors; and</li> <li>3) energy purchases or sales necessary for the operation of the transmission system and the transmission networks, including procurement of ancillary services and balancing service.</li> </ol> <p>11. The compliance officer shall monitor the compliance of an independent transmission operator with the provisions regulating confidentiality of the transmission system operator in accordance with this Law and other applicable legal acts.</p> <p>12. The compliance officer shall have access to all relevant data and to the offices of an independent transmission operator and to all the information necessary for the fulfilment of its tasks. The compliance officer shall have access to the offices of an independent transmission operator without prior announcement.</p> <p>13. With prior approval of the Commission, the Supervisory Body of an independent transmission operator formed in accordance with Article 53 [Supervisory Body of an ITO] of this Law may dismiss the compliance officer. It shall dismiss the compliance officer for reasons of lack of independence or professional capacity upon request of the Commission.</p>	
10	<b>Article 56 - Certification of the transmission system operator</b>	<b>56.5</b> Where the final decision of the Commission diverges from the opinion of the ECS, the Commission shall provide and publish together with such decision, the reasoning underlying its diverging decision, and shall inform the ECS accordingly.	<b>Article 56.5</b> It is unclear what happens if Georgian National Energy and Water Supply Regulatory Commission (GNERC) and the ECS differ on the entity to be certified. Whose decision prevails?
11	<b>Article 58 - Tasks of the transmission system operator</b>	<b>58.9</b> TSOs shall keep at the disposal of competent national authorities of Georgia, including the Commission and the Competition Agency, as well as of the ECS all information referred to in this Article and all technical information necessary for system users to gain effective access to the transmission system, information related to relevant points for transparency requirements, and information to be published at all relevant points and the time schedule according to which that information should be published at least for a period of five (5) years.	<b>Article 58.9</b> The phrase “information related to relevant points for transparency requirements” (which has to be retained for five years) is too vague for the TSO to know what information has to be retained. It should be more specific.
12	<b>Article 60 - Development of the transmission network and investment decisions</b>	<b>60.8(3)</b> Oblige the transmission system operator to accept a capital increase to finance the necessary investments and allow independent investors to participate in the capital. <b>60.13</b> If, under Article 46 [ISO] of this Law, an independent system operator has been designated and such an independent system operator does not reach an agreement with the transmission system owner regarding particular developments of transmission network assets owned by the transmission system owner, including network extensions, the decision on such investments shall be made by the Commission based on economic and technical justification provided by an independent system operator and the transmission system owner.	<b>Article 60.8(3) and (13)</b> This provision would allow GNERC to “oblige the transmission system operator to accept a capital increase to finance the necessary investments and allow independent investors to participate in the capital.” The TSO is not the owner of the transmission assets and cannot issue shares on behalf of the owner to increase the capital in the owner’s company. The TSO only owns equipment and is unlikely to be a joint stock company (certainly not if it is an ISO) which can issue shares.

			If the TSO and the transmission system owner cannot agree on construction of needed facilities, GNERC could require the TSO to issue an Request for Proposals (RFP) for the new facilities, which would then be owned by the winning bidder; however, the facilities would need to be segregated from those of the existing transmission owner and GNERC would need to develop a tariff methodology which compensated the new owner for its investment separately from the tariff for the existing, depreciated transmission facilities.
13	<b>Article 62 - Delivery of data and information to the transmission system operator</b>	<b>62.2</b> The transmission system operator shall exchange metering data and other necessary information with other operators of interconnected systems.	<b>Articles 62.2</b> The treatment of "metering" and the ownership of metering devices throughout the Draft Law is inconsistent. Most of the references listed above assume that metering equipment is owned by customers and suppliers or requires ownership to be identified in the Distribution Network Code. The exception is in Article 91.1, which states that metering equipment on a distribution network shall be "owned" by the DSO and in paragraph 3 of that article, which states that where the metering device is owned by the producer or customer, the DSO shall "take over ownership of such metering devices." There is no reference to compensation for taking over ownership nor is there any rationale given. Presumably the rationale is to ensure consistency of standards for metering. In other countries, the issue of consistency is addressed through a Metering Code with which all meters are required to comply. There is no reason for the DSO to own all meters if, as provided in other provisions of this Draft Law, the DSO has access to such meters.
14	<b>Article 64 - Regional and international cooperation of the transmission system operator</b>	<ol style="list-style-type: none"> <li>1. The transmission system operator, in coordination with the Commission, shall particularly promote and facilitate the cooperation of transmission system operators at a regional level, including cross-border issues, with the aim of creating a competitive regional market in electricity or natural gas and fostering the consistency of legal, regulatory and technical frameworks concerning activities of transmission system operators, in line with the assumed international commitments of Georgia.</li> <li>2. The transmission system operator shall cooperate with the EC Regulatory Board and, where relevant, with regulatory authorities and transmission system operators of other EC Parties within the framework determined by EC law, this Law and other applicable legal acts.</li> <li>3. The transmission system operator, subject to a prior approval of the Commission, may participate in the work of one or more integrated system (or systems) at the level of one or more regions covering two or more EC Parties for the allocation of transmission capacities and for checking the security in transmission networks.</li> <li>4. The transmission system operator shall promote operational arrangements in order to ensure the optimum management of transmission networks in the EC and shall promote the development of energy exchanges, the coordinated allocation of cross-border capacity through non-discriminatory market-based solutions, paying due attention to the specific merits of implicit auctions for short-term allocations, as well as to the integration of balancing and reserve mechanisms.</li> </ol>	<b>Article 64</b> Since Georgia does not border on any country that is likely to join the EC in the foreseeable future, this article does not have any applicability to Georgia. It should be removed.
15	<b>Article 65 - Third-party access to the electricity transmission system</b>	<b>65.6</b> The transmission system operator shall, if necessary for the purpose of carrying out its functions including in relation to cross-border transmission of electricity, have access to the network of other transmission system operators of neighbouring countries following their mutual agreements and/or other terms of cooperation.	<b>Article 65.6</b> This provision mandates access to neighbouring networks, even though none of the neighboring countries are members of the Energy Community. It is a meaningless hortatory statement. Instead it should encourage the TSO to negotiate cross-border agreements with neighbouring TSOs, adhering (to the extent possible) with principles of non-discrimination and third-party access.
16	<b>Article 66 - Refusal of access to the electricity transmission system</b>	<b>66.3</b> The transmission system operator, if refusing access to the electricity transmission system on the basis of lack of capacity or a lack of connection, shall make the necessary enhancements as far as it is economic to do so or when a potential customer is willing to pay for such enhancements.	<b>Article 66.3</b> This section requires the TSO to make "the necessary enhancements as far as it is economic to do so" when it is unable to provide access to a system user. The notion of what is "economic"

			needs elaboration—economic from the perspective of other system users or from the perspective of the requesting customer? How should the costs of that enhancement be recovered? The issue is particularly relevant when connecting renewable energy facilities, such as wind farms, which may be located far from the nearest transmission facility. Whether those costs should be “socialized” (i.e. spread across all users) or should be allocated to the new user has been a subject of many disputes in other countries.
17	<b>Article 68 - Electricity Transmission Network Code</b>	<b>68.2(4)</b> procedure, terms and conditions for the connection to the electricity transmission network in accordance with Article 67 [Connection to the electricity transmission network] of this Law, including:	<b>Article 68.2(4)</b> The treatment of “metering” and the ownership of metering devices throughout the Draft Law is inconsistent. Most of the references listed above assume that metering equipment is owned by customers and suppliers or requires ownership to be identified in the Distribution Network Code. The exception is in Article 91.1, which states that metering equipment on a distribution network shall be “owned” by the DSO and in paragraph 3 of that article, which states that where the metering device is owned by the producer or customer, the DSO shall “take over ownership of such metering devices.” There is no reference to compensation for taking over ownership nor is there any rationale given. Presumably the rationale is to ensure consistency of standards for metering. In other countries, the issue of consistency is addressed through a Metering Code with which all meters are required to comply. There is no reason for the DSO to own all meters if, as provided in other provisions of this Draft Law, the DSO has access to such meters.
18	<b>Article 68 - Electricity Transmission Network Code</b>	<b>68.2(8)</b> terms and conditions for the elaboration of electricity balances providing the forecasted data of the generation of electricity as well as supply and demand in the system and applied for dispatching and balancing operations. Electricity balances shall be prepared and updated on periodical basis in cooperation with operators of interconnected systems and other relevant system users and shall be published on the website of the transmission system operator;	<b>Article 68.2(8)</b> The references to “electricity balance” should be replaced with “projected supply and demand”; the concept of an “electricity balance” is a Soviet-era concept which gave the Government the ability to control which generators would be allowed to operate and which would be excluded through the use of an “annual balance” which had to be approved at the beginning of each year. That concept and the ability of the Government to control imports and exports by excluding certain supplies from the annual “balance” should not exist in competitive markets.
19	<b>Article 70- Allocation and use of cross-border electricity transmission capacities</b>	<ol style="list-style-type: none"> <li>1. Allocation and use of cross-border electricity transmission capacities shall be arranged following the rules established by the Electricity Transmission Network Code and the rules referred to in paragraph 3 of this Article, inter alia taking into account regionally coordinated arrangements thereto.</li> <li>2. For the purpose of allocation and use of the cross-border electricity transmission capacities within one or more regions, or the implicit purchase and sale of electricity along with the cross-border transmission capacities, when applicable, the transmission system operator may, in conformity with international agreements, establish together with the transmission system operators of other countries, one or more legal persons for coordinating auctions of cross-border transmission capacities.</li> <li>3. The rules on allocation and use of cross-border electricity transmission capacities in accordance with harmonised rules at the level of the region of the EC shall be developed by transmission system operators in charge, in line with the instructions of relevant national regulatory authorities and shall be adopted by the Commission in coordination with relevant national regulatory authorities in the region concerned. Supervision over cross-border capacity allocation at the level of the region of the EC shall be implemented in conformity with the decision on establishing a legal person for coordinated auctions.</li> </ol>	<b>Article 70</b> This article calls for the creation of one or more Coordinated Auction Offices (CAO) similar to the ones created in Europe. The South East Europe (SEE) CAO, established in Montenegro, includes a number of EC members as well as EU members but they are all contiguous to one another. It is unrealistic to suppose that Georgia can impose “harmonized rules” in conformance with EC rules on its neighbours. The article should be removed.
20	<b>Article 72 - Inter-transmission system operator</b>	1. Transmission system operators shall receive compensation for costs incurred as a result of hosting cross-border flows of electricity	<b>Article 72</b> This provision requires TSOs hosting cross-border flows to be compensated by the other TSO. Again,

	<b>compensation mechanism</b>	<p>on their networks as a result of cross-border exchanges in electricity.</p> <p>2. The compensation referred to in paragraph 1 shall be paid by the operators of national electricity transmission systems from which cross-border flows of electricity originate and the systems where those flows end.</p> <p>3. Compensation payments shall be made on a regular basis with regard to a given period of time in the past. Ex-post adjustments of compensation paid shall be made where necessary, to reflect costs actually incurred.</p> <p>4. The magnitude of cross-border flows of electricity hosted and the magnitude of cross-border flows of electricity designated as originating and/or ending in national electricity transmission systems shall be determined on the basis of the physical flows of electricity actually measured during a given period of time.</p> <p>5. The costs incurred as a result of hosting cross-border flows of electricity shall be established on the basis of the forward-looking long-run average incremental costs, taking into account losses, investment in new infrastructure, and an appropriate proportion of the cost of existing infrastructure, in so far as such infrastructure is used for the transmission of cross-border flows of electricity, in particular taking into account the need to guarantee security of supply.</p> <p>6. When establishing the costs incurred, as referred to in paragraph 5 of this Article, recognised standard-costing methodologies shall be used. Benefits that a network incurs as a result of hosting cross-border flows of electricity shall be taken into account to reduce the compensation received.</p>	<p>this article appears to be inapplicable to Georgia and applies only where all neighbouring TSOs are part of the EC. The goal in the article is a noble one but can only be achieved through mutual inter-TSO agreements and cannot be legislated by Georgia. This article should be removed.</p>
21	<b>Article 74 - Third-party access to the natural gas transmission system</b>	<b>74.8</b> The transmission system operator shall, if necessary for the purpose of carrying out its functions including in relation to cross-border transmission of natural gas, have access to the network of other transmission system operators of neighbouring countries following their mutual agreements and/or other terms of cooperation.	See Comment on <b>Article 65.6</b>
22	<b>Article 75 - Refusal of access to the natural gas transmission system</b>	<b>75.4</b> The transmission system operator, if refusing access to the natural gas transmission system on the basis of lack of capacity or a lack of connection, shall make the necessary enhancements as far as it is economic to do so or when a potential customer is willing to pay for such enhancements.	See comment on <b>Article 66.3</b>
23	<b>Article 76 - Connection to the natural gas transmission network</b>	<p><b>76.5</b> The transmission system operator shall not be entitled to refuse a new connection point on the ground that it will lead to additional costs linked with necessary capacity increase of network elements in the close-up range to the connection point. The transmission system operator shall ensure sufficient entry and exit capacity for new connections.</p> <p><b>76.6</b> The transmission system operator, in case of connection of a respective facility to the natural gas transmission network, shall be responsible for the construction of connecting installations at the connection point, unless it is otherwise expressly provided by the Natural Gas Transmission Network Code, and shall ensure that all technical requirements regarding the natural gas transmission network are properly met.</p>	<p><b>Article 76.5 and 6</b></p> <p>The recovery and allocation of costs needs to be addressed when obligating a TSO to incur additional costs.</p>
24	<b>Article 77 - Natural Gas Transmission Network Code</b>	<p>1. The operation and management of the natural gas transmission network shall be regulated by the Natural Gas Transmission Network Code and other applicable legal acts.</p> <p>2. The Natural Gas Transmission Network Code shall establish:</p> <ol style="list-style-type: none"> <li>1) operational prerequisites for safety of the natural gas transmission network in compliance with prescribed natural gas technical quality requirements under technical rules adopted pursuant to Article 108 [Interoperability of systems and technical rules] of this Law;</li> <li>2) procedures for operating the natural gas system under normal network operation regime and operation under extraordinary conditions, operation under fault conditions, events of force majeure and other cases of disturbed operation taking into account, inter alia, emergency management and security of supply rules adopted by applicable legal acts;</li> <li>3) procedure, terms and conditions for granting third party access to the natural gas transmission system, including third-party access services provided by the transmission system operator, in accordance with Articles 74 [Third-Party Access (TPA) to the natural gas transmission system] and</li> </ol>	<p><b>Articles 77</b> The treatment of "metering" and the ownership of metering devices throughout the Draft Law is inconsistent. Most of the references listed above assume that metering equipment is owned by customers and suppliers or requires ownership to be identified in the Distribution Network Code. The exception is in Article 91.1, which states that metering equipment on a distribution network shall be "owned" by the DSO and in paragraph 3 of that article, which states that where the metering device is owned by the producer or customer, the DSO shall "take over ownership of such metering devices." There is no reference to compensation for taking over ownership nor is there any rationale given. Presumably the rationale is to ensure consistency of standards for metering. In other countries, the issue of consistency is addressed through a Metering Code with which all meters are required to comply. There is no reason for the DSO to own all meters if, as provided in other provisions of this Draft Law, the DSO has access to such meters.</p>

<p>75 [Refusal of access to the natural gas transmission system] of this Law;</p> <ol style="list-style-type: none"> <li>4) procedure, terms and conditions for the connection to the natural gas transmission network in accordance with Article 76 [Connection to the natural gas transmission network] of this Law, including: <ol style="list-style-type: none"> <li>a) prerequisites for the connection to the natural gas transmission network;</li> <li>b) method of the natural gas metering, and functional requirements and accuracy class of metering equipment provided as established by technical rules pursuant to Article 108 [Interoperability of systems and technical rules] of this Law and other applicable legal acts;</li> <li>c) ownership of metering equipment at the connection point or other determined accounting metering point; and</li> <li>d) rights and obligations of the transmission system operator and system users related to connections to the natural gas transmission network;</li> </ol> </li> <li>5) terms and conditions for dispatching, including services provided by the transmission system operator thereto;</li> <li>6) terms and conditions for balancing of the natural gas system in accordance with Article 78 [Natural gas balancing rules and imbalance charges] of this Law;</li> <li>7) capacity-allocation mechanisms and congestion management procedures in accordance with Article 79 [Principles of CA mechanisms and CM procedures concerning the natural gas transmission system] of this Law;</li> <li>8) criteria for and method of the procurement of ancillary services and provision of natural gas system services;</li> <li>9) criteria, procedure and methodology for planning the operation and development of the natural gas transmission network;</li> <li>10) virtual point (or points) in the natural gas transmission network;</li> <li>11) range of quality, chemical contents and other characteristics of natural gas taken to the natural gas transmission network and delivered from the network provided as established by technical rules pursuant to Article 108 [Interoperability of systems and technical rules] of this Law and other applicable legal acts;</li> <li>12) procedure, terms and conditions for measuring capacities and delivered natural gas to and transported through the natural gas transmission network;</li> <li>13) terms and conditions for data exchange on planned and delivered quantities of natural gas in cases where daily measurements are not possible;</li> <li>14) terms and conditions for the implementation of procedures for interruptions of natural gas deliveries through the natural gas transmission network;</li> <li>15) rights and obligations of the transmission system operator and of system users related to the operation and management of the natural gas transmission network;</li> <li>16) general terms and conditions for the provision of transmission related services, including for relevant contractual relations with regard to connection to the natural gas transmission network (pursuant to standard contract on connection) and transmission of natural gas (pursuant to standard natural gas transport contract);</li> <li>17) terms and conditions for the internal handling of complaints and settlement of disputes within the transmission system operator as arising from natural gas transport contracts and from other relations with regard to access and connection to and use of the natural gas transmission network;</li> <li>18) method of publication of data and information possessed by the transmission system operator necessary for the operation and management of natural gas systems and for organising the natural gas market, including definition of all relevant points and time schedule of publications, inter alia in accordance with Article 61 [Transparency requirements concerning the TSO] of this Law;</li> <li>19) methods of data and information exchange with other system operators of interconnected natural gas systems;</li> <li>20) requirements for the submission of data and information to the transmission system operator necessary for the</li> </ol>	<p><b>Article 77.2(1) and .2(10)</b></p> <p>Given the disruption that occurred when a natural gas pipeline explosion occurred many years ago, some reference should be made to “physical security” of the natural gas network. While terrorism cannot be completely prevented, certain security measures can be taken. There is no equivalent article for natural gas to Article 145 (Operational security of electricity networks) so some reference to physical security of the natural gas network should be included in para 2(1) of this article, such as inserting the words “and physical security” after the word “safety” (unless the issue of physical security of the natural gas network is dealt with in another law).</p> <p>Para 2(4) (10) of this article lists “virtual point” as an item that should be included in the Natural Gas Transmission Network Code; however, what should be included in the Code is “provisions dealing with the operation of a Virtual Trading Point (or points)” not just a “virtual point.”</p>
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		<p>operation and management of the natural gas transmission network in accordance with Article 62 [Delivery of data and information to the TSO] of this Law;</p> <p>21) measures aimed at energy efficiency and security of natural gas supply requirements within the competence of the transmission system operator;</p> <p>22) other terms and conditions relevant for the operation and management of the natural gas transmission network.</p> <p>3.The Natural Gas Transmission Network Code shall be developed by the transmission system operator and adopted by the Commission. In the process of development of the Natural Gas Transmission Network Code, the transmission system operator shall ensure appropriate participation of and consultations with all interested parties and may seek for advice by the ECS regarding the compliance of the draft Natural Gas Transmission Network Code. The transmission system operator shall comply with technical rules adopted pursuant to Article 108 [Interoperability of systems and technical rules] of this Law and other applicable legal acts.</p> <p>4.The Natural Gas Transmission Network Code shall be published in the Legislative Herald of Georgia and on the website of the transmission system operator.</p> <p>5.Without prejudice to paragraph 1 of this Article, any item referred to in paragraph 2 of this Article, in cases where deemed necessary by the transmission system operator and subject to its justification, may be excluded from the Natural Gas Transmission Network Code and therefore elaborated and adopted as a separate act (rules or regulation). Requirements laid down in paragraphs 3 and 4 of this Article shall be fully applied to such a separate act.</p>	
25	<p><b>Article 80 - Status of the distribution system operator</b></p> <p><b>Article 81 - Designation of the distribution system operator</b></p> <p><b>Article 82 - Unbundling of the distribution system operator</b></p>	<p><b>Article 80 - Status of the distribution system operator</b></p> <p>1.Distribution is an activity of public interest which encompasses the transport of electricity or natural gas on the distribution network, ensuring secure and reliable deliveries of electricity or natural gas for final consumption, as well as the operation, maintenance and development under economic conditions of the distribution network, and other related activities necessary for the efficient functioning of and access to electricity and natural gas distribution systems of Georgia.</p> <p>2.Distribution shall be carried out by the distribution system operator under the terms and conditions stipulated in this Law, as well as in line with other applicable laws and/or other legal acts regulating activities in the energy sector of Georgia.</p> <p>3.The distribution system operator shall be organised as a specialised and independent energy undertaking with the status of a legal person incorporated under the laws of Georgia. While carrying its duties and fulfilling its tasks, the distribution system operator shall be independent from any other energy activities, namely production, transmission, supply and trade, and related commercial interests. Independence of the distribution system operator shall be implemented and further on ensured through unbundling of the distribution system operator under the terms and conditions stipulated in Article 82 [Unbundling of the DSO] of this Law.</p> <p>4.The distribution system operator shall not be entitled for sale and/or purchase of electricity or natural gas, except for in cases expressly referred to in this Law, including procurement of electricity or natural gas to cover the losses in the distribution network.</p> <p>5.The distribution system operator shall be entitled to undertake its activities subject to its designation under the terms and conditions stipulated in Article 81 [Designation of the DSO] of this Law.</p> <p><b>Article 81 - Designation of the distribution system operator</b></p> <p>1.The distribution system operator shall be designated by the Commission by issuance of a license for the distribution under the terms and conditions stipulated in the Law of Georgia on Licenses and Permits in accordance with Chapter V [Authorisation of energy activities] of this Law.</p> <p>2.License for the distribution may be issued only to a duly unbundled distribution system operator in accordance with Article 82 [Unbundling of the DSO] of this Law.</p> <p><b>Article 82 - Unbundling of the distribution system operator</b></p>	<p><b>Articles 80, 81, 82</b></p> <p>This article reads as if there will be only one distribution system operator, which is the case in a number of countries. But in Georgia there are several distribution companies, in both gas and electricity, which exceed the 100,000 connected customers threshold and will therefore have their own DSO. The term “operator” should be replaced by “operators” throughout these articles.</p>

		<ol style="list-style-type: none"> <li>1. Where the distribution system operator is part of a vertically integrated undertaking, it shall be independent at least in terms of its legal form, organisation and decision making from other activities not relating to distribution.</li> <li>2. The independence of the distribution system operator, as referred to in paragraph 1 of this Article, shall not create an obligation to separate the ownership of assets of the distribution system operator from the vertically integrated undertaking.</li> <li>3. To guarantee the independence of the distribution system operator, as required under paragraph 1 of this Article, the following minimum criteria shall apply: <ol style="list-style-type: none"> <li>1) those persons responsible for the management of the distribution system operator must not participate in company structures of the integrated undertaking responsible, directly or indirectly, for the day-to-day operation of the production, transmission, supply or trade;</li> <li>2) appropriate measures must be taken to ensure that the professional interests of the persons responsible for the management of the distribution system operator are taken into account in a manner that ensures that they are capable of acting independently; and</li> <li>3) the distribution system operator must have effective decision-making rights, independent from the integrated undertaking, with respect to assets necessary to operate, maintain or develop the distribution network. In order to fulfil those tasks, the distribution system operator shall have at its disposal the necessary resources including human, technical, physical and financial resources.</li> </ol> </li> <li>4. The independence of the distribution system operator shall not prevent the vertically integrated undertaking from approving the annual financial plan, or any equivalent instrument of the distribution system operator and setting global limits on the levels of its indebtedness.</li> <li>5. The vertically integrated company shall not have the right to give instructions regarding day-to-day operations of the distribution system operator, nor with respect to individual decisions concerning the construction or upgrading of distribution lines, which are within the terms of the approved financial plan, or any equivalent instrument.</li> <li>6. The distribution system operator must establish a compliance programme, which sets out measures taken to ensure that discriminatory conduct is excluded and ensure that observance of it is adequately monitored. The compliance programme shall set out the specific obligations of employees to meet that objective.</li> <li>7. An annual report, setting out the measures taken by the distribution system operator, shall be submitted by the person responsible for monitoring the compliance programme of the distribution system operator, i.e. by the compliance officer, to the Commission and shall be published on the website of the distribution system operator. The compliance officer shall be fully independent and shall have access to all the necessary information of the distribution system operator and any affiliated undertaking to fulfil its tasks.</li> <li>8. The distribution system operator cannot take advantage of its vertical integration to distort competition. In particular, the distribution system operator shall not, in its communication and branding, create confusion in respect of the separate identity of the supply branch of the vertically integrated undertaking.</li> <li>9. The Commission shall monitor the compliance of the distribution system operator with the requirements for its independence and unbundling stipulated by this Law.</li> <li>10. The Ministry shall be entitled to take complementary measures regarding the organization and independence of the distribution system operator, in order to guarantee its independence from other activities not related to distribution, as required under paragraph 1 of this Article. The Ministry may decide, upon consultation with the Commission, that requirements of this Article shall not be applied to the distribution system operator, considering that the vertically integrated undertaking in question is serving less than 100 000 connected customers.</li> </ol>	
26	<b>Article 90 - Connection to the</b>	<b>90.4</b> The connection point shall be defined by the distribution system operator following relevant published technical criteria and based on a	<b>Article 90.4</b>

	<b>distribution network</b>	solution which is economically or commercially most viable from the aspect of a person who applies for connection of its facilities.	Who pays for the new connection point to the distribution network? This article states that a “solution” is to be “economically or commercially most viable from the aspect of a person who applies for connection of its facilities.” Paragraph 6 states that the DSO does the construction, but nowhere does it say who pays for this construction.
27	<b>Article 91 - Access to metering points and devices</b>	<b>91.1</b> Metering devices, including auxiliary equipment, on connection points in the distribution network with the networks or facilities of producers and customers shall be owned, maintained and verify by the distribution system operator in charge.	<b>Article 91.1</b> The treatment of “metering” and the ownership of metering devices throughout the Draft Law is inconsistent. Most of the references listed above assume that metering equipment is owned by customers and suppliers or requires ownership to be identified in the Distribution Network Code. The exception is in Article 91.1, which states that metering equipment on a distribution network shall be “owned” by the DSO and in paragraph 3 of that article, which states that where the metering device is owned by the producer or customer, the DSO shall “take over ownership of such metering devices.” There is no reference to compensation for taking over ownership nor is there any rationale given. Presumably the rationale is to ensure consistency of standards for metering. In other countries, the issue of consistency is addressed through a Metering Code with which all meters are required to comply. There is no reason for the DSO to own all meters if, as provided in other provisions of this Draft Law, the DSO has access to such meters.
28	<b>Article 92 - Distribution Network Code</b>	<b>92.3(4)b</b> method of the electricity or natural gas metering, and functional requirements and accuracy class of metering equipment provided as established by technical rules pursuant to Article 108 [Interoperability of systems and technical rules] and other applicable legal acts; <b>92.3(4)c</b> ownership of metering equipment at the connection point or other determined accounting metering point; and	<b>Article 92.3(4)b and c</b> The treatment of “metering” and the ownership of metering devices throughout the Draft Law is inconsistent. Most of the references listed above assume that metering equipment is owned by customers and suppliers or requires ownership to be identified in the Distribution Network Code. The exception is in Article 91.1, which states that metering equipment on a distribution network shall be “owned” by the DSO and in paragraph 3 of that article, which states that where the metering device is owned by the producer or customer, the DSO shall “take over ownership of such metering devices.” There is no reference to compensation for taking over ownership nor is there any rationale given. Presumably the rationale is to ensure consistency of standards for metering. In other countries, the issue of consistency is addressed through a Metering Code with which all meters are required to comply. There is no reason for the DSO to own all meters if, as provided in other provisions of this Draft Law, the DSO has access to such meters.
29	<b>Article 95 - Unbundling of the natural gas storage system operator</b>	<b>95.3</b> This Article shall apply only to natural gas storage facilities that are technically and/or economically necessary for providing efficient access to the natural gas system for the supply of customers pursuant to Article 98 [Organisation of access to natural gas storage facilities and linepack] of this Law.	<b>Article 95.3</b> This paragraph is unclear. It implies that there may be two types of natural gas storage facilities—those that are “technically and/or economically necessary for providing efficient economic access to the natural gas system for the supply of customers” and those that are not “necessary” for providing such “efficient economic access.” No storage facilities are “technically or economically necessary” for operating a gas transmission system, since Georgia has managed to operate without one up to now. If “necessity” is the criterion, then the unbundling requirement would never apply. Is this distinction supposed to differentiate between “commercial” storage and “strategic” storage? Or between “private” and “public” storage? It is not clear.
30	<b>Article 97 - Transparency requirements concerning natural</b>	<b>97.5</b> In cases in which a system user is the only user of a natural gas storage facility, such system user may submit to the Commission a reasoned request for confidential treatment of the data referred to in paragraph 4 of this Article. Where the Commission comes to the	

	<b>gas storage facilities</b>	conclusion that such a request is justified, taking into account, in particular, the need to balance the interest of legitimate protection of business secrets, the disclosure of which would negatively affect the overall commercial strategy of the system user, with the objective of creating a competitive internal natural gas market, it may allow the natural gas storage system operator not to publish the data referred to in paragraph 4 of this Article, for a duration of up to one (1) year.	
31	<b>Article 98 - Organisation of access to natural gas storage facilities and linepack</b>	<b>98.6</b> In the case of regulated access, the Commission shall take the necessary measures to give natural gas undertakings and eligible customers either inside or outside the territory covered by the interconnected system a right to access to natural gas storage, linepack and other ancillary services, on the basis of published tariffs and/or other terms and obligations for use of that natural gas storage and linepack, when technically and/or economically necessary for providing efficient access to the system, as well as for the organisation of access to other ancillary services. The Commission shall consult system users when calculating those tariffs or developing the methodologies used to calculate those tariffs. The right of access for eligible customers may be given by enabling them to enter into supply contracts with competing natural gas undertakings other than the owner and/or operator of the system or a related undertaking.	<b>Article 98.6</b> The last sentence of this paragraph is unclear. It states: "The right of access for eligible customers may be given by enabling them to enter into supply contracts with competing natural gas undertakings other than the owner and/or operator of the system or a related undertaking." If unbundling from supply and TPA are already mandated, why is it necessary to note that eligible customers "may be right would otherwise not exist, unless specified by this provision, which is contrary to the whole thrust of competitive markets in supply laid out in the Draft Law.
32	<b>Article 99 - Third-party access services concerning natural gas storage facilities</b>	<b>99.1(6)</b> offer to system users both bundled and unbundled services of natural gas storage space, injectability and deliverability	<b>Article 99.1(6)</b> What is meant by "bundled and unbundled" storage services? How can "space, injectability and deliverability" be provided as separate services?
33	<b>Article 101 - Principles of capacity-allocation mechanisms and congestion management procedures concerning natural gas storage facilities</b>	<b>101.1</b> The maximum natural gas storage capacity shall be made available to natural gas market participants, taking into account system integrity and operation.	<b>Article 101.1</b> Does the requirement that the "maximum natural gas storage capacity" be made available to natural gas market participants allow the Ministry to reserve a portion of the capacity for "strategic" and security of supply purposes?
34	<b>Article 114 - General Supply Conditions</b>	<ol style="list-style-type: none"> <li>1. Rights and obligations of the supplier and final customer shall be regulated under the supply contract.</li> <li>2. The conclusion and contents of the supply contract shall be further determined by the General Supply Conditions, as adopted by the Commission in line with the provisions of this Law and to be mandatory applied by all suppliers. Where relevant, separate General Supply Conditions may be issued for the supply of electricity and supply of natural gas.</li> <li>3. The General Supply Conditions, with respect to supply contracts, shall particularly contain the following: <ol style="list-style-type: none"> <li>1) the method for changing contracted terms of supply;</li> <li>2) the right of the final customer to terminate the contract;</li> <li>3) the method for the notification of a price increase before its application;</li> <li>4) the method for the notification of valid prices, standard deadlines and conditions, in particular those related to the access and use of services;</li> <li>5) the ban for a final customer to keep any data from that contract, calculations and bills (especially prices, ways to change prices and metering data) as confidential data; and</li> <li>6) the method for billing and payment for services provided under the supply contract.</li> </ol> </li> <li>4. Each supplier shall ensure that the conditions from the supply contract which the supplier offers to its final customers are in line with the General Supply Conditions. The conditions from the supply contract shall be written clearly and comprehensibly and shall not include non-contractual barriers to exercise the rights of customers, such as excessive contractual documentation or excessive administrative burdens. Each supplier shall ensure that final customers are protected from unfair and misleading sales methods.</li> <li>5. Each supplier shall prepare and in an appropriate manner publish standard conditions for the conclusion of the supply contract containing conditions established in advance. Each supplier shall also appropriately publish applicable prices or regulated tariffs, as applied.</li> </ol>	<b>Article 114</b> Requires that any enterprise wishing to undertake electricity supply should notify the Regulator no later than 5 days after the customers start receiving supply, and if it intends to cease supply activities it should inform the regulator 5 days after cessation. This may be OK for pure business to business suppliers, but for those who take on a Public Service Obligation (PSO) (i.e. universal suppliers supplying residential and small commercial customers), consideration should be given to requiring a license. This would ensure that the regulator is confident in the technical and commercial capabilities in the aspiring supplier. It would also give the regulator an unambiguous tool for initiating the Supply of Last Resort (SoLR) process – if the supplier is in breach of the license conditions the regulator revokes the license and appoints to SoLR Note also that the suppliers will generally be required to be in or to be a balancing group (Article 136) but there seems nothing in the law to require such membership (although I may have missed it). This could be in the license or in the market rules, but qualification should be established before trading commences.

		<p>6. Based on the General Supply Conditions it shall be ensured that all final customers:</p> <ol style="list-style-type: none"> <li>1) are afforded a right to a contract with their suppliers that specifies: <ol style="list-style-type: none"> <li>a) the identity and address of the supplier;</li> <li>b) the services provided and the service quality levels offered;</li> <li>c) the means by which up-to-date information on all applicable prices or regulated tariffs, as applied may be obtained;</li> <li>d) the duration of the contract, the conditions for renewal and termination of services and of the contract, the existence of any right of withdrawal;</li> <li>e) any compensation and the refund arrangements which apply if contracted service levels are not met; and</li> <li>f) the method of initiating procedures for settlement of disputes in accordance with Article 169 [Dispute settlement] of this Law.</li> </ol> </li> <li>2) are given adequate notice of any intention to modify contractual conditions and are informed about their right of withdrawal when the notice is given. Suppliers shall be required to notify their customers directly of any increase in charges, not later than required under the General Supply Conditions before the increase comes into effect;</li> <li>3) receive transparent information on applicable prices and tariffs, and on standard terms and conditions, specifically with respect to access to and use of services in the electricity or natural gas sector;</li> <li>4) benefit from transparent, simple and free of charge procedures for dealing with their complaints. Such procedures shall enable disputes to be settled fairly and promptly with provision, where warranted, for a system of reimbursement and/or compensation as referred to in subparagraph 4 of paragraph 1 of Article 116 [Obligations of suppliers] of this Law;</li> <li>5) are informed about their rights to be supplied, under this Law, with electricity or natural gas of a specified quality at published prices or regulated tariffs.</li> </ol> <p>7. Provisions of the supply contract shall be fair and shall, clearly and unambiguously, encompass the rights and obligations of both the supplier and final customer. Where contracts are concluded through intermediaries, the notification pursuant to paragraphs 5 and 6 of this Article must also be provided to final customers prior to the conclusion of the supply contract.</p> <p>8. The supply contract shall not deprive or aggravate the right of the final customer to terminate or cancel the said contract for the purpose of using its supplier switching right, nor shall it impose additional financial obligations for that matter, except for in cases where it is expressly otherwise agreed between the supplier and non-household final customer.</p>	
35	<p><b>Article 116 - Obligations of suppliers</b></p>	<p>1. Each supplier shall ensure a single contact point from which its final customers shall be provided with all the necessary information and notifications concerning their rights, current regulations and the existing and available means of dispute settlement. The single contact point shall also allow final customers to:</p> <ol style="list-style-type: none"> <li>1) receive transparent notification on applicable prices or regulated tariffs and on standard terms and conditions, in respect of access to and use of services;</li> <li>2) be offered a wide choice of payment methods, which do not unduly discriminate between final customers. Prepayment systems shall be fair and adequately reflect likely consumption. Any difference in terms and conditions shall reflect the costs to the supplier of the different payment systems;</li> <li>3) receive available information as regards the possibility to change their supplier on a free basis;</li> <li>4) receive instructions for the implementation of transparent, simple and economic procedures for dealing with their complaints – in particular, each supplier shall ensure that its final customers have the right to a good standard of service</li> </ol>	<p><b>Article 116</b></p> <p>There seemed to be an opinion that Telasi would retain Tbilisi and Energo Pro everywhere else when considering Residential consumers protected by a PSO. Further in the law, it's stated that the Universal Service Supply to relevant customers on the territory of one distribution service area, may be performed by a single supplier to whom a public supply obligation has been imposed. Therefore, clarification is needed will there be a single USS designated or each distribution licensee is deemed as USS?</p>

	<p>and that their complaints are handled properly and in such a way that enables disputes to be settled fairly and promptly, in ten (10) business days, with provision, where warranted, for a system of reimbursement and/or compensation;</p> <ol style="list-style-type: none"> <li>5) receive frequent and accurate notifications on actual electricity or natural gas consumption and costs to enable them to regulate their own consumption – that information shall be provided by using a sufficient time frame, which takes account of the capability of the metering equipment of the final customer, with due account taken of the cost-efficiency of such measures and without additional costs charged to the final customer for that service; and</li> <li>6) receive a final closure account following any change of supplier not later than six (6) weeks after the change of supplier has taken place.</li> </ol> <p>2. In relation to a single contact point, in addition to requirements specified in paragraph 1 of this Article, each supplier serving household customers and small enterprises shall:</p> <ol style="list-style-type: none"> <li>1) establish customer centres which shall provide information, handle inquiries by final customers, requests and complaints, by telephone, e-mail and in person;</li> <li>2) establish a commission for complaints in order to protect final customers in accordance with the provisions of the laws regulating the customer protection;</li> <li>3) adjust office hours of the customer centre to final customer needs, ensuring that at least one day per week the customer centre remains open until 8 p.m. It shall be possible for the final customers to make appointments with the customer centre by phone or e-mail.; and</li> <li>4) assist with the transmission and/or distribution system operator in relation to complaints and/or information which relate to matters which are regulated by the contract for transmission and/or distribution related services.</li> </ol> <p>3. Suppliers shall take the necessary steps to provide their final customers with a copy of the energy customer checklist which contains practical information relating to energy customer rights and ensure that it is timely published.</p> <p>4. Each supplier shall notify the final customer on changes to applicable prices or regulated tariffs and other supply conditions, at least fifteen (15) days before the implementation of such changes, including the information on the right of the final customer to terminate the contract. Final customers are free to terminate their contracts if they do not accept the new conditions notified to them.</p> <p>5. Each supplier may supply the final customer only if the transmission or distribution system operator to whose network facilities of the final customer are connected establishes and confirms to the supplier that said customer complies with the conditions for secure supply of electricity or natural gas.</p> <p>6. Each supplier shall prepare and publish its action programme for:</p> <ol style="list-style-type: none"> <li>1) providing assistance to final customers in relation to their fulfilment of due contractual obligations in order to prevent the suspension of supply; and</li> <li>2) supporting the supply of final customers in remote areas.</li> </ol> <p>7. Each supplier shall regularly notify its final customers on measures for the improvement of energy efficiency in final energy consumption.</p> <p>8. Each supplier pursuant to concluded supply contracts shall propose to its final customers that said supplier issues an invoice and collects payments for:</p> <ol style="list-style-type: none"> <li>1) use of the transmission and/or distribution system;</li> <li>2) provision of system services; and</li> <li>3) other fees prescribed by applicable legal acts.</li> </ol> <p>9. Each supplier shall charge for electricity or natural gas supplied and related services provided on the basis of an invoice which shall be clear and comprehensible as well as formed and issued in compliance with the requirements prescribed by the Commission.</p> <p>10. Each supplier shall regularly inform its final customers about the supply of electricity or natural gas, including environmental issues. Information that each supplier shall provide to its final customers</p>	
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		<p>shall be in line with the requirements prescribed by the Commission. Each supplier shall specify in the invoice sent to the final customer or in the annexes to such invoice as well as in promotional materials available to the final customer:</p> <ol style="list-style-type: none"> <li>1) the share of each energy source within the overall portfolio of supply invoked by the supplier to meet the electricity or natural gas demand of its final customers, where available;</li> <li>2) at least a reference to existing reference sources, such as websites, where information is publicly available on environmental impact of production from energy sources invoked by the supplier in the preceding year, where available; and</li> <li>3) inform final customers concerning their rights as regards available means of dispute settlement and handling of complaints.</li> </ol> <p>11. The Commission shall take the necessary steps to ensure that the notifications provided by suppliers to their final customers are presented in a reliable, clear and comparable manner. The Commission may decide to make elements of those notifications available to all market participants, providing that commercially sensitive information on certain participants or transactions are not published.</p> <p>12. Each supplier shall undertake necessary steps aimed at protecting the interests of its final customers as well as handling the complaints of its final customers, including out-of-court dispute settlements, in an efficient way and free of charge. The Commission shall supervise the way in which complaints are handled pursuant to the provisions of this Law and applicable rules adopted by the Commission.</p> <p>13. Each supplier shall report, on a periodical basis, to the Commission regarding its supply activities and, in particular, fulfilment of requirements established in this Law and in the General Supply Conditions under the terms and conditions stipulated in the rules on provision of information adopted by the Commission.</p>	
36	<p><b>Article 120 - Supply of natural gas under public service obligation</b></p>	<ol style="list-style-type: none"> <li>1. Household customers and small enterprises shall be entitled to be supplied with natural gas by the public service supplier under the terms and conditions stipulated in this Article.</li> <li>2. The supply of customers referred to in paragraph 1 of this Article, on the territory of one distribution service area, may be performed within the framework of supply by a single supplier to which a public supply obligation has been imposed pursuant to Article 9 [Public services] of this Law.</li> <li>3. The Commission shall determine and adopt the operational rules for public service suppliers which carry out the supply of natural gas as a public service obligation. These rules shall further regulate the activities of such suppliers including, inter alia, their rights and obligations, termination of their responsibilities, and other matters considered relevant by the Commission. By 1st of March each year, public service suppliers shall issue, upon prior approval of the Commission, an annual report regarding its activities with respect to public supply service over the previous year. This report shall be made available to the Competition Agency and the ECS.</li> <li>4. Supply of natural gas under public service obligation shall be provided at fair, comparable and market-based prices set and applied by public service suppliers in a transparent and non-discriminatory manner.</li> <li>5. For the purposes envisaged in Article 9 [Public Services] of this Law, the Commission may deviate from paragraph 4 of this Article and may set the end-user price for natural gas supplied by public service suppliers pursuant to the methodology adopted by the Commission. The Commission shall ensure that regulation of the end-user price is limited only for the purposes of the supply of natural gas under public service obligation to household customers and small enterprises and only to the extent necessary.</li> <li>6. In cases where the Commission invokes the regulation of the end-user price for natural gas supplied by public service suppliers under paragraph 5 of this Article, it shall provide a detailed explanation and rationale linking such regulation with exceptional circumstances on the natural gas market and offering a justification of the necessity for maintaining regulation of the end-user price as a public service obligation that complies with the conditions of this</li> </ol>	<p><b>Article 120</b></p> <p>This article makes it clear that any supplier serving residential customer is a by default is a Universal Service Supplier (USS), although Law says that USS will be designated by relevant authority. Clarification is needed to avoid contradictory provisions.</p>

		<p>Article and with Article 9 [Public services] of this Law. Such explanation shall be made available to the Competition Agency and the ECS.</p> <p>7. The Commission, in cases referred to in paragraph 6 of this Article, shall establish the end date for phasing-out the regulation of the end-user price, as well as a roadmap for doing so, showing clearly the temporary character of such price regulation.</p> <p>8. The Commission shall ensure that natural gas prices, whether market-based or regulated, are cost-reflective. Cost-reflectivity must extend to the actual costs of supply, including necessary investments and an appropriate rate of return, the costs of imports, the costs of supply services and bad debts.</p> <p>9. Each public service supplier shall:</p> <ol style="list-style-type: none"> <li>1) provide supply of natural gas as a public service to all those final customers who are eligible for that type of supply under this Law;</li> <li>2) perform the supply of natural gas under public service obligation exclusively in accordance with the requirements laid down in this Article;</li> <li>3) undertake measures to achieve secure, reliable and prescribed quality of the supply of natural gas to final customers whom it supplies with natural gas under public service obligation; and</li> <li>4) undertake measures to achieve the most acceptable natural gas prices for final customers provide with the supply of natural gas under public service obligation.</li> </ol> <p>10. The Commission shall ensure that different categories of customers to whom the supply of natural gas under public service obligation is provided do not benefit from the same treatment and protection.</p>	
37	<p><b>Article 121 - Supply of last resort</b></p>	<p>1. Based on an open tender procedure, the Government shall designate a supplier of last resort for electricity and a supplier of last resort for natural gas. Nothing in this Law shall preclude the universal service supplier or the natural gas supplier under public service obligation from being designated as a supplier of last resort.</p> <p>2. The decision on opening of tender procedure under paragraph 1 of this Article shall contain the criteria for selection of the supplier of last resort, terms and conditions for the supply of last resort, information about the electricity or natural gas price formation and its changes, contractual terms and conditions, as well as the duration of the term for which the supplier of last resort shall be appointed.</p> <p>3. In case the tender procedure for selection of the supplier of last resort fails, including due to absence of candidate supplier of last resort, the Government shall right to directly designate the supplier of last resort upon submission by the Ministry.</p> <p>4. The supplier of last resort shall be appointed for a period of three (3) years.</p> <p>5. The supplier of last resort shall supply a final customer with electricity or natural gas without a specific application having to be submitted by the final customer if its electricity or natural gas supplier has exited the market and that said customer loses electricity or natural gas supply without any form of protection, regardless whether the concerned customer is faced with unplanned or planned exit of the supplier or a severe violation by the supplier of its obligations.</p> <p>6. The supplier that is not capable of supplying electricity or natural gas to its final customers, in cases referred to in paragraph 5 of this Article, shall be obliged to notify its final customers, the supplier of last resort, the Commission, and transmission and distribution system operators in charge on the date of the suspension of supply in a timely manner and, in any case, not later than thirty (30) days before the date of the suspension of supply or not later than the next business day after the supplier became aware of such a date. In such a case the customer shall be automatically supplied by the supplier of last resort.</p>	<p><b>Article 121</b></p> <p>This Article does not specify the criteria for selecting a SoLR following the tender procedure. Is a SoLR selected based on the lowest "margin" that a SoLR proposes to charge above the average market price or some other factor?</p> <p>The U.K. has taken a different approach to the SoLR role. Rather than treating SoLRs as "reluctant" suppliers which are forced to take on additional customers against their will, it treats the bankruptcy of a supplier as an opportunity for another supplier to acquire more customers without having to do any marketing. In the U.K., a SoLR is selected through an open tender procedure only after a supplier has ceased supply to one or more customers due to financial difficulties. The SoLR is selected based on certain published criteria and "from [among] those suppliers [Ofgem] consider to be best placed to carry out the role." <sup>1</sup> The customers of the bankrupt company do not pay tariffs different from the SoLR's existing customers and may choose to stay with the SoLR or may choose another supplier by following the supplier switching rules. Appointing a SoLR when needed to deal with the specific problems presented in a specific case, provides more flexibility for the Commission, rather than appointing a SoLR several years in advance (since a supplier appointed for three years may also get into financial difficulties and declare bankruptcy as has happened with both electric and gas distribution companies in Georgia).</p>

<sup>1</sup> [https://www.ofgem.gov.uk/system/files/docs/2017/09/solr\\_revised\\_guidance\\_final\\_21-10-2016.pdf](https://www.ofgem.gov.uk/system/files/docs/2017/09/solr_revised_guidance_final_21-10-2016.pdf)



		<p>7. The Commission shall inform final customers, the supplier of last resort, and transmission and distribution system operators in charge by publishing on its website about the supplier referred to in paragraph 5 of this Article, not later than in five (5) business days from the date the Commission became aware of the circumstances causing incapability by the supplier to supply electricity or natural gas to its final customers.</p> <p>8. Transmission and the distribution system operators in charge shall submit information to the supplier of last resort about the customers who are transferred for the supply of last resort within five (5) business days after receipt of the notice under paragraphs 5 and/or 6 of this Article.</p> <p>9. The procedure regarding the market exit by the supplier from the electricity or natural gas market shall be prescribed by the Electricity Market Rules and the Natural Gas Market Rules respectively.</p> <p>10. The supplier of last resort may supply final customers for a time period the maximum duration of which is three (3) calendar months. In case that the final customer fails to conclude a supply contract with a new supplier in the above-referred time period, the system operator in charge shall terminate the delivery of electricity or natural gas.</p> <p>11. The Commission shall adopt operational rules for the supplier of last resort which shall further regulate its activities with respect to its obligations as of a supplier of last resort.</p> <p>12. Supply of last resort shall be provided at fair, comparable and market-based prices set and applied by suppliers of last resort in a transparent and non-discriminatory manner pursuant to the methodology adopted by the Commission.</p> <p>13. The Commission shall ensure that prices for electricity and natural gas supplied by suppliers of last resort are cost-reflective. Cost-reflectivity must extend to the actual costs of supply, including necessary investments and an appropriate rate of return, the costs of imports, the costs of supply services and bad debts.</p> <p>14. Prices for electricity and natural gas supplied by suppliers of last resort must be higher than the average market price for electricity and natural gas supplied to the same category of customers under regular supply conditions. This requirement shall be implemented by increasing the cost-reflective price with a supply of last resort margin calculated and set pursuant to the methodology adopted by the Commission.</p> <p>15. The supplier of last resort shall unbundle, keep separate financial records and prepare financial reports as regards the performance of the supply of last resort.</p> <p>16. Supply contract between the supplier of last resort and final customer shall be considered concluded as from the day on which the supply is physically established and provided to the customer, whether requested or not by said customer, in accordance with applicable rules and conditions provided for in the Supplier Switching Rules and/or applicable operational rules.</p> <p>17. The supplier of last resort shall deliver to its customers a written supply contract within eight (8) days after the commencement of the supply of last resort.</p> <p>18. The supplier of last resort may request suspension of delivery of electricity or natural gas to the customer due to unsettled liabilities by submitting a request for the suspension of delivery to the system operator in charge.</p> <p>19. The supplier of last resort shall prepare and publish at least once a year a report which contains the number of supplied customers, the total amount of delivered electricity or natural gas and the average duration of the supply of last resort. This report shall be made available to the ECS.</p>	
38	<p><b>Article 122 - Rights and obligations of final customers</b></p>	<p>1. Final customers shall be protected in accordance with this Law and regulations passed on the basis thereof, as well as other laws regulating the customer protection in Georgia and/or their implementing regulations.</p> <p>2. Final customers shall pay for electricity and natural gas in accordance with the General Supply Conditions and other applicable contractual conditions. Terms and procedures for</p>	<p><b>Article 122 – Supply of Last Resort</b></p> <p>The article seems to require that a single SoLR is appointed for a period of 3 years, following a tender process.</p> <p>Further, the article requires that the provision of supply following a default of a Universal Supplier will persist for only three months.</p>

		<p>invoicing, settlement and collections of payments shall be defined in the General Supply Conditions.</p> <p><b>122.3</b> In accordance with Articles 112 [Supply activities] and 117 [Supplier Switching Rules] of this Law, each eligible customer is entitled to a free choice of supplier and change of supplier. Each final customer is entitled to possess all relevant data in relation to its electricity and natural gas consumption and shall be able to, by explicit agreement and free of charge, give any registered supplier access to its metering data. The party responsible for data management shall be obliged to give those data to energy undertakings in charge. The General Supply Conditions shall define a format for the data and a procedure for suppliers and final customers to have access to the data. No additional costs shall be charged to the final customer for that service.</p> <p>3. Large customers shall have the right to contract simultaneously with several suppliers. The Commission shall elaborate in the General Supply Conditions the rules and procedure enabling large customers to exercise this right.</p> <p>4. In the event of technical or other disturbances in the delivery of electricity or natural gas, which are not caused by facilities of the final customers, the final customer shall have the right to demand the removal of those disturbances within the shortest possible period of time under the terms and conditions stipulated in the applicable Transmission Network Code or Distribution Network Code.</p> <p>5. Disruptions due to the implementation of measures for suspended deliveries which are undertaken in the event of distortions on the electricity or natural gas market shall not be considered as disturbances in the delivery of electricity or natural gas referred to in paragraph 5 of this Article, provided that such disruptions are justified under terms and conditions stipulated in this Law and/or other applicable legal acts.</p> <p>6. Final customers shall use electricity and natural gas under the conditions, in the manner and for the purposes established by this Law, the applicable Transmission Network Code and Distribution Network Code, other applicable acts and in line with respective contractual obligations.</p>	<p>Firstly, it may be more flexible if such precise numbers (3 years, 3 months) were to be in the secondary legislation, this giving the regulator some discretion in managing the fallout of a supply failure.</p> <p>Secondly, the provisions seem unjustified. It is quite possible that a supplier designated as SoLR itself fails (remember Enron), and it seems perfectly possible that the affected customers are happy with their new supplier. It may be of benefit to regulate the SoLR tariff for the first three months under some conditions, but this should be under the purview of the regulator, not enshrined in primary regulation.</p> <p><b>Article 122.3</b></p> <p>This provision states that eligible customers are entitled to “a free choice of supplier”; however, if they are served at regulated rates set by GNERC, they must take supply from the universal service supplier for electricity or the single supplier of gas on which a public supply obligation has been imposed. They are therefore not “free” to choose their supplier under those circumstances. That exception should be made clear here.</p>
39	<p><b>Article 123 - Protection of vulnerable customers</b></p>	<p><b>123.3</b> Household customers benefiting from a financial support covering, fully or partially, payments for electricity and/or natural gas supply services shall not be allowed to use such financial support for other purposes.</p> <p><b>123.6</b> The difference between costs and revenues from the activity of a supplier serving socially vulnerable customers shall be compensated by the Government or its authorised public body.</p>	<p><b>Article 123.3 and .6</b></p> <p>This article needs to be clarified. Paragraph 3 of this Article implies that vulnerable customers directly receive financial support since they are not allowed to “use the financial support for other purposes.” Para 2(3) states that the subsidy of vulnerable customers will come from “revenue sources other than tariff charges”. Yet para 6 says that the “difference between costs and revenues” from supply of vulnerable customers is to be compensated by the Government, which implies that the supplier has to supply the vulnerable customers at a price that does not cover its costs.</p> <p>Para 5 also implies that vulnerable customers will be supplied by the public supplier; however, other references to “each supplier serving vulnerable customers” indicates that they may be served by suppliers other than the public supplier. If this is the case, what is the procedure for appointing or choosing a supplier for vulnerable customers? Article 7 has the vulnerable customer submitting a request to a supplier, but it is unclear how they know to which supplier they should submit their request.</p> <p>Para 10 notes that a vulnerable customer may have “unpaid bills” and requires the supplier to make special accommodations to avoid termination of electricity or natural gas. If the Government is subsidizing a vulnerable customer’s bills, there is no reason to treat vulnerable customers differently from other non-paying household customers. If there are extraordinary circumstances that prevented a vulnerable customer from paying its bills which justify not disconnecting the non-paying</p>

			<p>vulnerable customer, those justifications should also be applicable to other customers.</p> <p>Finally, the register of vulnerable suppliers kept by the DSO should also identify the supplier to the registered vulnerable customers.</p>
40	<p><b>Article 128 - Competition in energy markets</b></p>	<ol style="list-style-type: none"> <li>1. The Commission shall pursue that conditions for effective competition in energy markets and its development are established, and possibilities for market abuse are timely intercepted and controlled.</li> <li>2. For the purposes of paragraph 1 of this Article, the Commission shall carry out the monitoring of energy markets and, when necessary, shall therefore proceed with the market survey: <ol style="list-style-type: none"> <li>1) upon request of the Government, the Ministry, the Competition Agency, and the Public Defender of Consumers' Interests;</li> <li>2) upon request of the market participants, where they have evidence of market abuse and they suffer direct financial damage as a result of such abuse;</li> <li>3) on its own initiative.</li> </ol> </li> <li>3. The market survey shall constitute the following: <ol style="list-style-type: none"> <li>1) definition of the market (scope of services and geographical territory);</li> <li>2) analysis of the effectiveness of competition in the market and quantitative assessment of the concentration in the market (including the Herfindahl-Hirschman Index (HHI), used as a measure to assess the share of the market possessed by each energy undertaking and the amount of competition among several undertakings);</li> <li>3) indication of persons having significant influence upon the market, as referred to in Article 129 [Significant influence upon energy markets] of this Law; and</li> <li>4) conclusions of the market survey, which shall include decisions on or proposals for regulatory measures referred to in paragraph 8 of this Article.</li> </ol> </li> <li>4. The market survey shall be carried out under the terms and conditions established by the rules on the monitoring of energy markets adopted by the Commission and following respective decision of the Commission.</li> <li>5. The market survey shall be processed in line with the laws of Georgia, respective regulations and/or recommendations of the EC and taking into account the best international practices in the field and in cooperation with the relevant national authorities.</li> <li>6. For the purposes of the market survey, the Commission shall proceed with public consultations in accordance with Article 24 [Public consultations and cooperation] of this Law. Comments and proposal received during public consultations shall be analysed by the Commission and their consolidated review, including explanations provided by the Commission, shall be published on the website of the Commission.</li> <li>7. The market survey shall be finished in four (4) months from the date of the respective decision of the Commission to start such market survey. If reasonably required and duly justified, such term may be extended under decision of the Commission, but in any case, not longer than for additional four (4) months. The Commission shall pursue that the market survey is finished in the most effective and timely manner.</li> <li>8. The market survey shall be finished by adoption of the decision of the Commission, which shall demonstrate the outcomes of questions referred to in paragraph 3 of this Article. Decisions on or proposals for regulatory measures may include the following: <ol style="list-style-type: none"> <li>1) decision on revocation of a license for energy activities under the terms and conditions stipulated in the Law of Georgia on Licences and Permits;</li> <li>2) decision on application of financial penalties, as referred to in Article 167 [Penalty provisions] of this Law;</li> <li>3) decision on application of measures to promote market opening according to Article 126 [Measures to promote market opening] of this Law; and/or</li> </ol> </li> </ol>	<p><b>Article 128</b></p> <p>The survey of market competition conducted by the Commission in cooperation with the Competition Agency should also assess competition of fuel sources for thermal power plants and natural gas suppliers, including from imports, and make recommendations on improving competition and diversity in the supply of energy resources.</p>

		<p>4) decision to apply to a competent national authority of Georgia should the legitimacy of any activities of a market participant be at stake.</p> <p>9. Results of the market survey and respective decisions of the Commission shall be submitted to the Government, the Ministry, other competent national authorities of Georgia, and shall be published on the website of the Commission.</p> <p>10. For the purposes of this Article, the Commission shall closely cooperate and exchange the information with the Competition Agency, but without prejudice to their respective competences and regulatory powers as stipulated in this Law and in the Law of Georgia on Competition.</p>	
41	<b>Article 131 - Organisation of the electricity market</b>	<b>131.2</b> The possibility of establishing the stock exchange of electricity derivatives shall not be limited only to the electricity market operator	<p><b>Article 131.2</b></p> <p>There are several oblique references to derivatives in the Draft Law but the concept of a derivatives, or financial, market for electricity products is not developed. The reference in this para to the Market Operator establishing “a stock exchange of electricity derivatives” should either be deleted or developed in much more depth.</p>
42	<b>Article 132 - Tasks of the electricity market operator</b>	<b>132.1(3)</b> preparation of daily schedules for purchase and sale of electricity within and across the borders of Georgia pursuant to contractual obligations arising from purchasing and selling on the day-ahead electricity market	<p><b>Article 132.1(3)</b></p> <p>The exception to the prohibition on the Electricity Market Operator (EMO) trading in electricity is unclear. When would an EMO ever represent a contractual party? This is not explained by Article 134.5 which again references the EMO trading. The EMO is privy to confidential information which could influence its trading decisions and its trading could distort market signals. There should not be any exception to the prohibition on the EMO trading in electricity</p>
		<b>132.3</b> The electricity market operator shall not trade in electricity, except for the purpose of trading on the organized electricity markets where the electricity market operator represents a contractual party.	<p><b>Article 132.3</b></p> <p>This is not good practice. Is there a precedence in the EU market where such exception exists for an EMO?</p>
43	<b>Article 133 - Electricity market concept design and the Electricity Market Rules</b>	<b>133.4(4)</b> types and templates of contracts concluded on the electricity market;	
44	<b>Article 134 - Electricity market participants</b>	<b>134.5</b> In relation to the trade on the organised electricity markets, where the electricity market operator represents a contractual party as referred to in paragraph 3 of Article 132 [Tasks of the electricity market operator] of this Law, the electricity market operator is a specific electricity market participant whose special characteristics are further regulated by the Electricity Market Rules.	<p><b>Article 134.5</b></p> <p>The exception to the prohibition on the EMO trading in electricity is unclear. When would an EMO ever represent a contractual party? This is not explained by Article 134.5 which again references the EMO trading. The EMO is privy to confidential information which could influence its trading decisions and its trading could distort market signals. There should not be any exception to the prohibition on the EMO trading in electricity</p>
45	<b>Article 135 - Liability of electricity market participants in relation to imbalances</b>	<b>135.1</b> Liability for the imbalance is established for all electricity market participants based on the balancing group model, for the purpose of unobstructed performance of purchase and sale transactions on the electricity market and their fair settlement, achieving a balance between generation and consumption in the electricity system of the Georgia and separation of financial transactions from physical delivery.	<p><b>Article 135.1</b></p> <p>Will the balancing groups be allowed to manage under their own internal rules or will the rules on managing a balancing group be specified by a central body?</p>
46	<b>Article 136 - Scope of the natural gas market</b>	<b>136.5</b> Before establishment of the organised natural gas balancing and ancillary services market, the transmission system operator for natural gas shall have the responsibility to procure balancing and ancillary services from natural gas market participants capable of providing such services under the terms and conditions stipulated in the Natural Gas Transmission Network Code and Natural Gas Market Rules which shall define, inter alia, requirements for providers of balancing and ancillary services, terms and conditions for the procurement of balancing and ancillary services.	<p>Article 138 (2) states the Market Operator (MO) will organize the balancing and ancillary services market. This is probably not consistent with other countries where the TSO operates these markets. I doubt the Georgian electricity market operator will be able to handle gas balancing market.</p>
		<b>136.7</b> The transmission system operator shall cooperate with other system operators on facilitating balancing market at a regional level in order to ensure operational security of natural gas networks and efficient functioning of balancing market based on the effective competition, non-discrimination and transparency	<p>Not sure this has any relevance in the southern Caucasus where no neighbour has a balancing market.</p>

47	<b>Article 137 - Organisation of the natural gas market</b>	<p><b>137.1</b> The natural gas market operator shall be responsible for the organisation of the day-ahead natural gas market in Georgia, when established, for trade in natural gas as well as for its connection and integration with other organised natural gas markets. Organisation of the natural gas market shall be regulated by the Natural Gas Market Rules.</p> <p><b>137.3</b> The natural gas market operator shall perform its activities on the basis of a license issued by the Commission under the terms and conditions stipulated in the Law of Georgia on Licenses and Permits in accordance with Chapter V [Authorisation of energy activities] of this Law.</p>	<p><b>Articles 137.1 and 3</b></p> <p>See comment on Definition No. 24 re “day-ahead natural gas market”</p>
48	<b>Article 138 - Tasks of the natural gas market operator</b>	<p><b>138.2</b> The natural gas market operator may be assigned with other tasks and responsibilities under this Law and the Natural Gas Market Rules, including those additional tasks and responsibilities which may be conferred upon establishment of the organised natural gas balancing and ancillary services markets as referred to in paragraph 8 of Article 136 [Scope of the natural gas market] of this Law.</p> <p><b>138.3</b> The natural gas market operator shall not trade in natural gas, except for the purpose of trading on the day-ahead natural gas market where the natural gas market operator represents a contractual party.</p>	<p>See comment on <b>Article 136</b>.</p> <p>Not needed in Georgia and is not recommended in any way as a transparent approach to market operation.</p>
49	<b>Article 139 - Natural gas market concept design and the Natural Gas Market Rules</b>	<p><b>139.4(10)</b> day-ahead natural gas market;</p> <p><b>139.4(8)</b> standards and procedures for the application, preparation, verification and change of daily schedules for purchasing and selling of natural gas;</p>	<p><b>Articles 139.4(10)</b></p> <p>See comment on Definition No. 24 re “day-ahead natural gas market”</p> <p><b>Articles 139.4(8)</b></p> <p>Something seems to be missing here. Who and how is applying and verifying daily schedules?</p>
50	<b>Article 140 - Natural gas market participants</b>	<p><b>140.5</b> In relation to the trade on the day-ahead natural gas market, where the natural gas market operator represents a contractual party as referred to in paragraph 3 of Article 138 [Tasks of the natural gas market operator] of this Law, the natural gas market operator is a specific natural gas market participant whose special characteristics are further regulated by the Natural Gas Market Rules</p>	<p><b>Article 140.5</b></p> <p>See comment on Article 131.3 re trading by the EMO. The natural gas market operator should not be allowed to trade in the gas market.</p>
51	<b>Article 144 - Measures concerning security of electricity supply</b>	<p><b>144.4</b> In cases where the guaranteed electricity generation capacity is needed in order to ensure the stability, safety and reliability of the electricity system, including balance between supply and demand, the Government, subject to the proposal by the Ministry, may impose an obligation on an electricity producer or several electricity producers to maintain the guaranteed electricity generation capacity which may be effectively allocated for the system balancing needs in case of emergency or other defined extraordinary circumstances in the electricity system. Such obligation shall in all cases comply with the criteria for public service obligations in accordance with Article 9 [Public services] of this Law and shall be therefore justified, including the screening in accordance with competition and/or State aid rules, and consulted pursuant to requirements stipulated therein. Terms and conditions for the maintenance of the guaranteed electricity generation capacity shall be established by the Government. Dispatching of the guaranteed electricity generation capacity shall be performed by the transmission system operator to whose network respective electricity generation facilities are connected under the terms and conditions stipulated in the Electricity Transmission Network Code. Electricity produced following allocation of the guaranteed electricity generation capacity shall be traded under the terms and conditions stipulated in this Law.</p>	<p><b>Article 144.4</b></p> <p>Where electric generators are designated as “guaranteed electricity generation capacity” it should be made clear that they are compensated only if they are available for dispatch and that their compensation is tied to availability.</p> <p>The thermal power plants are currently included in the category of “social” gas customers and supplied at below market tariffs. This special category for the Thermal Power Plants (TPPs) is not addressed anywhere. Article 112(3) only provides public service to households and small enterprises. If the TPPs are to continue receiving “social gas,” this issue needs to be addressed in the Law.</p>
52	<b>Article 145 - Operational security of electricity networks</b>	<p>1. The transmission system operator shall set the minimum operational rules and obligations of the security of the electricity transmission network in compliance with this Law, regulations on the security of electricity supply, Transmission Network Code, technical rules as referred to in Article 108 [Interoperability of systems and technical rules] of this Law, and other applicable legal acts.</p> <p>2. Operational rules and obligations of the security of the electricity transmission network shall be adopted following prior consultations with system users and other relevant parties in Georgia and, where relevant, with transmission system operators of the neighbouring countries. The transmission system operator shall consult the Commission and the Ministry as regards the compliance of its set operational rules and obligations with legal acts referred to in paragraph 1 of this Article.</p> <p>3. The Ministry and the Commission, within their competence, shall ensure that transmission and, where relevant, distribution system operators comply with the minimum operational requirements and quality requirements for services in the transmission and/or</p>	<p><b>Article 145</b></p> <p>Some reference to cyber security should be made in this article.</p>

		<p>distribution network, and maintain an appropriate level of the operational security of electricity networks.</p> <p>4. The transmission system operator shall maintain an appropriate level of technical transmission reserve capacity for operational security of electricity networks and cooperate with system operators of interconnected systems and of the neighbouring and/or other countries concerned. The level of foreseeable circumstance in which security shall be maintained shall be defined in the operational rules and obligations of the security of the electricity transmission network in compliance with legal acts referred to in paragraph 1 of this Article.</p> <p>5. The transmission system operator shall exchange information with the relevant system operators in interconnected systems relating to the operation of network in a timely and effective manner in line with the minimum operational requirements.</p> <p>6. The transmission system operator shall meet network security performance objectives and, where relevant, the quality of the supply of electricity, as stipulated in the operational rules and obligations of the security of the electricity transmission network in compliance with legal acts referred to in paragraph 1 of this Article.</p> <p>7. For the purposes of the cross-border exchanges in electricity and the operational security of electricity networks thereto, the transmission system operator, the electricity market operator and/or any other electricity undertaking in charge shall not discriminate between the cross-border contracts and national contracts.</p>	
53	<b>Article 165 – Right to use third party owned network facilities</b>	<p>1. Owners, other than system operators, of any electricity or natural gas distribution network facilities, under the Civil Code of Georgia, shall be obliged to tolerate the use of their facilities for the purpose of providing system services. System operators in charge shall be responsible for operation and maintenance of those facilities, except in the cases defined by the Commission. The owner may claim compensation for such use of network facilities, in accordance with the rules set by the Commission. The costs of operation and maintenance of such network facilities incurred by system operators, or compensation of such costs paid by system operators shall be reflected in the tariffs set by the Commission under the applicable methodology.</p> <p>2. If no owner has been identified of electricity or natural gas distribution network facilities, which are necessary for provision of system services, system operators in charge shall be responsible for operation and maintenance of such facilities to ensure the required quality of their provided system services in accordance with the requirements set by the Commission. The costs of operation and maintenance of such network facilities incurred by system operators, or compensation of such costs paid by system operators shall be reflected in the tariffs set by the Commission under the applicable methodology.</p>	<p><b>Article 165</b></p> <p>A reference to reasonable compensation should be included in this article.</p>
54	<b>Article 172 - General transitory provisions concerning this Law</b>	<p><b>172.2</b> The date indicated in paragraph 1 of this Article shall be without prejudice that a subsequent one (1) year period will be necessary for testing and adjusting the relevant implementing provisions and market instruments in the electricity sector.</p>	<p><b>Article 172.2</b></p> <p>It is unclear whether the one-year grace period for the electricity sector in Article 172.2 prevails over 173.1(1). Article 175.1(1) and other articles specifically note the transitory period. The same reference should be included in Article 173.1(1).</p>
55	<b>Article 173 - Transitory provisions concerning energy activities</b>	<p><b>173.1(1)</b> All energy activities regulated by this Law shall be performed as market activities, unless defined and justified as public services in accordance with Article 9 [Public services] of this Law, not later than:</p> <p>1) electricity activities – from 1 January 2019; and</p>	<p><b>Article 173.1(1)</b></p> <p>It is unclear whether the one-year grace period for the electricity sector in Article 172.2 prevails over 173.1(1). Article 175.1(1) and other articles specifically note the transitory period. The same reference should be included in Article 173.1(1).</p>

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